

Saturday, 17th May, 1856

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.**

---

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

witnesses" be referred to a Select Committee consisting of Mr. Currie, Sir Arthur Buller, and the Mover.

Agreed to.

#### PROTECTION OF UNDER-TENANTS.

SIR JAMES COLVILLE moved that the Petition from Captain Craufurd read to-day, be printed.

Agreed to.

SIR JAMES COLVILLE gave notice that, on Saturday next, he would move the following Resolutions:—

*First.*—That, in the opinion of this Council, the same protection which shall by law be given to under-tenants against the consequences of a sale for arrears of Government revenue, ought, as far as is possible, to be given to under-tenants against the consequences of a sale of a Patnee talook or other saleable tenure for arrears of rent.

*Secondly.*—That the Petition of Captain Craufurd, presented on the 10th of May, be referred to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency," with an instruction to consider the propriety of protecting under-tenants against the consequences of a sale for arrears of rent, either by the incorporation of proper Clauses into that Bill, or by a separate measure; and to prepare the Clauses or Bill necessary for that purpose.

#### REVENUES OF CALCUTTA.

MR. CURRIE moved that the Bill "relating to the administration of the Public Revenues in the town of Calcutta" be referred to a Select Committee, consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

#### EMIGRATION.

MR. GRANT moved that a communication received from the Colonial Secretary at the Cape of Good Hope respecting the emigration of laborers from India to Natal, which had been reported to the Council on the 12th ultimo, be printed.

Agreed to.

The Council adjourned.

*Saturday, May 17, 1856.*

#### PRESENT:

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

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

#### MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented the following Petitions:—

A Petition of inhabitants of Pubna against the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

A Petition of certain Natives of India against the same Bill.

Two Petitions of inhabitants of Dacca against the same Bill.

Two Petitions of inhabitants of Orissa against the same Bill.

A Petition of inhabitants of Rutnagherry against the same Bill.

A Petition of inhabitants of Rutnagherry in favor of the same Bill.

A Petition of inhabitants of Sattara in favor of the same Bill.

A Petition of inhabitants of Rungpore in favor of the same Bill.

A Petition of certain Natives of India in favor of the same Bill.

SIR JAMES COLVILLE moved that the above Petitions be printed.

Agreed to.

#### BOMBAY MUNICIPAL TAXES.

THE CLERK also presented a Petition from the Justices in Sessions at Bombay stating that, owing to a deficiency in the Municipal Funds, arising mainly from the failure of the shop-and-stall tax, means were wanting for proceeding with public works, the suspension of which was a great inconvenience, and praying that the Council would take these circumstances into its earliest consideration, and pass the two Draft Acts to amend the Law relating to the municipal taxes at Bombay, or at least to substitute an occupation rate for the shop-and-stall tax.

MR. ALLEN moved that the above Petition be printed.

Agreed to.

#### RETURN OF NATIVE MENIAL SERVANTS, &c., FROM GREAT BRITAIN TO INDIA.

THE CLERK reported to the Council that he had received by transfer from the Secretary to the Government of India in the Home Department, papers relative to the necessity of passing an Act to enable the East India Company to indemnify themselves in respect of the liability imposed upon them by the Merchant Shipping Act Amendment Act 1855, to provide for the relief of persons (menial servants and others), natives of the territories under the Government of the Company, who may be found destitute in the United Kingdom.

**PEACE OFFICERS (STRAITS' SETTLEMENT).**

Also a communication from the Governor of the Straits' Settlement relative to the power of the Court of Quarter Sessions under Her Majesty's recent Charter creating new Courts of Judicature in that Settlement, to nominate, appoint, and control Constables and other Peace Officers.

**SALE OF UNDER-TENURES (BENGAL).**

The Council resumed the adjourned Committee on the Bill "to amend the Law relating to the sale of Under-tenures."

Section VII, which was the postponed Section, prescribed the mode of conducting a sale.

MR. CURRIE said, this Section had been postponed in order that its wording might be further considered. The wording had been taken from an existing Act—namely, Act I of 1845, which was the Revenue Sale Law; but it must be admitted that it was confused and inaccurate. The confusion had arisen from an attempt to provide in one Section for default in the payment of the purchase-money both on an original sale and in case of re-sales. Some alteration had been made at the last Meeting of the Council, in the 31st line of the Section, which had the effect of partly restricting the Section to the original sale. He now proposed to move a further amendment, which would complete that object. He also proposed that the latter part of the Section should be separated from it, and, with certain amendments, be made a distinct Section, applicable to default in the payment of the purchase-money on a re-sale.

His first amendment, then, was, that all the words after the word "revenue" in the 44th line of Section VII be left out, in order that the words

"and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof"

might be substituted for them.

