

Saturday, 1st December, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

EMBANKMENTS.

MR. CURRIE moved that Mr. Grant be requested to carry the Bill "relating to Embankments" to the President in Council, in order that it may be submitted to the Most Noble the Governor General for his assent.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 1st of December, move that the Bill "to explain and amend Act No. XXXIII of 1852" be read a third time and passed.

MR. CURRIE gave notice that he would on the same day move the second reading of the Bill "to amend the law relating to the sale of under-tenures."

SIR JAMES COLVILLE gave notice that he would on the same day move the second reading of the Bill "to amend the law relating to Bills of Lading."

The Council adjourned.

Saturday, December 1, 1855.

PRESENT :

The Most Noble the Governor General, *President*.

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

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

MESSAGE No. 57.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 13th of October 1855, entitled "A Bill relating to the Emigration of Native Laborers to the British Colonies of Saint Lucia and Grenada."

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,

*Secy. to the Govt. of India,
with the Governor General.*

MADRAS, }
The 14th November, 1855. }

MESSAGE No. 58.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 24th of November 1855, entitled "A Bill relating to Embankments."

By Order of the Most Noble the Governor General.

J. W. DALRYMPLE,

Offg. Secy. to the Govt. of India.

FORT WILLIAM, }
The 30th November, 1855. }

LIGHTING OF THE TOWN OF CALCUTTA.

THE CLERK presented a Petition signed by the Secretary of the Mahomedan Association against the Bill "to provide for the better Lighting of the Town of Calcutta."

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

Agreed to.

OBSCENE PUBLICATIONS.

MR. ALLEN presented the Report of the Select Committee on the Bill "to prevent the public sale or exposure of obscene books and pictures."

SALE OF UNDER-TENURES (BENGAL.)

MR. CURRIE moved the second reading of the Bill "to amend the law relating to the Sale of Under-Tenures."

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

BILLS OF LADING.

SIR JAMES COLVILLE moved the second reading of the Bill "to amend the law relating to Bills of Lading."

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

SIR JAMES COLVILLE moved that the Bill be referred to a Select Committee consisting of Mr. Dorin, Mr. Allen, and the Mover.

Agreed to.

ENFORCEMENT OF JUDGMENTS.

MR. LEGEYT moved the third reading of the Bill "to explain and amend Act No. XXXIII of 1852."

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

EXPORT OF SALTPETRE.

THE PRESIDENT said, he thought it proper to mention to the Council that the Clerk had that moment placed in his hands an office memorandum from the Secretary to the Government of India, transmitting a letter from Mr. Richard Lewis, Vice Consul for the United States, referring to the Bill "to prohibit the exportation of Saltpetre except in British vessels bound to the Ports of London or Liverpool." According to the strict interpretation of the Standing Orders, the letter could not now be received, unless it was the opinion of the Council that, the Standing Orders having been suspended with reference to the Bill, it might be admitted on the face of the proceedings as a similar communication had been already admitted.

MR. PEACOCK moved that the letter should be read.

Agreed to.

THE CLERK then read the letter, which was as follows :—

"To G. F. EDMONSTONE, Esq.

*Secretary to the Government of India,
in the Foreign Department.*

SIR,—The large amount of shipping engaged, and the great interests at stake, will, I trust, excuse my respectfully drawing the attention of the Government of India to the present position of the trade of the United States in this Port.

The Draft Act of the Legislative Council of India restricting the trade in Saltpetre, followed as it has been by an order prohibiting the exportation of that article except in British vessels to London and Liverpool, pending the passage of the Act, has, for the time being, paralyzed the trade of my country in this Port.

American vessels cannot load while the passage of the Act remains uncertain. Saltpetre is the first cargo they require in place of ballast. Their engagements are falling due, and remain unfulfilled. And liabilities have thus been incurred, for which heavy damages will be demanded.

As Vice Consul, therefore, of the United States, charged with the supervision of the commercial interests of my fellow-citizens here, I would beg leave, as in duty bound, to deprecate further delay in the action of Government as regards the legitimate trade of my fellow-countrymen; and I would, at the same time, protest against the present arbitrary suspension of a portion of that trade, under a promise of indemnity hereafter to the officers concerned, as contrary to every principle of Law and Justice.

I have the honor to be, &c.,

(Signed) RICHARD LEWIS,
United States Vice-Consul for Calcutta."

