

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

VOL. II.

Published by the Authority of the Council.

175.

CALCUTTA:

PRINTED BY P. M. CRANENBURGH, MILITARY ORPHAN PRESS.

1857.

CONTENTS.

Proceedings of the Legislative Council from January 19, to December 27, 1856,	1
Standing Order for the admission of Reporters for the Public Press,	732a
Index,	733

Kingdom and the Colonies. It authorized the apprehension of deserters without a warrant by an Officer or Soldier, if a Constable could not be immediately met with. The Section under consideration authorized a Commanding Officer, upon information upon oath, to issue a warrant for the apprehension of a deserter, and to search any place in which there shall appear reason to suspect that he is concealed. The Act of Parliament conferred almost the same power upon any Officer or Soldier in the United Kingdom and the Colonies, without warrant, if a Constable could not be met with, which this Act conferred upon the person to whom the Commanding Officer might direct his warrant.

SIR JAMES COLVILLE said, he thought it would be better to alter his amendment by adopting the words which the Honorable and Learned Member had in view, since there might be a Magistrate or Justice of the Peace established in the place where the desertion might happen, but he might be away from the station and in some distant part of his district at the time. He should, therefore, with the leave of the Council, alter his amendment by wording it thus:—"in which no person lawfully exercising Magisterial powers can be found."

The amendment was then put and agreed to.

The remaining Sections of the Bill, with the Preamble and Title, were passed.

The Council having resumed its sitting, the three Bills settled in Committee were reported.

BILLS OF LADING.

SIR JAMES COLVILLE gave notice that, on Saturday next, he should move that the Bill "to amend the Law relating to Bills of Lading" be read a third time and passed.

MARRIAGE OF HINDOO WIDOWS.

MR. ELIOTT moved that a communication which he had received from the Chief Secretary to the Government of Madras, relative to the Bill "to remove all legal obstacles to the marriage of Hindoo Widows" be laid on the table and referred to the Select Committee on the Bill.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that, on Saturday next, he would move that the Bill "to

repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof, and the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India," be severally read a third time and passed.

MR. ELIOTT gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "to amend Act XII of 1851 (for securing the Land Revenue of Madras.)"

CHOWKEYDARS.

MR. ALLEN moved that the Bill "for the punishment of Chowkeydars for neglect of duty" be referred to a Select Committee consisting of Mr. Elliott, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

AMEENS (BENGAL.)

MR. CURRIE gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

The Council adjourned.

Saturday, April 5, 1856.

PRESENT :

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

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

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from residents of Midnapore in favor of the Bill "to remove all legal obstacles to the marriage of Hindoo Widows."

Also a Petition from Hindoo Inhabitants of Tipperah against the same Bill.

MR. GRANT moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

EMIGRATION.

THE CLERK reported that he had received a communication from the Secretary

to the Government of India in the Foreign Department, forwarding copies of papers with a view to the passing of an Act for the punishment of immigrant laborers in Pegu for the breach of their engagements.

MR. GRANT moved that the above communication be printed and referred to the Select Committee on the Penal Code prepared by the Indian Law Commissioners. Agreed to.

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. ELIOTT presented the Report of 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." In submitting this Report, he said, the Select Committee desired he should mention that they hoped to be able to present their Report on the Police Bill on Saturday next. On that day, he would move that the Council resolve itself into a Committee upon the Conservancy Bill; and on Saturday the 19th, he would move that the Council take the Police Bill into consideration in Committee. The Conservancy Bill was of considerable length, but it would be in the hands of Honorable Members on Monday, and he hoped that they would have time to consider it between Monday and Saturday. The reason for which he was desirous of urging the progress of these Bills, of which he had charge, was, that he proposed, after the Meeting of the Council on Saturday the 19th instant, to ask for leave to proceed to Madras, and that he would therefore probably be absent on the next following Saturday.

BILLS OF LADING.

SIR JAMES COLVILE moved the third reading of the Bill "to amend the law relating to Bills of Lading."

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

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYNT moved the third reading of the Bill "to repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof."

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

DESERTION OF EUROPEAN SOLDIERS.

MR. LEGEYNT moved the third reading of the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

MR. ALLEN said, he objected so strongly to this Bill, that he could not refrain from asking the Council to consider it once again.