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

MR. CURRIE next moved to introduce the following new Section after the above, observing that the greater part of it had been taken from the latter part of Section VII, as printed:—

"When default is made in the payment of purchase-money, notice of the intended re-sale shall be immediately affixed in the Zillah Court or highest Civil Court of the District or Divi-

slon as aforesaid, and the Office of the Collector or other Offices as aforesaid: and unless the sum due be paid intermediately by the proprietor of the tenure, such re-sale shall be made on the day fixed in the notice, which shall not be less than three nor more than seven days from the occurrence of such default, or on any subsequent day to which the Collector or other Officer as aforesaid, for reasons to be recorded on the proceedings, may adjourn the re-sale. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated; which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized. As between the several defaulting bidders, each shall be liable for the amount by which his bid exceeds that of the defaulter at the next succeeding sale, and if the amount levied from any defaulter exceeds the amount for which, as between the several defaulters, he is hereby declared to be liable, the excess shall be recoverable by him from any of the other defaulters to the extent of the amount for which such other defaulter is hereby made liable, or so much of it as remains unpaid."

MR. CURRIE said, for the last part of this Section, which was new, he was indebted to the Honorable and learned Member to his right (Mr. Peacock), to whom he had referred the Section for consideration.

He had made an alteration in the Section as to the time when a re-sale should take place. As the latter part of Section VII stood in the printed Bill, the re-sale was to take place on the next office day after the occurrence of the default in payment of the purchase-money. In this provision he had followed Regulation VIII of 1819. He had thought it desirable that the procedure under that Regulation and the procedure under this Act should be as nearly similar as possible. But that agreement had been destroyed by the substitution of 15 days for 8 in respect to the time for payment of the purchase-money; and, therefore, he saw no objection to an alteration being made in respect to the time to be fixed for a re-sale. Accordingly, for the words "on the office-day next following the occurrence of such default," before the words "such re-sale shall be held," he proposed to substitute the words "not less than 3 or more than 7 days after the notice."

The new Section was agreed to.

The Preamble was passed after a verbal alteration.

The Title was passed.

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

## POLICE (PRESIDENCY TOWNS, &amp;c).

MR. ELIOTT moved that the Bill "for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca," be re-committed, in order that certain amendments might be inserted in it.

The question being proposed—

MR. PEACOCK said, although, under the Standing Orders, no notice was necessary for a motion of this nature, still it was extremely inconvenient that Members should be called upon, on so short a notice as had been given in this case, to come prepared for the re-committal of a Bill. It was true that Members had understood that this Bill was to be re-committed, and that some new Sections were to be added to it; but no notice had been given at any previous Meeting that it was to be re-committed to-day. He thought that, where a Member intended to re-commit a Bill, he should, as a general rule, give notice of his intention at some previous ordinary Meeting of the Council. He (Mr. Peacock) had received a communication from the Chief Magistrate containing certain objections to this Bill, and he proposed to move some amendments; but he had had no time to prepare them since he became aware of the intention of the Honorable Member to make the present motion. He became aware of the intention to move for the re-committal of the Bill to-day only late on Thursday evening, when he received notice of the business of the day. The whole of yesterday and of this morning he had been engaged upon other business, and he had not had any opportunity of drawing up the amendments which he desired to move. It was not a matter of very great importance to him whether the Bill was re-committed to-day or not, because, if it was re-committed to-day, he should move for its further re-committal on a future day, or on the motion for the third reading, in order that the amendments which he intended to propose might be made. But the object of a re-committal on a motion for the third reading was, not to introduce numerous amendments, but to correct any errors which might have escaped the previous Committee of the Council; and, therefore, if he should have to move the insertion in this Bill of new Clauses on the motion for the third reading, he thought it due to the Council to explain now why he should be obliged to take that unusual and inconvenient course.

The 87th Standing Order, after stating that notice of a motion should not be necessary except in cases specially provided for, said—

"But if a motion be made without notice given at a previous ordinary Meeting, the Council, upon the motion of a Member, or the President of his own authority, may order the discussion upon such motion to stand over, and to be inserted in the Orders of the Day for the next ordinary Meeting."

It appeared to him that it would be far more convenient that this course should be adopted in the present case, than that he should propose his amendments on the motion for the third reading, and that the Bill should be read a third time and passed immediately after their introduction, before the Council should have seen the amendments in writing or in print.

He had no doubt that it was merely from inadvertence that the motion for the re-committal of the Bill had been made without notice at a previous Meeting; but he thought it necessary to make these observations in his own justification for not being prepared on this occasion with the amendments which he proposed to make in the Bill, which he would have been had notice been given at the last Meeting of the intention to re-commit the Bill to-day.

MR. ELIOTT said, that, owing to his absence, he himself had not known that the Police and Conservancy Bills were to be re-committed to-day, until the Orders of the Day were issued. He had understood, however, that the wish was that they should be brought forward for final consideration while they were yet fresh in the minds of Honorable Members. He had not known that any Honorable Member desired that the re-committal should be postponed; but he confessed that the reasons stated by the Honorable and learned Member opposite for a postponement were very cogent; and, therefore, with the leave of the Council, he should withdraw his motion.