On the Order of the Day being read for the Council to resolve itself into a Committee on the Bill "to prohibit the exportation of Saltpetre except in British vessels bound to the Ports of London or Liverpool"—

MR. PEACOCK said, before he made a motion for that purpose, he thought it right to offer a few remarks upon the objections which had been urged against the Bill. A communication had been made by several gentlemen, citizens of the United States carrying on business in Calcutta, in which they represented that they had purchased largely and engaged freight for Saltpetre to America, and that the passing of the proposed Act would not only stop all this Saltpetre without notice, but would subject them to damages for the non-fulfilment of their contracts for tonnage without compensation of any kind. He thought that these gentlemen were under a slight mistake in supposing that they would be liable to an action for a breach of their contracts; because he apprehended that if a State, during the time of War, prohibited the export from its own territories of articles which were contraband of War, a contract entered into in that State for the export of such articles would be rescinded. But independently of that, it appeared to him that, without reference to the Act now proposed, and under the law as it existed at present, it was not lawful to export Saltpetre from India in an American or other foreign ship. The Statute 37 Geo. III. c. 117, gave power to the Court of Directors to regulate the trade to be carried on by means of foreign ships with the British possessions in India. Under that Statute, the Court of Directors passed several Regulations, the last of which was dated the 2nd of December 1839, and was inserted in the *Calcutta Gazette* on the 11th of December in that year. The Regulation recited the Statute 37 Geo. III. c. 117. It also recited that a Regulation had been passed by the Court of Directors, which was transmitted to this country by a Despatch, dated the 28th of July 1837, and was promulgated by the Supreme Government on the 29th of December 1837, for rescinding and re-enacting with modifications certain provisions contained in a previous Regulation passed by the Court of Directors on the 12th of August 1829, for regulating the trade of foreign Nations with the ports and settlements of the British Nation in the East Indies. It further recited that doubts had arisen as to the true intent and meaning of certain parts of that Regulation, and that it was expedient that such

doubts should be removed ; and it declared that the Court of Directors, by virtue of the power granted to them by the Statute 37 Geo. III. c. 117, had rescinded the whole of that Regulation, and, in lieu thereof, had framed the following Regulation :—

“ Foreign ships belonging to any State or country in Europe or in America, so long as such States or countries respectively remain in amity with Her Majesty, may freely enter the British sea-ports and harbours in the East Indies, whether they come directly from their own country or from any other place ; and shall be there hospitably received, and shall have liberty to trade there in Imports and Exports conformably to the Regulations established, or to be established, in such sea-ports. Provided that it shall not be lawful for the said ships to receive goods on board at one British port of India to be conveyed to another British port of India, on freight or otherwise ; but nevertheless, the original inward cargoes of such ships may be discharged at different ports, and the outward cargoes of such ships may be laden at different British ports for their foreign destinations.”

This proviso had been, in effect, rescinded by Act No. V of 1850. Then came the following proviso, having reference to Saltpetre :—

“ And provided further that it shall not be lawful for the said ships in time of War between the British Government and any State or Power whatsoever, to export from the said British territories, without the special permission of the British Government, any Military or Naval Stores, Saltpetre or Grain.”

He thought that this proviso of the Regulation was in full force, notwithstanding the 37 Geo. III. c. 117 had been repealed by the 12 and 13 Vic. c. 29, an Act passed in England for amending the Navigation Laws. The first proviso of the Regulation made it unlawful for the vessels of foreign States to export goods from one British port in India to another. That, as he had observed before, had since been in effect rescinded ; but he had not been able to find that any other portion of the Regulation had been repealed by any subsequent Act ; and, in his opinion, the proviso which related to saltpetre continued to be in full force to this day just as much as if it had been passed by the British Parliament. The Regulation was no more rescinded by the repeal of the Statute 37 Geo. III. c. 117, than all the Regulations of Bombay and Madras passed previously to the 3 and 4 Wm. IV. c. 85, were repealed by virtue of that Statute, which prohibited the local Governments from making laws and Regulations,—or than Act V of 1850 was abrogated when the Statute 13 Victoria, c.

29, under which it was passed, was repealed by the 16 and 17 Vic. c. 107. He thought that the repeal of a Statute which gave power to enact laws, was not a repeal of the laws that had been enacted by virtue of that Statute whilst it was in force. He was bound to admit that the Regulation of 1839 had not been acted upon since the commencement of the present War, and that Saltpetre had been exported from India in foreign vessels by the tacit consent of the British Government there ; but that did not alter the law ; and it was still illegal to export that commodity without the special permission of the British Government in India.