The part to which he would particularly direct attention was the penal portion of the Bill, although he did not think that the procedure part was unobjectionable. The penal portion of the Bill was contained in the first Section, and the only offence created or made punishable by the Bill was the offence of a Master or Commander being so neglectful of his duty, or allowing such a want of discipline to prevail in his vessel, that a deserter from Her Majesty's or the East India Company's Army might be concealed on board. He begged to remind the Council that this Bill did not make penal the offence of harboring or concealing a deserter, or of assisting a deserter. Therefore, it essentially differed from Act III of 1855. He thought that there were good reasons for passing that Act. At that time, there was no provision for punishing persons who concealed or assisted deserters from the Indian Navy, while there was such a provision in the Mutiny Act as regarded deserters from the Army. There was almost a necessity, then, for bringing in a Bill to punish those who should conceal or assist deserters from the Navy. It was very true that a third Section had been added to that Bill creating the minor offence of allowing of deserters from the Navy being concealed or harbored on board in consequence of neglect of duty or want of discipline; but that was not the principal part of the Bill; it was a mere adjunct to it; and that addition had been made a substantive provision in this Bill for the Indian Army.

Those Honorable Members who were present at the discussion of the Bill for the Indian Navy, would remember that, while the principle of the measure was acknowledged to be good on all sides, there were several supplements introduced into it, all of which were eventually weeded out, except the provision to which he was referring. The honorable and learned Chief Justice of the day had weeded out one of these supplements, the present Chief Justice had modified some, and the Honorable Member opposite (Mr. Grant) had weeded out another. When the Section he alluded to was under

discussion, the principal argument in favor of it was contained in these words :—

“ The Master or Commander was frequently absent from his vessel. Yet, he was the person directly interested in inducing sailors to desert, in order the more effectually to man his own ship. That was the grievance of which the Naval Authorities in Bombay principally complained. Wages were high in the Merchant Service at present ; and, of course, the higher the rate of wages, the greater the inducement for desertion from the Indian Navy, and the more frequent the occurrence of the offence. It was very easy for a Master or Commander to contrive to induce men to desert without appearing to take any part in the transaction himself, by employing his mate, his boatswain, or his gunner ; and while he thus had the benefit of the desertion, he might contrive not to lay himself open to have the offence defined in the 2nd Section proved against him.”

The most eloquent speech against the Section, contained these words :—

“ The seaman concealed might be a deserter without any one on board knowing he was a deserter. He might be the friend of one of the crew who, knowing that it was contrary to the rules of the ship to have his friend on board, might have concealed him from the Officers of the ship without knowing that he had absconded from the Navy. From neglect of duty, or from a want of proper discipline, the Master might not know of the concealment. The man who concealed, would not be guilty of any offence, not knowing of the desertion ; but yet, by this Section, the Master, who might not know either of the desertion or of the concealment, would be guilty of an offence, because he did not know of the concealment.”

These were the grounds on which that Section in Act III of 1855 had been supported and opposed.

He now came to the Bill before the Council. Could the corresponding Section in it be justified by a reference to any good Criminal Code in Europe or America ? He believed that it could not be. He believed that no precedent could be found for it anywhere but in the unfortunate Section in the Indian Navy Desertion Act to which he had referred. It would be an insult to Macaulay to ask if such a Section was to be found in his Code. Would any Member of the Select Committee appointed to consider that Code, propose to introduce into it a Section similar to the Bill which was now under consideration ? He imagined not. One and all of them would feel that such a Section would be a blot in the Code at which every Jurist of America and Europe would point. This Bill was not defended upon that ground. It was defended, he thought, first upon the ground that what was right for the Indian Navy, must be right for the Indian Army ;

and secondly upon the ground that the Military Authorities at Bombay and Rangoon had represented that it was necessary for the purpose of preventing desertion from the Army.

With respect to the first ground, he could only say that, if the provision was wrong in principle, the precedent afforded by the Act for the Indian Navy could not make it right in a Bill for the Indian Army. Two blacks could not make a white ; and the whole argument upon this ground seemed to him to show that, instead of making the present Bill follow Act III of 1855 in this respect, the more judicious course would be to repeal the third Section of that Act.