Agreed to.

## CONSERVANCY (PRESIDENCY TOWNS, &amp;c).

The re-committal of the Conservancy Bill was likewise postponed.

## PROTECTION OF UNDER-TENANTS.

SIR JAMES COLVILLE moved, according to notice, the following Resolutions:—

"1.—That, in the opinion of this Council, the same protection which shall by law be

given to under-tenants against the consequences of a sale for arrears of Government Revenue, ought, as far as is possible, to be given to under-tenants against the consequences of a sale of a Putnee Talook or other saleable tenure for arrears of rent.

"2.—That the petition of Captain Craufurd, presented on the 10th of May, be referred to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency," with an instruction to consider the propriety of protecting under-tenants against the consequences of a sale for arrears of rent, either by the incorporation of proper Clauses into that Bill, or by a separate measure; and to prepare the Clauses or Bill necessary for that purpose."

SIR JAMES COLVILLE said, he had taken the liberty, at the last Meeting of the Council, of stating somewhat in detail the reasons which had induced him to give notice of the above Resolutions. He did not propose to inflict upon the Council a second speech on the same subject. He would only remind them that he had stated, on the former occasion—and subsequent reflection had in no degree modified the opinion which he then expressed—that all the reasons which could induce the Legislature to grant protection to under-tenures against the consequences of a sale for arrears of Government revenue, were equally cogent in favor of the principle of granting protection to under-tenures against the consequences of a sale for arrears of rent. He had stated on that occasion, as he stated now, that, if it were our desire to prevent the hardship of one man's property being sacrificed for the default of another—if it were our desire to prevent those collusive and fraudulent transactions by which that deplorable result was often brought about—if it were our desire to induce men to do what a just, wise, and prudent landlord would do, and to encourage under-tenants to improve their lands by the outlay of capital in the confidence that their tenures were fixed and certain—we ought to give that legal protection to under-tenures in the one class of cases which we might determine to give them in the other.

He had also endeavored to anticipate the objections which might be urged on the ground of a supposed distinction between the consequences of a summary sale for arrears of revenue and the consequences of a summary sale for arrears of rent, and to show that there was little or no force in them. If any Honorable Member was opposed to the principle of his Resolution, the Council would probably hear some of those objections to-day. He did not propose to repeat now what he had said respecting them before. It would

save the time of the Council if he were to reserve his observations until he should have heard the precise mode and form in which the objections were urged. He fully anticipated that several Honorable Members who might agree with him now on the general question, might think that his Resolution went too far in pledging the Council to a specific declaration of principle. It certainly was not his desire to do this; and, therefore, he should not stickle for any particular form of expression. All he wished was, that this subject should be fully considered; and that the Council should pledge itself to the opinion that the principle of protecting under-tenures in the case of a sale of the superior talook for arrears of rent ought to be adopted, as well as the principle of protecting under-tenures generally in the case of a sale of the parent estate for arrears of Government revenue.

MR. CURRIE said, he had no intention of opposing the enquiry which he understood it to be the main object of these Resolutions to bring about. He thought it was quite right that such enquiry should be made, and that, therefore, the Petition of Captain Craufurd should be referred to a Select Committee. But he did object to the Council pledging itself to an *à priori* opinion on the subject. On the last occasion, he had stated that, in different parts of the country, there were numerous different tenures of different denominations and conditions. He had no wish to mystify the Council with a string of unknown words, and he should therefore spare them the enumeration. But he would mention briefly that, in the districts of Bulloah and Backergunge, there were gradations of under-tenures totally different in character from the putnees, dur-putnees, &c. which were specially referred to in the Resolutions moved. He believed that, with respect to those under-tenures, such a course as the Honorable and learned Chief Justice contended for, would not be inappropriate. But there were numerous other under-tenures in other parts of the country, with the conditions of which he was not fully acquainted; and, speaking for himself—and he thought he might claim as much acquaintance with the subject as other Honorable Members—he must say that he thought the Council was not in a position to pronounce an opinion on the subject.

Even with respect to putnees, dur-putnees, se-putnees, and so on, he for one was not prepared to say that the conditions under

which under-tenures had existed since their first creation, some 50 years ago, and which were recognized and confirmed by Regulation VIII of 1819, ought to be abrogated, or that the terms of the contracts under which they were held should be set aside. He believed that the direct tendency of the Putnee system of sub-letting was so to grind down the ryot, that every new link in the chain of under-tenure was an additional burden on his back; and he thought that the Legislature ought carefully to look into these matters before it jumped to the conclusion that what might be a perfectly just and expedient measure as between the Government and the Zemindar with respect to tenures of the first degree, would be equally just and expedient with respect to subordinate tenures as between parties with whose transactions it was by no means clear that it had any right to interfere. He should, therefore, vote against the first Resolution.