The reason for the introduction of the present Bill was to be found in a Despatch from the Honorable Court of Directors directed to the Governor-General in Council. The Despatch said :—

“ We have to desire that you will take immediate measures for preventing, during the continuance of the present War with Russia, the exportation of Saltpetre from India, except in British vessels bound to the Ports of London or Liverpool.”

Those directions were express ; and he thought that, in a matter like this—a matter of State policy—the Council were bound to presume that Her Majesty's Government had not come unadvisedly to the conclusion that Saltpetre ought not to be exported from India except in the manner mentioned in the Despatch. The American Merchants who remonstrated against the Bill, asked the Council to contrast the measure proposed with the conduct of the belligerents in Europe, and to consider that, on the declaration of War, the British and Russian Governments allowed a certain reasonable period for the departure of the enemies' vessels from the Ports of each country ; by which means, existing engagements were respected, and the vessels were enabled to leave without injury. But that was a very different thing from the exportation of Saltpetre. On war being declared, the British Government, according to usages in modern warfare, allowed a given time for Russian vessels then in British Ports, to depart without being subject to seizure or confiscation as enemies' property. The object of this Bill was to prevent the warlike resources of Russia from being augmented by means of any article exported from the British territories in India ; and with that view, it prohibited the exportation of Saltpetre from India except in British vessels bound to the Ports of London or Liverpool. The gentlemen who had signed the let-

rite also said that, even when a blockade was declared in the Baltic last season, ample time was given for neutral vessels to finish loading, and leave the Ports to be blockaded ; and they asked—

“Is the present a case which demands greater stringency than the operations of a blockading force?”

No doubt it was right to allow sufficient time to neutral vessels lying in the blockaded Ports to load and depart ; the permission did not extend to allow vessels bound with cargoes for the blockaded Ports to enter such Ports, notwithstanding they might have sailed before the blockade was established ; nor did it enable Russia to increase her resources for the conduct of the War. The fact urged, therefore, appeared to him to be no argument against an Act to prohibit the export of Saltpetre from this country in foreign vessels. By the rules of international law, a neutral Government was not bound to prohibit its subjects from carrying goods contraband of war to a belligerent power. They might do so subject to the right of the State at war with such Power, to seize such contraband Articles *in transitu*, and to confiscate them. That being the case, it was perfectly justifiable for the British Government to say to the subjects of neutral nations—“It is true you are not guilty of a breach of the law of nations, by carrying Saltpetre or Gunpowder into Russia, if you can do so without their being seized *in transitu* ; but we will not allow you to supply our enemy with munitions of War from our own territories.” Every one must be aware that, during the time of war, the exportation of munitions, or articles contraband of war, from the territories of either of the belligerent Powers, was liable to be stopped at any moment ; and therefore, those who had purchased Saltpetre in India for the purpose of exportation, or who had contracted for the conveyance thereof from India in foreign Vessels or to foreign Ports, whilst England was at War with Russia, must have done so with the knowledge that they were subject to the risk of having such exportation prohibited by the British Government, whenever that Government might think it expedient to do so.

For these reasons, and because he presumed that the British Government, to whom the Council was bound to give credit for not acting unadvisedly in the matter, were desirous that such a measure should be taken, he thought that the proposed Law was perfectly justifiable ; and he should now move

that the Council do resolve itself into a Committee upon the Bill.

SIR JAMES COLVILLE said, as the few observations which he had to make upon the Bill applied to it generally, he thought it would be more convenient to make them on the question then before the Council. It was with the utmost diffidence that he found himself opposed to his honorable and learned friend on a question which, even remotely, was a question of law ; but he felt unable to justify the support which it was his intention to give to this Bill on the narrow and, in his humble judgment, untenable ground, that the exportation of saltpetre in foreign vessels was prohibited by the law as it now existed. He was unable to satisfy himself that the Regulation to which his honorable and learned friend had directed the attention of the Council, had now any legal force or vitality ; or, to put the question in other words, that any foreign merchant who, in a foreign vessel, might have exported saltpetre or grain before the passing of the proposed Act, or who might export grain after the passing of the proposed Act, had been or would be guilty of an infraction of any existing law. To the general proposition that the repeal of an Act which authorized the making of laws, did not necessarily repeal any law that had been passed under it, he yielded his assent ; but looking at the particular Statute by virtue of which the Regulation in question was framed, looking at the peculiar form of the Regulation, it seemed to him that that proposition could not apply to this case. What was the state of the law when the Statute of the 37 Geo. III. was passed ? He need hardly remind the Council that the Navigation laws, beginning with the Statute of Charles II, were in full force at that time, and that no goods could be exported from any part of the British dominions in foreign vessels. Various laws had been passed in modification of the Navigation Laws for different parts of the British dominions ; but the regulation of trade in India in foreign bottoms, long continued to be provided for by the Statute in question, and the Regulations framed in pursuance of it. Acting under the power given by that Statute, the Court of Directors appeared to have framed first one Code of Regulations, and afterwards the particular Regulation referred to by his honorable and learned friend, which superseded the others. By that Regulation, the Court of Directors said that the trade prohibited by the present law should be free upon certain conditions and