The other ground was, that representations had come from Bombay and Rangoon which justified this enactment. The first of these representations was from Bombay ; the other from Rangoon. He would take the representation from Rangoon first. The gallant Officer commanding at Rangoon said—

“ I request that it may be submitted for the consideration of the Supreme Government, whether these cases may not be met by a legislative enactment to punish Masters of Ships, and others, for concealing, or conniving at the concealment, and carrying away of Deserters from the Armies (or Navies) of the Queen or the East India Company.”

Did this Bill do that ? He said, certainly not ! And why ? Because the offence of concealing or conniving at the concealment of deserters was already provided for by the Mutiny Act. He believed that the gallant Commandant of the Pegu Division did not know of the existence of this provision in the Mutiny Act when he sent up his representation. Had he been informed that he already had, in such a Section of such an Act, the remedy which he required, he believed he would have been perfectly satisfied with the Law as it stood.

The Bombay Government, indeed, had expressly asked for a Bill similar to Act III of 1855. But was this Bill similar to Act III of 1855 ? He said, No ! The Bombay Government had asked for Hamlet, and the Bill gave it, with the part of Hamlet left out at the particular desire of the Honorable Member for Bombay. Act III of 1855 was to punish Commanders of vessels and others for concealing or harboring deserters from the Indian Navy, or aiding in concealing or harboring them. That was the principle of that Act, and that was the object for which a similar Bill was applied for. But this Bill contained no provision of the sort. It contained only an excrescence of Act III of 1855.

Her Majesty's Army was distributed all over the world. There was one Act for the punishment of offenders in that Army, and it contained a Section for the punishment of those who should aid desertion from it. That Section he would read :—

“ Any person who shall, in any part of Her Majesty's dominions, by words, or by any other means whatsoever, directly or indirectly, procure any Soldier to desert, or shall by words, or by any other means whatsoever, attempt to procure or persuade any Soldier to desert, and any person who, knowing that any Soldier is about to desert, shall aid or assist him in deserting; or, knowing any Soldier to be a Deserter, aid or assist such Deserter in concealing himself, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be liable to be punished by Fine or Imprisonment, or both, as the Court before which such conviction shall take place, may adjudge.”

This Section applied to India as well as elsewhere. Why was it that it was not sufficient? What was the difference between the Indian port of Bombay and the Chinese port of Hong-Kong?—what between the Continent of India and the Island of Ceylon?—what between the East Indies and the West Indies—that what was sufficient in those parts of the British dominions should not be sufficient in these?

He felt he owed some apology to His Excellency the Commander-in-Chief for so pertinaciously opposing a Bill relating to the Army which His Excellency had recommended. If he thought that the Military Authorities at Bombay and Rangoon had considered the Section of the Mutiny Act which he had just read, and that His Excellency the Commander-in-Chief had also considered it, and still asked for the Bill as necessary for the better prevention of desertion from the Army, he should not have spoken to-day and repeated his opposition to the Bill. He could not have voted with him, as he did not think that the end justified the means in jurisprudence any more than in ethics; but his vote would have been a silent one.

He should respectfully suggest that the third reading of the Bill be postponed for three weeks or a month, in order that there might be an opportunity of making some further inquiry, for the purpose of ascertaining whether there really was any absolute necessity for the passing of this stringent measure.

So much for the penal part of the Bill.

He had a very few words to say as to the procedure part.

The principal part of the procedure proposed was contained in Section V. To him, it