MR. PEACOCK said, he quite agreed with the observations that had fallen from the Honorable Member for Bengal; and it appeared to him that another reason why the Council ought not to vote for this Resolution, was that, if it did so, it would commit itself to an opinion in the dark. It was asked to commit itself to the opinion that

“the same protection which shall by law be given to under-tenants against the consequences of a sale for arrears of Government Revenue, ought, as far as is possible, to be given to under-tenants against the consequences of a sale of a Putnee Talook or other saleable tenure for arrears of rent.”

He thought that, before the Council could properly decide that this should be done, it ought to know what the law was to be with regard to sales for arrears of Government Revenue. Otherwise, it would be voting in the dark, and pledging itself that the same protection ought to be extended to under-tenures on sales for arrears of rent, as the Council might *hereafter* determine to give to under-tenures on sales for arrears of Revenue. It might happen—he did not know that it would—that some Member might stand alone in opposing the decision to which the rest of the Council might come with regard to the protection which ought to be granted to under-tenures in the case of sales of estates for arrears of Government Revenue. Was that Member to pledge himself now, that, although he might be opposed to the principle of that protection, he was prepared to extend the same protection to under-tenures in the case of sales of

Mr. Currie

Putnee talooks or other saleable tenures for arrears of rent? It appeared to him that the case of a sale for arrears of revenue, and that of a sale for arrears of rent, were not at all parallel. When the Government granted an estate to a zemindar, they reserved to themselves a certain revenue: the law afforded them certain means for the collection of that revenue; and they had the power of destroying all under-tenures, if the revenue for that land were not paid. Now, the Government was perfectly free to give up any security they might have for the realisation of their revenue. But it did not necessarily follow that, because the Government might be willing to give up some rights which had been granted for their own protection as against the zemindars, they should also compel the zemindars to relinquish similar protection which they might have specially reserved to themselves by contract with their under-tenants for the collection of their rents. He would refer the Council to Regulation VIII of 1819. Section VIII of that Regulation enacted as follows:—

“Zemindars—that is, proprietors under direct engagements with the Government—shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.”

This right was very similar to a right that was exercised in England. There, a lessor might reserve to himself a right of re-entry for non-payment of rent, and, under that proviso, he might avoid the lease and all incumbrances created under it, if the tenant neglected to pay the rent. That was his security for the collection of his rents. Suppose, then, that a zemindar, by contract with a tenant, specially reserved to himself the right of selling the tenure free from incumbrances for an arrear of rent, would it be just to pass a law that he should not have the power of enforcing that right upon the breach of the contract by the tenant, and that the tenure should remain subject to incumbrances created by the defaulter? It appeared to him that the protection contended for, unless carefully guarded, might be an unjust interference with the contract rights of the zemindars. A man ought to be entitled to enter into any contract in regard to his own land, provided it were not contrary to the policy of the law or good government, or to the well-being of the people. It had not been shown that any of

these objections applied to the rights which zemindars now, with the sanction of the law, reserved to themselves by contract with their tenants. If a zemindar specially reserved to himself the right to sell an under-tenure free from incumbrances for arrears of rent, why should he be deprived of that right, any more than of a right of re-entry? Would the Honorable and learned Chief Justice, while proposing to take away the right of a zemindar to sell free from incumbrances, also propose to take away his power to stipulate by contract for a right to make void a tenure and to take back his land free from incumbrances if his rent should not be paid? If a zemindar might avoid a lease and all subsequent incumbrances by re-entering for non-payment of rent, there was no reason why he should not be allowed, upon the grant of a tenure, to stipulate for a right to sell the tenure free from incumbrances, if his rent should not be paid.

He also agreed with the Honorable Member for Bengal in his observations respecting the second Resolution.

[The Honorable and learned Member here read the Resolution.]

He was quite prepared to vote for that Resolution; but the Council would be prejudging the question which it proposed to refer to the Select Committee if they also voted for the first Resolution. In that case, they would be deciding the question first, and then referring it to the Select Committee for consideration and report. Why should he refer the Petition of Captain Craufurd to a Select Committee, if he were to decide now that the same protection which might hereafter be given to under-tenants against the consequences of a sale for arrears of revenue, ought also to be given to under-tenants against the consequences of a sale for arrears of rent?

He should vote against the first Resolution—first, because the two cases were not parallel, and, consequently, the protection that might be right as to the one would not necessarily be right in regard to the other; secondly, because he could not pledge himself to extend to sales for arrears of rent the same protection which might be given in the case of sales for arrears of revenue until he knew what that protection was to be; and lastly, because, by voting for the first Resolution, he should be prejudging the very question which the second Resolution proposed to refer to a Select Committee in order that they, by their labor and research, might enable the Council to form a better and more correct opinion upon the subject.