with certain exceptions. Since that time, we all know that the Navigation laws had been swept away; and, by the 12 and 13 Vic. c. 29, the Statute of the 37 Geo. III, c. 117, was repealed. This being the state of the law, it appeared to him that, with the repeal of the general prohibition against the export of Indian articles in foreign bottoms, and of the Statute under which the dispensing Regulation in question was passed, the Regulation itself must be considered as virtually, though not expressly, repealed. It must be remembered too, that the particular Regulation was passed at a time when the Governor General in Council had, under the Charter Act, the general power of legislating for India—a clear power of framing and passing that which, by its own force, would be binding as law. He conceived that, if the object had been not to exercise the mere power of dispensing with the Navigation laws as they existed at the time, but to prohibit for all time the exportation of saltpetre under certain circumstances, that would have been effected in the ordinary way by an Act of the Legislature.

He, therefore, speaking with submission, must say it seemed to him that the repeal of the Statute of Geo. III. had carried that Regulation into the limbo of things dead and forgotten. He believed that he was quite accurate in saying that, if not dead, it had slept forgotten of all men, until it was disinterred by the laudable research of the Clerk of the Council, and warmed into life by the fostering hands of his honorable and learned friend.

But he thought it was not a very important question whether the Regulation was in force or not; and for this reason. If it was a law, it was a law without a sanction; for, since the repeal of the Navigation laws, there remained no penalty for its infraction; and further, it did not embrace all the objects of the present Bill. Therefore, further legislation upon the subject now under the consideration of the Council was necessary in any point of view.

Upon the general question, it appeared to him that the course of the Council's duty, however painful, was perfectly clear. He did not say that the Council ought to pass the law now brought forward, simply because it was told by the Home Authorities to pass it. He respectfully claimed for himself upon this, as, with some of his honorable friends, he had claimed upon another question, the right of acting in conformity

with his own judgment and conscience. But he conceived that no man could be said to act conscientiously who was content to proceed upon his general notions of what was right or wrong, and did not in every case inform his judgment by all the means in his power, and thus come to an honest conviction what, in the particular case, he ought to do. Now, how did this case stand? No one could deny that every State had the abstract right to regulate the export of its own commodities as it saw fit. On the other hand, no one could deny that every State was under an obligation,—an imperfect obligation,—to exercise that right with due regard to the interests and convenience, not only of its own subjects, but of foreign and friendly states. He might go further, and admit that a sudden interference with the course of commerce—the abrupt interruption of a legal, or, if not legal, a permitted trade, was a capricious exercise of that power. But there was no one in his senses who did not see that a state of war was exceptional. It was notorious that, during the continuance of War, a belligerent Power was, by the common consent of nations, permitted, in certain circumstances, to violate the natural rights of other nations; as for instance, when it took goods which fell within the description of contraband of War, out of a neutral vessel; or prevented the vessels of a neutral nation from entering a blockaded port, and exercising their right of trading with the enemy. And if a belligerent Power was thus justified by the necessities of War in this interference with the positive rights of other nations, *à fortiori*, it might be justified by the same necessities in hastily or even harshly exercising what was its own undoubted right.

Therefore, on the general question of the right to pass the law proposed—a right which seemed to be partly conceded by one of the papers before the Council—he entertained no doubt. If the measure was necessary, it was just. And who were the persons to judge of the necessity for the measure? Surely, in such a case, those to whom the responsibility of the conduct of the war was entrusted; and if they assured the Indian Government that the measure was necessary, why should this Council, a limited Legislature, withhold its confidence from them? Why should this Council evince a greater jealousy of the Ministers of the Crown than was evinced by Parliament itself, which had vested in them the right of declaring at any moment, by a sim-

ple order in Council, that the export of saltpetre from the British dominions should cease. If Parliament had given the Ministers of the Crown prospectively the right to exercise that discretionary power whenever they might be of opinion that there was a necessity for its exercise, surely this Council could not refuse them the like confidence, or decline to carry out their object when they assured us that such a necessity had actually arisen.