was not quite clear what was intended to be done by this Section. It provided that, upon information given on oath or solemn affirmation, a Commanding Officer, or a Justice of the Peace, Magistrate, &c. might issue a Warrant to any person authorizing him to enter into and search, by day or night, any vessel, house, or other place on shore, and apprehend any European deserter from the Army. Did this mean that the person to whom the Warrant was directed might enter by forcible means? One Member of the Select Committee on the Bill had informed him that it did—another, that it did not; consequently, it was doubtful what the Section really meant. But, in his opinion, it would be objectionable whether designed to provide for entry with force or without force. If without force, the Council, in passing the Section, would be limiting the powers which the Military Authorities already possessed. There was not, at the present day, a file of soldiers that could not go and arrest a deserter in any Punch House or other place of concealment without a warrant: there was not a Policeman in the country who could not apprehend any deserter in any place without a warrant. He had been two years a Magistrate in Cawnpore; and it was not at all an uncommon occurrence for Police Officers to send in deserters from places distant forty or fifty miles away from the station without any warrant; and they were made over to the local Military Authorities. He had never heard that this was wrong. Then, did those Honorable Members who supported the Section in question mean to say by implication that no deserter was to be apprehended by a soldier or policeman unless the soldier or policeman was armed with a warrant? If, on the other hand, the Section was intended to give the power of forcible entry, he considered that it would be objectionable; for it would go directly against a Section in the Mutiny Act relating to the Queen's Army, which he should think it inadvisable to set aside. That Section immediately followed the one he had already read, and was as follows :—

“ Any Officer or Soldier who shall forcibly enter into or break open any dwelling-house or out-house, or shall give any order under which any dwelling-house or out-house shall be forcibly entered into or broken open without a Warrant from one or more Justices of the Peace, shall, on conviction thereof before two Justices of the Peace, forfeit a sum not exceeding twenty Pounds.”

He did not see the advantage that was to

be gained by the Section, if it was merely intended to authorize entry into a ship or house without force; and if it was intended to authorize such entry with force, it appeared to him to be objectionable.

He felt his objections against this Bill so strongly that he would not move that the third reading be postponed; but if any other Member of the Council should make that motion, he should support it.

THE COMMANDER-IN-CHIEF said, he had not been prepared for the continued opposition made to this Bill, and he did not think that the Honorable Member who urged it had made out to-day a better case in support of his views than in the debate on the motion for Committee of the whole Council. The Honorable Member had based his arguments principally upon a supposed distinction between the necessity for this Bill for the Indian Army and the necessity for the Bill that had been passed for the Indian Navy. Now, he (the Commander-in-Chief) thought that the argument of the Honorable Member rather told against himself. The Honorable Member said that the reason why the provision in question was advisable in the Bill for the Indian Navy was, that there was a strong inducement for Commanders to harbor deserters from that Service, because the men would be useful to them as sailors. By that argument, he really gave up his position of the absence of any necessity for the passing of this Bill; for he admitted that Commanders of vessels might be open to undue influences for harboring deserters on board their vessels. If they were open to such influences, he (the Commander-in-Chief) thought it was necessary that the Military Authorities should have the power of searching their vessels or boats for deserters from the Army. This Bill had been brought forward principally at the suggestion of the Government of Bombay; but, at the same time, a suggestion had also come from the General Officer commanding at Rangoon for some enactment to prevent desertion in stations on or near the sea coasts in that country.

The Honorable Member had remarked particularly on Section V of the Bill, which authorized a Commanding Officer or Justice of the Peace, upon information given on oath or solemn affirmation, to enter any ship or house, at any time of the day or night, to search for and apprehend a deserter, and had said that, from his experience as a Magistrate in this country, he could state that it was a common occurrence for Police Officers to ar-

rest deserters 40 or 50 miles from their district without any warrant. But it was to be observed that there was no great difficulty in finding a deserter on land; while there was very great difficulty in finding a deserter who was concealed on board a vessel.

On the whole, the arguments which the Honorable Member had adduced to-day were not stronger than those which he had brought forward before; and he (the Commander-in-Chief) did not believe that the Council would alter the decision to which they had come on the former discussion of this Bill. As he had mentioned on that occasion, we had a different state of things to deal with in this country, and greater powers were necessary for the support of authority here. The 88th Section in the Mutiny Act for the Queen's Army, which the Honorable Member had read, gave a very extensive power for arresting deserters; but it did not apply to the circumstances which the provisions of this Bill were to deal with; and he was of opinion that some further power was necessary.