MR. GRANT said, he agreed with the Honorable and learned Member opposite (Mr. Peacock) in thinking that it would be better not to ask the Council to pledge itself, in the present position of the question, to the principle of the measure proposed; and to allow the whole question, difficult and important as it was, to go to the Select Committee without any instruction from the Council. It was evident from what Honorable Members had said that the Council was not now prepared unanimously to decide on the principle contended for by the Honorable and learned Chief Justice; and, therefore, whatever his own opinion might be on the principle, he thought that this circumstance was a sufficient reason for not asking the Council to pledge itself one way or the other upon the question, until it should have the advantage of the Report of the Select Committee in forming its opinion.

With respect to the question itself, he must say that he failed to see the distinction which the Honorable and learned Member had taken between the case of an estate granted by Government and the case of an under-tenure granted by a Zemindar. It appeared to him that the two cases were in every respect identical. The Government, when it gave the estate to the Zemindar, reserved to itself a certain fixed revenue; and the Zemindar was by law prevented from granting any under-tenures which would be valid against the Government in the event of the fixed revenue not being paid. That law, this Council had pledged itself to alter, upon the principle that, if the Government is secured in the realisation of its revenue, the sale of the parent estate for arrears of revenue should not destroy the under-tenures. That was the principle to which the Council was now pledged as to the first link in the chain of under-tenures; and exactly the same principle applied to the second link. As the Government had given the estate to the Zemindar, reserving a fixed revenue, so, upon precisely the same conditions, the Zemindar granted under-tenures to the dependent Talookdars, reserving a fixed rent, and not allowing the creation of lower tenures which should be valid against him if the rent were not paid.

Another reason had been urged by the Honorable Member for Bengal, against the grant of the protection sought;—that tenures intermediate between the holding of the Zemindar and the holding of the actual cultivators were evils in themselves, and that, upon that ground, the Legislature ought not to

give them the stability which this Resolution proposed to give. If he were of that opinion, he should bring in a law disallowing under-tenures altogether. If any tenure were a *malum in se*, it should have no lawful existence at all; but whatever descriptions of property in land were authorized and supported by law, should not be denied that certainty which is indispensable to agricultural prosperity.

If the Honorable and learned Chief Justice pressed his first Resolution as it now stood, he should not be able to vote in support of it; but he should be prepared to do so if the Resolution were very slightly amended—that is to say, if the word “ought” were substituted for the word “shall” in the second line. He was quite prepared to express his conviction—a conviction in which he was convinced he never could be shaken, whatever Report any Select Committee might make—that the same protection which ought by law to be given to under-tenants against the consequences of a sale for arrears of Government revenue ought, as far as possible, to be given to under-tenants against the consequences of a sale of a Putnee talook or other saleable tenure for arrears of rent. But, as the Honorable and learned Member opposite (Mr. Peacock) had observed, the Council could not now say what protection it was that the law would provide in the former class of cases; and, therefore, it could not pledge itself by anticipation to say that the protection to be provided for such cases, whatever it might be, should also be extended to under-tenures in the case of a sale for arrears of rent. If the Bill respecting sales for arrears of revenue were passed as it now stood, and as he thought it ought to stand, he should be perfectly ready to apply the principle of that measure to sales for arrears of rent. But he could not be sure that it would be so passed. One Honorable Member on the Select Committee (Mr. Currie)—whose opinions on all subjects, and especially on a subject like this, were entitled to great respect—had said that he disagreed with him upon an important point, and desired to introduce a different provision upon that point. He (Mr. Grant) proposed to give certain and absolute protection to all *bonâ fide* tenures, and to prevent, as far as it was possible for human legislation to prevent, claims for such protection under fraudulent and fictitious tenures being set up. That he called a whole measure. But the Honorable Member was in favor of giving

*Mr. Grant*

protection to under-tenures, which should not be certain or absolute protection, without any provisions to prevent the creation of fraudulent and fictitious tenures. That he (Mr. Grant) called a half measure, which would open a door to every sort of fraud. If the Honorable Member's principle were applied to sales for arrears of revenue, he (Mr. Grant) was very much afraid that, though the new law would be attended with advantages, it would in many cases be productive of evils which might even overbalance its advantages—he meant the evils of fraud and endless litigation. But, if the same principle were extended to sales of under-tenures for arrears of rent, the abuses which the measure would encourage, would become so extensive as to interfere very greatly with the value of landed property. Frauds would be so enormous, the number of suits upon fictitious tenures instituted against auction purchasers would be so great, that he was convinced that much property of very great value now, would become absolutely unsaleable. If he should fail to convince the Honorable Member that his (Mr. Grant's) principle was the correct one, and the Honorable Member should succeed in convincing the Council that his own half measure ought to be adopted, and the Bill for amending the Sale Law were passed in that shape, then he (Mr. Grant) should be obliged to contend that the new principle introduced into that measure ought not to be extended to under-tenures against the consequences of a sale for arrears of rent.

If the Honorable and learned Chief Justice desired to press his first Resolution, he (Mr. Grant) would move his amendment.