Whether modifications might not fairly be made in the Act so as to diminish the hardship which it would inflict, was a question which might admit of greater doubt. He did not disguise from himself that the hardships inflicted, might be considerable. He had seen two American gentlemen, both subscribers of the letter which had been read at the last Meeting of the Council, upon this subject; and there could be no reason to doubt their assurances of the manner in which the proposed law would operate upon private interests. The houses to which these gentlemen belonged, were consignees of some of those magnificent vessels which America had lately sent in such profusion to this port—of vessels now loading in the river. Under the arrangements into which they had entered with the ship-owners, they were bound to supply their vessels with a certain amount of cargo, of which a specified proportion must consist of what was called dead-weight. Now, there was, at present, no commodity falling within the description of dead-weight which could be exported from India to America at a profit except saltpetre. The consequence was that, if the proposed law were passed, the vessels in question must go home partly in ballast; and that the consignees would be obliged to pay freight upon that ballast as if it were cargo earning freight. His honorable and learned friend had said that an Act passed to prohibit the export of certain goods in certain vessels, would rescind any previous contract to ship such goods on such vessels. He (Sir James Colville) apprehended that that result would depend in a great measure upon the form of the contract, and the place in which it was sought to enforce it. But, however that might be, it was clear if the consignees were not answerable for the compelled violation of their contracts, the loss would fall on the ship-owners, who, on the faith of the existing law, had sent their vessels to this port. What followed from that state of things?—and how far, if at all, was it remediable by this Council? The

gentlemen who remonstrated against the Bill said in one paragraph of their letter—

“ We submit simply that we are entitled to full compensation for interference with our business, as far as that interference shall prove to be illegal and without force of law; and that some reasonable time shall also be given, as is usual in such cases, for vessels that have come to this port for merchandize, relying upon the good faith and fair dealing of the British Government, to load and depart.”

This paragraph really seemed to assert a claim as of strict right; and all he had to remark on it was this—if what was proposed to be done was inconsistent with the Municipal law, there was a remedy for it; if, on the other hand, it was inconsistent with the law of Nations as now understood, or any existing treaty, that afforded a ground for diplomatic representation and remonstrance, and claims for compensation. He did not see, or for one moment admit, that what the Council was about to do could fairly be questioned in either way. The letter also represented that the proposed Act was inconsistent with the spirit in which both the British and Russian Governments had acted on the commencement of hostilities, and in which, during the present war, the exercise of the extreme rights of belligerents had been modified in Europe. Such modifications of the extreme law of Nations was, undoubtedly, not only humane, but, whenever they could safely be allowed, consistent with sound policy. But then came the question, who were the persons to judge whether the particular modifications that were desired could safely be permitted? Why, those whose province it was to judge of the necessity for the general measure. It appeared to him that it would be almost as difficult for the Council to say what precise modifications of the proposed prohibition would be safe, as it would be for this Council to say, that existing circumstances did not justify the prohibition at all. He had certainly felt pressed by the consideration that the distance at which those who were likely to suffer by this measure were from the Home authorities prevented them from making representations which, if made at home, might have had more or less success. He stood there as one who had no connection with the Executive Government. If the Executive Government at whose instance the Bill was brought in, had seen fit to ask for a power to dispense with the strict application of the law in certain classes of cases, so as to diminish the hardships caused by its sudden enactment, he should have gladly given them that power.

Sir James Colville

But they had not thought fit to ask for it ; and he did not see how he could propose to force upon them the exercise of what would, at best, be an invidious power, and involved the doing of that which he, as a member of the Legislature, thought the Legislature could not safely do. He felt that the losses caused by this measure were all such as admitted of pecuniary compensation, if any sufficient ground for compensation could elsewhere or hereafter be shown ; whereas if the Council took upon itself to modify the measure urged upon them by the Home Authorities, it might really defeat the object of the measure, and occasion difficulties of the extent and gravity of which it had not the means of judging.