MR. LEGEY said, as the mover of the Bill, he desired to say a few words in reply to the Honorable Member opposite (Mr. Allen). He was sorry the Honorable Member had continued his opposition to the passing of the Bill; for he must say he agreed with His Excellency the Commander-in-Chief that he had not made out a stronger case to-day than when the measure was last before the Council. If he understood him aright, he felt a greater objection to the present Bill than he felt to Act III of 1855, because the principle of Act III of 1855 was to punish any person who aided desertion, whereas this Bill contained no provision for that offence. It was true that this Bill contained no such provision; but the Honorable Member had forgotten to tell the Council that the Mutiny Act both for Her Majesty's and for the East India Company's Forces contained a Section exactly similar in meaning and almost similar in words to the provision, the absence of which from this Bill he seemed so much to regret. Consequently, to insert a provision of the same kind in this Bill, even supposing the Council had the power to insert it, would only be a useless repetition. He took it for granted that General Steel and the Bombay Government must have known that the Mutiny Act did contain such a provision; and both those authorities had asked for the further stringent provision for putting down desertion which this Bill gave. He (Mr. LeGeyt) did not think

it was at all fair to suppose that either the gallant Officer commanding at Pegu or the Authorities at Bombay had asked for this Bill blindly, and in utter ignorance of an existing Act which must be constantly in their hands. It appeared to him, therefore, that the Honorable Member's argument upon that point could not be supported.

The Honorable Member had said that no other Code of Law in Europe or America contained such a provision as that made by this Bill. That might be; but when an evil was found to exist in a particular country, and was considered by the Government of that country to call for a remedy, be (Mr. LeGeyt) did not think that the fact of the remedy not being adopted elsewhere, was an argument for not giving the local Executive power to enforce such remedy.

With respect to the severity of the provision referred to, he adhered to the opinion he had expressed in the last debate on the Bill, that, if the Master or person in charge of a vessel was so neglectful of his duty as to allow deserters from the Army to be received on board his vessel and kept concealed there, the mere fact of his being ignorant of the concealment ought not to be allowed as an excuse for him. Why was the Commander of a ship to keep a floating receptacle for deserters from a garrison? No one on shore was allowed to keep a house for such a purpose; and he (Mr. LeGeyt) did not see why a Commander, because he alleged that he himself was out of the ship when a deserter was admitted on board, should be personally free of all penalties for allowing such a state of discipline to prevail in his vessel that he should remain in ignorance that the man was lying concealed there. No such excuse by the landlord of a public house would be listened to.

With regard to the provision made by the Bill for procedure, to which the Honorable Member had also objected, it was very true that, in the Mutiny Act for the Queen's Army, there was a provision allowing any officer or soldier to apprehend deserters from that Army if he met them in the streets; but there was no such provision in the Mutiny Act relating to the East India Company's Army. A deserter from that Army, to be legally apprehended, must be apprehended by a warrant from a Justice of the Peace. He (Mr. LeGeyt) had looked through the Act relating to the Company's Army with care, and had not found any provision on this head similar to that in the Act relating to the Queen's Army.

Mr. LeGeyt

But supposing that this were otherwise, even the Act relating to the Queen's Army did not admit of an officer or soldier in pursuit of a deserter to enter a ship or a house. Such officer or soldier could not enter any place in which any thing like resistance was opposed to him—even such resistance as the shutting of a door against him. He (Mr. LeGeyt) had endeavoured to show on the last occasion that the power which the Bill gave in this respect was necessary in this country, by reason of the difficulty which was often experienced, and which must be overcome, of obtaining in good time warrants for arrest from Justices of the Peace; and as he thought it unnecessary to ring the changes upon that and the other points brought forward by the Honorable Member opposite (Mr. Allen), he should conclude by pressing his motion for the third reading of the Bill.

The motion being put, the Council divided:—

<i>Ayes</i> 10.	<i>No.</i> 1.
Sir Arthur Buller.	Mr. Allen.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Elliott.	
Mr. Peacock.	
Mr. Grant.	
General Low.	
The Commander-in-Chief.	
Sir James Colville.	
The Vice-President.	

Majority for the Motion—9.

The Bill was then read a third time.

LAND REVENUE OF THE TOWN OF MADRAS.

MR. ELLIOTT moved that the Council resolve itself into a Committee on the Bill “to amend Act XII of 1851 (for securing the Land Revenue of Madras).”