*Sir James Colville* intimating his intention to press his Resolution—

MR. GRANT concluded by moving that the word “shall” be left out of the 2nd line of the first Resolution, in order that the word “ought” might be substituted for it.

MR. PEACOCK said, he objected to the Resolution even with the amendment proposed. He saw no benefit which could be derived from the Council pledging itself to a principle of this sort, when each Member might entertain a different opinion as to what protection ought to be given by law against the consequences of a sale of an estate for arrears of Government revenue. This Resolution would pledge Members to the principle that whatever ought to be the law in respect of sales for arrears of revenue ought also to be the law in respect of sale for arrears of rent; but he could not admit

the principle, inasmuch as the two cases were not parallel, and he did not even know that Honorable Members were agreed as to what the law ought to be. What advantage, then, would be obtained from their pledging themselves now to the principle put forward in the Resolution as amended, which would not be gained by the votes they might give when they had seen the Report which the Select Committee would make after a careful consideration of the question in all its bearings?

With regard to the remarks of the Honorable Member opposite (Mr. Grant), he would merely say that, if a landlord who had reserved to himself a right of re-entry on non-payment of his rent, chose to give up that right, it was no reason why he should compel all his neighbors to be as liberal as himself. The Council represented the Government in this case: but, if Government were willing to abandon any part of the protection which they now enjoyed for the collection of their revenue, did it necessarily follow that they should compel every zemindar to abandon the right to re-enter or sell which he might have specially reserved to himself in his contracts with his tenants, under the sanction of the law as it existed at the time when such contracts were made? That was the difference between the case of the Government and the case of zemindars; and it appeared to him that, in dealing with this question, great precaution would be necessary to see that we did not interfere with the private rights of zemindars, which they had secured by contracts into which the law authorized them to enter.

SIR JAMES COLVILLE said, he certainly preferred the Resolution as proposed to be amended by the Honorable Member to his right (Mr. Grant), to the mode in which he himself had framed it hastily on the occasion of the discussion upon Captain Craufurd's Petition. He should not, therefore, after the debate which had just taken place, press the original Resolution to a division; but he was disposed to take the vote of the Council upon it in its modified form.

With respect to the general principle of the protection for which he contended, the Honorable Member for Bengal had said—and he willingly bowed to the larger experience of that Honorable Member on the subject—that, in various districts, there were many tenures of different denominations and degrees to which the rule which might be applicable to dur-putnee and se-putnee tenures (which he, Sir James Colville, had most in

his mind in framing his Resolution) would be inapplicable. But the Honorable Member had not shown what reason there was why such tenures ought not to be protected in the same degree as dur-putnee and se-putnee tenures against such consequences of a sale for arrears of rent as might be common to both. It might be that the provisions of Regulation VIII of 1819, which directed the sale of saleable under-tenures free from incumbrances, did not in practice affect these under-tenures; in which case, they would not be affected by his Resolution, or any thing done in pursuance of it.

The opposition of the Honorable and learned Member opposite (Mr. Peacock) was on wider grounds. He had used the argument which he (Sir James Colville) had endeavored to anticipate at the last Meeting of the Council—namely, the supposed distinction between the case of the Government granting estates to zemindars and the case of zemindars granting putnee tenures to under-tenants. The Honorable Member to his right (Mr. Grant) had already, in his judgment, said much in answer to that objection. The argument of the Honorable and learned Member opposite (Mr. Peacock), whose opinions were always entitled to great respect, seemed to him to involve a fallacy. The Honorable and learned Member treated the existing law as if it left the zemindar and his under-tenants to enforce their respective rights as they were defined by the contracts between them; and his Resolution, as if he were now seeking for the first time to interfere with those rights by positive legislation. But that was not the case. If the right of re-entry had ever existed in the zemindar, it had been taken away by legislative enactment. By Clause 3 of Section III of Regulation VIII of 1819, putnee tenures were positively declared to be not voidable for arrears of rent; and by Clauses 1 and 2 of the same Section, it was declared that all putnees were transferable and answerable for the debts of the putneedar; and that he had the power of underletting, subject to the right of the zemindar to hold the superior tenure answerable for any arrear of his rent free from incumbrances. Consequently, these tenures did not stand upon the same footing as a lease granted by a landlord with a proviso for re-entry on non-payment of rent. The fact was, that the Legislature had constantly interfered between the parties contracting in these cases. So great and wide an interference with contract rights had

Regulation VIII of 1819 been considered by the learned gentlemen who administered the Regulation Law to be, that he remembered an occasion on which, in the Sudder Court, he, as Counsel, in spite of the valuable aid of the Clerk Assistant of the Council, had failed to persuade that Court to recognise and enforce a title derived under a power of sale reserved in a Mortgage Deed—a security well known to the English Law, and not unfrequent in the country. And one of the principal reasons assigned by the Court for its conclusion—a reason, he confessed, neither then nor now satisfactory to his mind—was, that this very Regulation showed that a stipulation by a mortgagee for a forced sale on a default at his own time and without the intervention of a Court of Justice or the Collector, was contrary to the policy of the law. And the result was, that the title of the person who had bought on the faith of the power to sell reserved by the Mortgage Deed, was declared to be bad. He did not say whether the decision of the Court was right or wrong; but he said it showed that the Regulation of 1819 was considered to interfere in a very material way with rights of private parties even under contracts which were not expressed to be subject to that Regulation.