On the whole, then, he had come to the conclusion that it was his duty to support the Bill, as the honorable and learned Member proposed it, deeply regretting the mischief and loss which it might occasion ; but looking upon such mischief and loss as some of the evils, and those not the worst evils of War ; for surely, one could scarcely take up the Gazette without finding there some new proof that the temporary interruption of trade, the diminution of this or that Merchant's profits, or the failure of this or that mercantile speculation, however much to be deplored, however grievous they might be in their consequences, were yet amongst the lightest of the miseries which the state of war brought upon mankind.

Mr. PEACOCK said the honorable and learned Member who had just spoken, was under a mistake in supposing that he intended to put forward the local Regulation as a reason for passing the Bill. When he first introduced the Bill, he was not aware that such a Regulation existed. He merely stated that, in his opinion, it was still in full force. He still retained that opinion. He might be wrong in his view ; but he certainly thought that no Act which he had been able to find, repealed the Regulation.

THE PRESIDENT then put the question that the Council resolve itself into a Committee upon the Bill.

The motion was carried, and the Council resolved itself into a Committee accordingly.

Sections I and II of the Bill were passed as they stood.

Section III provided that offences against the Act should be punished by a fine not exceeding the rate of 20 Rupees for every ton of saltpetre.

Mr. PEACOCK moved that the figures 20 should be struck out, and the figures 200 substituted in their place.

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

The remaining Sections, with the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, and the Bill having been reported to it—

Mr. PEACOCK moved that the Bill be read a third time, and passed.

Motion carried, and Bill read a third time accordingly.

FREE IMPORTATION OF COTTON (N. W. PROVINCES).

Mr. ALLEN moved that the Council resolve itself into a Committee on the Bill "to abolish the levy of Customs Duty on the import of Cotton into the North-Western Provinces of the Presidency of Bengal."

Motion carried, and Committee formed accordingly.

The Bill passed through Committee without amendments.

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

ADMINISTRATOR GENERAL'S ACT.

Mr. PEACOCK postponed, until Saturday next, the motion (of which he had given notice for this day,) for a Resolution on the Despatch from the Honorable Court of Directors, concerning Act No. VIII of 1855. He said he thought it better that every Member of the Council should previously be made acquainted with the particular Resolution which he proposed to move. The Resolution he had framed was as follows :—

"That this Council being of opinion that there is no sufficient reason for amending Act No. VIII of 1855 in the manner desired by the Honorable Court of Directors, respectfully declines to amend it.

"That a repeal of the Act would not effect the object of the Honorable Court, and would be contrary to their intention ; and that it ought not to be repealed.

"That this Council, admitting to the fullest extent the right of the Hon'ble Court to disallow any law made by the Governor General in Council, desires to record its opinion that the Hon'ble Court has not the power to disallow only a part of an Act, unless the same relates to two or more subjects so wholly unconnected that the part disallowed amounts in substance to a distinct law.

"That this Council feels bound respectfully to protest against the right of the Hon'ble Court to dictate to the Council the terms of a law, and to direct them to pass it."

PORTS AND PORT-DUES.

Mr. ELIOTT moved, in pursuance of notice, "that the Clerk of the Council be

directed to address a letter to the Secretary to the Government of India in the Home Department requesting that the Governor General in Council will be pleased to order that the Governments of Bengal, Madras, and Bombay and the Straits Settlement respectively, be called upon to furnish Schedules containing the particulars hereunder described for the several Ports which have been or shall be declared subject to Act XXII of 1855, with a view to the passing of a Supplementary Act for the Regulation of Port-dues and fees after the expiration of the period of one year to which the levy of the present dues and fees is limited by Section XLI of the said Act.

"A Schedule of the annual collections for the last three years at each Port made subject to the Act on account of Port-dues and fees usually collected there—specifying the several Port-dues, fees, &c., which are now *in fact* charged in such Port (including pilotage and light-dues), and distinguishing the amount collected from British, Foreign, and Country vessels respectively.

"A Schedule of the annual expenses of the Port for the same time, including the pay of the establishment, and the cost of maintaining works (buoys, lights, &c.) for the benefit of the Port.

"The annual amount of tonnage for the same period entering and leaving the Port, distinguishing between British, Foreign, and Country vessels.

"An estimate of the amount of dues, &c., which, in the judgment of the several local Governments, will be necessary for the maintenance of the Port, and, if any improvement is contemplated, an estimate of the cost thereof, and of the increase to the said dues, &c., which will be necessary to provide for the same."