On the motion being proposed—

SIR JAMES COLVILLE said, before the President left the Chair, he wished to express, in a few words, an objection which he felt to the principle of this Bill. It might, perhaps, seem irregular to object to the general principle of the measure at this stage; but his apology was this. The Bill was read a first time on the 5th of October last; and a second time on the 13th of the same month. On both those occasions, he was absent from the Presidency. He could not, therefore, be said to have committed himself even by a tacit vote on the subject; and he might freely admit that, until this morning, he was not aware of the nature of the Bill, and had not read a single paper

concerning it. He had no desire to take the Honorable Mover of the Bill by surprise, and was willing that the discussion on his objection should take place now or at a subsequent stage, as might be deemed most convenient by the Honorable Member or the rest of the Council. But if it was determined to go into Committee to-day, he reserved to himself the right of taking the sense of the Council on the principle of the Bill upon the motion for the third reading.

He would now state his objection.

As far as he understood the papers annexed to the Bill, the tenure of land in Madras—that is, in that portion of the Presidency which was within the jurisdiction of the Supreme Court—was of the following nature. He spoke with great diffidence on the point, because he did not pretend to have studied the subject of the land tenures of that part of India; but he would assume the state of things he was about to describe to be the true one, because that was the assumption most favorable to the principle of the Bill, and to the views which the Honorable Member entertained regarding it. He would assume, then, that originally in the district in question, as elsewhere in the Carnatic, the village Meerassidars were the owners of the lands, subject to the rights of the Circar; and that the Circar had the right, if the Meerassidars did not pay the revenue to which their land was subject, of selling their interest in that land.

Then, when the lands within the limit in question passed by purchase into the hands of Europeans, or others not holding by the original tenure, the course of things was this. The purchasers had first to satisfy the Collector that they had acquired the rights of the Meerassidars, and next to enter into an engagement to secure the payment of the Government revenue. Originally, that was done in this way. The Government granted a lease for 99 years, which contained a clause providing for re-entry in the event of the revenue not being paid. Under that clause—which was, in effect, a clause of forfeiture—if the revenue was not paid, the Government re-entered, and, having re-entered, exercised the right of selling. This continued to be the case until 1828. In 1828, that and other circumstances connected with the land revenue of this district, appeared to have been considered inconvenient, and the local Government, under the advice of its Law Officers, adopted a new system, which was this. Any person who be-

came the first proprietor after a Meerassidar, was to satisfy the Collector that he had acquired the interest of the Meerassidar, and then he received a document from the Collector which gave him an absolute interest in the land, which was accompanied by a covenant whereby the purchaser bound himself, his heirs, administrators, and assigns, to pay the Government Revenue. That, he (Sir James Colville) should have conceived, was a covenant which would have run with the land; that is to say, it would have been binding upon all future proprietors, whether they should acquire the land by inheritance or by purchase. The Government, however, had obviated any doubt on that point by providing that, on any transfer of land being made, the transferee should enter into a new covenant for the payment of Government Revenue, whether the land became his by conveyance or by legal devolution. The forms of the covenants in these two classes of transfers were given in the printed papers as B. and C.

The only legislation that had taken place on the subject was Act No. XII. of 1851, the Act now proposed to be amended. That Act gave a priority to the Government demand over any other demand on the land, and it also provided that every action respecting Government rents, as relating to matters of revenue, should be determined in the Chingleput Court, and not the Supreme Court, which had no jurisdiction in matters of revenue.

The present Bill sought to go beyond that, and to give the Government the power of selling the land for arrears of Government Revenue. Now, it was admitted by the Madras Government and its legal advisers that such a right of sale over lands held under those documents which he had just described as granted since 1828, did not exist. In other words, every man who held land under such a document, held it under a contract which did not import the liability now sought to be imposed upon him. Now, he conceived that the broad and safe principle on such a question was this—that a contract should be equally sacred whether it was made between the State and an individual, or between John O'Nokes and Thomas Styles; and that the Legislature should not lightly interfere to add a term to it in either case.

With regard to those contracts which already existed in accordance with the form introduced in 1828, it did not seem to him that, even where the process of distraint failed to realise the whole amount of revenue

due, the case was without a remedy; for the Government might sue for the balance in the Chingleput Court on the covenant to pay, and might proceed, upon judgment recovered, to a sale of the land, like any other creditor.