The principle for which he contended would fully ensure to the zemindar the ultimate protection of all the interest which he retained in the land. That, he had stated, on the former occasion, to be a *sine qua non*. He thought it should also be a *sine qua non* that such protection should be ensured to the Government for the realisation of its revenue; and he could not admit that the Council's power of legislation on the subject was limited to the cases in which the interest of Government was alone concerned, or that it could not alter the law relating to the power of a Zemindar over his defaulting under-tenants, provided it took care adequately to protect his interest in the land.

With respect to the objection of the Honorable Member for Bengal, which rested on the impolicy of multiplying under-tenures intermediate between the superior landlord and the actual cultivator of the soil, he (Sir James Colville) had endeavored to anticipate that objection also at the last Meeting of the Council; and he thought there was great force in the observations with which the Honorable Member to his right (Mr. Grant) had this day answered it. If these under-tenures were an evil in the land, they ought not to be permitted to exist at all.

*Sir James Colville*

But where the Legislature had allowed them to be created, and where it knew that they were being daily created, it appeared to him that it was a bad and mischievous policy to leave the holders liable to the loss of their property for default on the part of another, since such insecurity of tenure must have a direct tendency to aggravate the evils supposed to be inherent in the system, by giving to the tenant an interest in making the most of his tenure whilst it lasted, and in doing nothing for the permanent improvement of the land.

He should say no more on the general principle of the protection claimed.

He was glad to find that there was no opposition to his second Resolution, which would, in a considerable degree, ensure the object he had in view—namely, the full consideration of the whole question. As, however, the general principle had been mooted, he was still disposed also to take the opinion of the Council on the first Resolution as amended.

THE COMMANDER-IN-CHIEF said, he would not at present discuss the principle of the measure to which the Resolution referred, but should only say a few words as to the mode in which the Resolution was now presented to the Council.

The Honorable and learned Chief Justice seemed disposed to press it, not in its original form, but as it had been altered by the Honorable Member opposite (Mr. Grant), by the substitution of the word "ought" in the second line for the word "shall." He (the Commander-in-Chief) agreed in thinking that the alteration was an improvement; but it appeared to him that it would be objectionable to adopt the Resolution at all. It was a declaratory Resolution, pledging the Council as to its future course of proceeding. The second Resolution was amply sufficient. It proposed that the Petition by which the present question was raised, should be referred to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency." The object of that was, that that Committee should take into its consideration whether the same protection which they might recommend for under-tenures against the consequences of a sale for arrears of revenue should be given to under-tenures against the consequences of a sale for arrears of rent. They would report their views upon the question, and the Council would then be in a position to come to a final decision regarding it. The opinion which most Honorable

Members at present entertained on the subject were now known. He himself was inclined to think that the same protection should be extended to under-tenures in both cases, and that it was most probable that this would be the eventual decision of the Council. But he felt that there was considerable objection to voting now that it ought to be done, as the Council would be thereby pledged to the adoption of a law yet to be passed, without precisely knowing what that law was to be. He would, therefore, put it to the Honorable and learned Chief Justice whether it would not be better to withdraw the first Resolution. For his own part, he confessed he did not see the use of it.

He spoke with very great deference on such a question; but as his observations referred more to the form of the Resolution than to its substance, he had ventured to make them.

SIR JAMES COLVILE said, after the appeal that had been made to him by His Excellency the Commander-in-Chief, and admitting as he did that there was considerable objection to a deliberative body coming to an abstract Resolution of this kind, he should withdraw his motion with the leave of the Council. If it were negatived, it might be supposed that the majority of the Council was advisedly of opinion that the protection sought, should not be given; whereas the real reason why some of them so voted might—be, that they thought it premature to pronounce on the question now.

MR. PEACOCK said, he by no means intended to say that he should now pledge himself to voting that no protection whatever should hereafter be given to under-tenures against the consequences of a sale for arrears of rent. All he wished was, to leave his mind open to consider what that protection was to be.

The first Resolution was then, by leave, withdrawn.

With reference to the second Resolution,

MR. GRANT said, he thought that any such Clauses as were referred to in it, would be out of place in a law relating to sales of estates for arrears of revenue. They would properly form a separate law. He should move that the words "and report upon" be inserted after the words "to consider," and that all the words after the words "arrears of rent" be left out. This would have the effect of instructing the Select Committee to report upon the Petition, and, if they should think it expedient, to introduce the intended

provisions as a separate and substantive measure.