MR. GRANT said, there were some Ports which were not under any local Governments—as, for instance, the Ports of Rangoon and Maulmein. He was not sure, therefore, whether the Honorable Member's motion as now worded would be taken to include such Ports.

THE PRESIDENT said, he might engage on the part of the Governor General in Council that, on the receipt of the motion proposed by the Honorable Member for Madras, instructions would be issued to the Commissioners of the Ports in the Eastern Provinces, in the same manner as to the local Governments of other Ports, to furnish the information desired.

MR. ELLIOTT'S motion was then put, and agreed to.

ACT XIV OF 1851 (STRAITS' EXCISE ACT.)

MR. ALLEN said, some months ago, the Governor of the Straits Settlement had

addressed to the Government of India a communication relative to Act XIV of 1851, which had been transferred to the Council, and of which he had taken charge. He desired now to move that that communication be referred to a Select Committee; and he thought it right to explain, as briefly as he might, the reason why he had not taken upon himself the task of bringing in a Bill founded on that communication. There was a considerable excise revenue collected in the Straits Settlements under Act XIV of 1851. Licenses were given to farmers for the monopoly of all excise articles, namely, Opium, Chundoo, Toddy, Bang, Arrack, and Spirits. In the beginning of this year, some Chinese inhabitants of Province Wellesley established a manufactory for a spirit called Samsoo beyond the boundary of the Province, and carried that spirit by a river which ran through the country into the harbor of Penang, which was bounded on one side by Province Wellesley, and on the other by the Island of Penang. The spirit was seized while being conveyed down the river, and an application was made that it should be confiscated. The case was tried, and the decision was that the spirit not having been *landed* within the Province, and not having been manufactured within the Province, the case did not come within the Act. In consequence of this decision, the Governor of the Straits Settlements asked the Supreme Government to pass an Act amending the present law. On looking at the papers sent up, he thought it would not be right to bring in a Bill to the effect proposed; and he now moved that the communication from the Governor of the Straits Settlements should be referred to a Select Committee, because, but for that course, it might remain for ever unnoticed on the records of the Council. The reason why he was of opinion that it was inexpedient to amend the Act as proposed, was, that the spirit in question, which was made beyond the frontier, and carried through the territory, was not, he believed, meant for consumption within the settlement, but for export. Act XIV of 1851 was entitled—

"An Act for consolidating the laws for collecting a Revenue of *excise* on spirituous liquors and intoxicating drugs in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

There was no doubt that a monopoly for the manufacture of the spirit had been granted to the spirit farmer, and people within Province Wellesley could not manufacture

it even if they wished to export it. But he thought that the monopoly for manufacture was given solely for the purpose of assisting the excise Revenue; for the whole Settlement was a free Port, as all articles might be exported from, or imported into it without payment of any duty at all. If the communication from the Governor of the Straits Settlement should be referred to a Select Committee, who could correspond with that functionary, and ascertain more clearly what his wishes on the subject were, the Council might be in a position to see what the actual exigency was, and a Bill might be brought in to meet it. He should conclude by moving a Select Committee consisting of Mr. Elliott, Mr. Currie, and himself.

Agreed to.

LICENSES FOR SALE OF INTOXICATING LIQUORS.

MR. LEGGITT moved that a communication received by him from the Secretary to the Government of Bombay on the subject of licenses for the sale of intoxicating liquors, be laid upon the table and referred to the Select Committee on the Bill "for regulating the Police of Calcutta, Madras, and Bombay and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

STEAM NAVIGATION, &c.

MR. LEGGITT moved that a communication received by him from the Secretary to the Government of Bombay relative to the draft of a proposed Act to regulate Steam Navigation, and the Boats and Lights to be carried by Vessels, be laid upon the table, and referred to the Select Committee on the Projects of Law connected with the Marine Department.

Agreed to.

CATTLE TRESPASS.

MR. ALLEN moved that a communication received by him from the Assistant Secretary to the Government of the North-Western Provinces be laid upon the table, and referred to the Select Committee on the Projects of Law relating to Cattle Trespass.

Agreed to.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR. CURRIE said he had received a communication from the Government of Ben-

gal on the subject of the proposed revision of the Revenue Sale Law. With that communication was forwarded a Petition from certain zemindars of Tirhoot, complaining of that principle of the existing law by which the whole of a joint estate is liable to sale in the event of default of payment by any of the co-proprietors. That was one of the points for which the new law was to provide a remedy. Another and an equally important point was the preservation of under-tenures, which, as the law now stood, fell with the sale of the parent estate. The Lieutenant Governor of Bengal asked him to say—

"What prospect there is of a Bill being introduced to amend Act I of 1845 in respect of securing under-tenures in case of an estate being sold."