As he had said before, he had no desire to promote a discussion of this question immediately. If the Honorable Mover of the Bill thought it would be more convenient to him to settle the provisions of the Bill in a Committee of the whole Council now, and to move the third reading next Saturday, he (Sir James Colvile) should not object to that course, but would reserve to himself the right of resisting the motion for the third reading when made. If, on the other hand, the Honorable Member thought it would be more convenient to him to discuss the principle of the Bill at once, he (Sir James Colvile) was prepared to take the sense of the Council upon his objection before the President left the Chair.

MR. PEACOCK said, on the motion for going into Committee being proposed, he was about to rise to express objections to this Bill similar to those which the Honorable and learned Chief Justice had pointed out, and to ask the Honorable Member in charge of the Bill to postpone his motion until the next Meeting of the Council.

The Select Committee on the Bill had made their Report on Saturday last; but he had received his copy of it only yesterday, or on Thursday. He had had no opportunity of taking it up until this morning. As he at present understood the case, it appeared to him that the Bill, if it was to be passed at all, ought not to be passed without certain amendments. He had not had time thoroughly to study the subject or to determine the precise form in which those amendments should be framed, and he should like to have further time for doing so. If, however, the Council should resolve to go into Committee upon the Bill to-day, he should propose to insert the amendments he had in view; but that must not be taken to pledge him to the third reading of the Bill.

One great objection that he felt to the Bill, was this. Prior to 1828, the Government of Madras granted out leases of lands within the town of Madras for certain terms of years, subject to a right of re-entry and sale if the revenue was not paid. But in 1828, they introduced a new form of grant, in which they omitted the provision for re-entry, but reserved to themselves quit-rent in the nature of revenue with the simple

power of distress. If a lessee holding under a grant in the form used since 1828, had erected a house upon a part of the land granted, and had sold the house, the purchaser of the house, as the Law stood at present, would have a good title notwithstanding the lessee might fail to pay the revenue reserved by Government. But by this Bill, if any part of the revenue should be in arrear from the original lessee, the Government might come in and sell the house, as well as the remainder of the land retained by the lessee. Now, that, as it appeared to him, would be a great injustice to any purchaser, who had purchased on the faith of the grant by Government. It therefore appeared to him necessary that, if this Bill were passed at all, some clause should be inserted in it for the purpose of protecting under-tenants. The Bill, as he understood it, would give no protection whatever to that class. It was true that the Select Committee had introduced a new Section which said that an under-tenant might pay the arrears of revenue and deduct the amount from the next payment of his rent. But supposing that the arrears of revenue due from the original lessee amounted to a considerable sum of money, and that the rent under which the under-lessee held his house was a mere peppercorn, how was the under-lessee to deduct from his rent the amount of the arrears which he might be compelled to pay, or what remedy did the Bill give him against his lessor? The Bill gave him no remedy. He (Mr. Peacock) thought that a Clause should be introduced to protect under-tenures. He did not pledge himself to vote for the third reading if such a Section should be introduced; but he should have a much stronger objection to the Bill without such a Section than with it.

Mr. ELIOTT said, the only reason for which he was unwilling to postpone going into Committee upon the Bill was, that, on Saturday next, a very lengthy Bill—the Conservancy Bill—would come before the Council, and would certainly occupy its attention the whole day. And again, the whole of Saturday the 19th would be taken up by the consideration of the Police Bill; and, as he would not be present at the next Meeting of the Council after that date, the delay would be considerable.

Mr. PEACOCK said, he intended to have pointed out before, that, in 1850, it was proposed to insert a Clause in the Act relating to the Land Revenue of Calcutta, to give Government the power of re-entry

and sale for arrears of Revenue, but that the Government of India objected to the Section.

SIR JAMES COLVILE said, since he had come into the room, the Honorable Member for Madras had brought to his attention that, when Advocate General, he had been consulted on this question in connection with Act XXIII of 1850 (for Calcutta); and that the opinion which he then gave was against allowing the right of sale. When he had arrived at his conclusions upon the principle of the present Bill, he had not that opinion in his mind; but he believed that the result of the discussions in 1850 was, that the Government of India determined there should be no such power of sale.