MR. CUBRIE observed that he had intended to move an amendment in the Resolution very similar to that proposed by the Honorable Member who had just spoken.

MR. GRANT'S amendments were severally put, and agreed to, and the Resolution was then passed.

#### NOTICES OF MOTION.

THE COMMANDER-IN-CHIEF gave notice that he would, at the next Meeting of the Council, move the first reading of a Bill for the Conservancy of Cantonments.

MR. CURRIE gave notice that, at the next Meeting of the Council, he would move for the introduction into 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," of a new Section, authorizing the Commissioners to acquire land adjoining new streets made by them, and to let the same for building purposes. Also a new Section authorizing the taking of fees for licenses.

MR. ALLEN gave notice that, on the same day, he would move for the introduction into the above Bill of a Section regarding registry of deaths.

MR. ELLIOTT gave notice that he would, on the same day, move for the re-committal of the same Bill and the Bill "for regulating the Police 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 COLVILE moved that, Saturday next being the Queen's Birth-day, the Council adjourn until this-day fortnight.

After some conversation—

MR. CURRIE proposed that the Council adjourn until Saturday next. The Police and Conservancy Bills stood for re-committal, and he thought that no unnecessary delay should be allowed to occur in disposing of them.

MR. GRANT said, it was quite unusual to meet for transacting business on the Queen's Birth-day, and he did not see why the rule should be broken in this instance.

MR. ELLIOTT said, it was important that the Police and Conservancy Bills should be passed without delay. If the Council

was not to meet on Saturday next, an earlier day in the week might be named.

SIR JAMES COLVILE said this was a *questio otiosa* for him, since he intended to leave Calcutta for Penang before Saturday next; but he agreed with the Honorable Member who had just spoken in thinking that the better course would be to adjourn until that day fortnight.

THE VICE-PRESIDENT said, for urgent business, the Council might meet any day of the week; but where there was no necessity for doing so, he apprehended that, as the papers necessary for Meetings could not be prepared before the latter part of the week, it would not meet except on the regular day. If, therefore, the Council was not to meet on the 24th, it would be more convenient to adjourn for a fortnight.

MR. CURRIE'S amendment was negatived.

SIR JAMES COLVILE'S motion was carried, and the Council adjourned accordingly.

—  
Saturday, May 31, 1856.

PRESENT :

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

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

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition of Inhabitants of Mymensing against the Bill "to remove all legal obstacles to the marriage of Hindoo Widows."

Also a Petition of Inhabitants of Ahmednuggur in favor of the same Bill.

MR. GRANT moved that these Petitions be printed.

Agreed to

MR. GRANT presented the Report of the Select Committee on the Bill.

CONSERVANCY OF MILITARY CANTONMENTS (BENGAL).

THE COMMANDER-IN-CHIEF said, it was his duty to propose to the Council a Bill "for the Conservancy of Military Cantonments in the Presidency of Bengal."

The Council was aware that, some months ago, a paper from the Quarter Master General of the Army had been transferred from the Supreme Government to the

Council containing certain suggestions for making proper Regulations for the Conservancy of Cantonments. When he arrived in Calcutta, he had found that paper on the table of the Council; and he had thought it his duty to request that it might be transferred to him for consideration. This had been done; and it appeared to him that it was desirable that some Rules should be adopted for bringing all persons residing within Cantonments under proper authority. The Council was aware that the present Regulations provided that all persons residing within Military Cantonments, should be bound by them. They gave large powers: amongst them, that of resuming land, if required for public purposes; of removing objectionable buildings; and of ejecting bad characters from the Cantonments.

It was considered that these were fit powers to vest in the Officer Commanding the Station. They were also empowered to make other Regulations for the Conservancy of the Cantonments. The power of ejection was subject to the approval of the Commander-in-Chief. Fines for some few breaches of discipline were also imposed. But it appeared necessary that some more stringent Rules should be introduced for enforcing measures of Conservancy within Cantonments. The Quarter Master General stated the following to be the reasons given by the late Commander-in-Chief of the Indian Army for submitting these Regulations for the sanction of the Supreme Government:—

"The Local Conservancy rules proposed for general adoption, in paragraphs 4 to 9 inclusive, are more or less in force now at many Stations; but, to ensure uniformity and their authoritative promulgation, they are embodied in these Regulations, as there is nothing in them that all residents should not be bound to abide by, or that interfere with their present rights and privileges according to Government standing orders."

In another paragraph, he said:—

"Some stringent measures had long been required to force house proprietors, especially non-Military ones, to comply with Conservancy and other similar rules, to which hitherto they had in many Stations offered a pertinacious, though passive resistance; and Local Authorities have felt themselves powerless, and without the means of enforcing obedience. The more stringent the measure, the less probability there will be of any necessity for having recourse to it; and unless a general Regulation is laid down, with the sanction of Government, and Commanding Officers be empowered to exact obedience to it, residents pay little or no attention to local orders on these subjects, save when it suits their convenience to do so."