He himself was aware of the great practical difficulties which beset an attempt to legislate upon these points; but he also knew that no one was so well qualified to cope with those difficulties as the Honorable Member who, it was understood, had undertaken the preparation of a Bill for amending the Sale Law. Considering the importance of the interests concerned, and the urgency with which the matter was pressed in the papers which he held in his hand, in the petition which the Council would recollect was read at the table last Saturday, and from other quarters, the Honorable Member in whose hands the measure was, would probably have no objection to say when he thought he should be able to bring it forward. In the mean time, he begged to move that the communication which he had received from the Bengal Government, be printed.

MR. GRANT said, in speaking upon this motion, he would simply answer the question which the Honorable Member had put to him. He was in great hopes that, in a fortnight, he should be able to bring forward a Bill for the object which the Honorable Member mentioned. He had had on his table for a long time the draft of a Bill for that purpose; but, on consulting some who were conversant with the subject, he found that the provisions of that draft would meet with strong opposition from one of the interests concerned, and he had not been able to satisfy himself that there was no substantial ground for such opposition. He hoped, however, to be able to frame other provisions for the same purpose, which would obviate, if not all objections, at least all substantial objections.

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

SALE OF UNDER-TENURES (BENGAL).

MR. CURRIE moved that the Bill "to amend the law relating to the sale of under-tenures" be referred to a Select Committee consisting of Mr. Grant, Mr. Allen, and the Mover.

Agreed to.

EXPORT OF SALTPETRE.

MR. PEACOCK moved that General Low be requested to carry the Bill "to prohibit the exportation of saltpetre except in British vessels bound to the ports of London or Liverpool," to the Most Noble the Governor General for his assent.

Agreed to.

ENFORCEMENT OF JUDGMENTS.

MR. LEGEY'T moved that General Low be requested to carry the Bill "to explain and amend Act No. XXXIII of 1852," to the Most Noble the Governor General for his assent.

Agreed to.

NOTICES OF MOTION.

MR. LEGEY'T gave notice that he would, on Saturday the 8th instant, move the second reading of the Bill "to amend the 122nd Article of War for the Native Army."

Also 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."

The Council adjourned.

Saturday, December 8, 1855.

PRESENT :

The Most Noble the Governor General, President.

Hon. J. A. Dorin,	D. Elliott, Esq.,
Hon. Maj. Genl. J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGoyt, Esq.
Hon. B. Peacock,	and
Hon. Sir James Colville.	E. Currie, Esq.

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

MESSAGE No. 59.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 1st of December 1855, entitled "A Bill to pro-

hibit the exportation of Saltpetre except in British Vessels bound to the Ports of London or Liverpool."

By Order of the Most Noble the Governor General.

J. W. DALRYMPLE,

Offg. Secy. to the Govt. of India.

FORT WILLIAM,

The 7th December, 1855. }

BOMBAY MUNICIPAL TAXES.

THE CLERK presented a Petition from the Secretaries to the Bombay Association concerning the Bill "to amend the Laws relating to certain of the Municipal Taxes in the Presidency Town of Bombay, and to legalize certain proceedings connected with the collection of the Shop and Stall Taxes."

MR. LEGEY'T moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

MARRIAGE OF HINDU WIDOWS.

THE CLERK presented a Petition from certain Hindu Inhabitants of Kishnaghur and its neighbourhood, in favor of the proposed Law for legalizing the Marriage of Hindu Widows.

MR. GRANT moved that the Petition be printed.

Agreed to.

IMPRISONMENT OF SOLDIERS.

THE CLERK reported to the Council that he had received, by transfer from the Officiating Secretary to the Government of India in the Military Department, a communication from the Adjutant General of the Army, relating to the necessity of providing that the time passed by Soldiers in Imprisonment either in a Civil Jail or in Military custody, under sentence, and while forfeiting pay, should not be reckoned as service.

ACT XIV OF 1851 (STRAITS' EXCISE ACT).

Also, by transfer from the Officiating Secretary to the Government of India in the Home Department, an Extract from the Proceedings of the Financial Department on the subject of the proposed amendment of Section 36, Act No. XIV of 1851.