MR. PEACOCK said, Act XXIII of 1850, as originally framed, contained a Section giving the power of re-entry and sale; but that Section was rejected by the Government of India, doubtless in consequence of the opinion given by the Honorable and learned Chief Justice when Advocate General.

MR. ELIOTT said, he believed that the intended provision for making land saleable for arrears was left out of the Calcutta Act by Mr. Millett, who had framed it, chiefly because he thought that, owing to the Survey and Registry of lands which had then recently been effected, there would be no difficulty in tracing out owners, and so executing the process of distraint, which would therefore be an effectual means of recovering revenue. But at Madras, the system of Registry had not been kept up, and the owners of lands were, in many cases, unknown. It was the difference between the two Presidencies in this respect that made the process of distraint insufficient at Madras.

As it seemed to be the wish of the Council that the Bill should be postponed, he would not now press his motion for going into Committee, but would ask leave to withdraw it for the present.

Agreed to.

AMEENS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William," and that the Committee be instructed to consider the Bill in the form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was agreed to as it stood.

Section II provided that Civil Court Ameens should be appointed, the number in each district, and the salaries to be allowed to them, to be determined by the local Governments.

MR. PEACOCK said, the Section as it stood would allow of the appointment of Sudder Ameens by the local Governments. This would be in opposition to the 59th Section of the Charter Act, which provided that no judicial appointments should be made without the sanction of the Governor General of India in Council. He should therefore move as an amendment that the words "with the sanction of the Governor General of India in Council" be inserted in the Section after the words "shall be appointed for the purposes of this Act."

MR. CURRIE said, he quite acquiesced in the propriety of the amendment. The omission of the words now proposed to be added was a mere oversight.

The amendment was agreed to.

The remaining Sections of the Bill, with the Preamble and Title, were agreed to as they stood.

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

BILLS OF LADING.

SIR JAMES COLVILE moved that Mr. Grant be requested to carry the Bill "to amend the Law relating to Bills of Lading" to the Governor General for his assent.

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT moved that Mr. Grant be requested to carry the Bill "to repeal the 122d Article of War for the Native Army, and to substitute a new Article in lieu thereof" to the Governor General for his assent.

Agreed to.

DESERTION OF EUROPEAN SOLDIERS.

Moved by the same that Mr. Grant be requested to take the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India" to the Governor General for his assent.

MUNICIPAL (BOMBAY).

MR. LEGEYT moved that a communication which he had received from the Govern-

ment of Bombay on the subject of facilitating the transaction of business by the Bench of Justices and the Board of Conservancy at Bombay, be printed and referred to the Select Committee on the Police and Conservancy Projects of Law for the Presidency Towns.

Agreed to.

Also that a communication which he had received from the Government of Bombay relative to a new scheme of municipal taxation for that Presidency, be printed and referred to the same Committee.

Agreed to.

CATTLE TRESPASS.

MR. CURRIE gave notice that, on Saturday next, he would move the second reading of the Bill "relating to Trespasses by Cattle."

AMEENS (BENGAL).

Also the third reading of the Bill "to amend the law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

The Council adjourned.

Saturday, April 12, 1856.

PRESENT :

The Hon'ble J. A. Dorin, *Vice President*, in the Chair.

Hon. Sir J. W. Colville,	C. Allen, Esq.,
His Excellency the Com- mander-in-Chief,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.
D. Elliott, Esq.,	and
	Hon. Sir A. W. Buller.

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

MESSAGE No. 73.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled "a Bill to amend the Law relating to Bills of Lading."

By Order of the Right Honorable the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
The 11th April 1856. }

MESSAGE No. 74.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled, "a Bill to repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof."

By Order of the Right Honorable the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
The 11th April 1856. }

MESSAGE No. 75.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled "a Bill for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

By Order of the Right Honorable the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
The 11th April 1856. }

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from certain Hindoo Inhabitants of Poonah, against the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from Hindoo Inhabitants of Tipperah against the same Bill.

Also a Petition from Hindoo Inhabitants of Hooghly in favor of the Bill.

MR. LEGEYT moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

EMIGRATION.

THE CLERK reported that he had received, by transfer from the Secretary to the Government of India in the Home Department, a communication from the Colonial Secretary at the Cape of Good Hope res-