A LETTER AND A PETITION

OF THE

BRITISH INDIAN ASSOCIATION.

- I.—ON THE QUESTION OF BRIDGING THE RIVER HOOGHLY AT CALCUTTA.
- II.—ON THE BILL TO AMEND THE LAW FOR GIVING RELIEF IN CASES OF FORCIBLE DISPOSSESSION.

CALCUTTA:

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To.

CAPTAIN T. E. ROGERS, I. N.,

Superintendent of Marine, - President of the Hooghly-Bridge Committee.

SIR,

I am desired by the Committee of the British Indian Association to acknowledge the receipt of your letter of the 25th
May last, and to make the replies following to the queries
contained in that letter.

To the first question "To what extent is the call for a bridge over the Hooghly at Calcutta well grounded?"—Our Committee consider, that the call for a bridge of some sort is, without doubt, well grounded, and that a bridge will necessarily be a great boon and productive of much and extensive benefit to the residents both of Calcutta and the Mofussil. They consider further, that a solid first-class bridge, such as they understand to be proposed, will be viewed by all classes of the native community as a great and noble work, worthy of a great and beneficent Government.

The want of safe and ready means of transit between Calcutta and the opposite bank (ranging between Sulkeah and Sibpore) has, very long, been a standing public grievance, causing amongst other evils, periodical loss of life to a fearful extent. This want has, for many years past, engaged the attention of private speculators and of public spirited persons, and it may be in the recollection of some of the members of

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withdrawn, and, with the exception of the small and illprovided steam ferries which have plied during the last three
years, (the proprietors of which were, it is believed, successively losers, until the opening of the Railway,) the communication, between the banks of the Hooghly, although an
absolute want and necessary of daily life to vast numbers of
people, has been left to the chance provision of poor native
boatmen, without progress or improvement of any sort, instead
of advancing with and becoming adapted to the social and
commercial advancement of the empire and especially of
Calcutta.

Railway communication has now again attracted public attention to the evil, and has created a new and encreasing demand for safe and commodious means of transit that may be permanently relied on.

In reply to the second question, viz., "For what objects is it (a bridge) specially wanted?" I am desired to say, the Committee consider that the direct advantages of a bridge are obvious, social and commercial; the indirect (though scarcely contingent) advantages of so great a national work will be, perhaps, yet more numerous, though of themselves, not sufficient to justify any very heavy pecuniary burden upon the community.

The objects have been generally described. Our Committee are not in possession of sufficient information to define, with any accuracy, the extent to which the interests of commerce or the traffic of the country will be affected by the

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In reply to the third question, via., at half a crore of rupees, might or might not this sum or range of it be expended in works more urgently required by the Calcutta community?" the Committee beg to observe, that the benefits resulting from a bridge will not be confined to the Calcutta community but will extend over a much wider circle. The two objects of executing public works of general utility and the municipal improvement of Calcutta are certainly not identical. But such has been and is the paramount importance of the latter, that its primary consideration may be said to be a matter of necessity. Assuming then the necessary cost of a solid bridge to be fifty lacks, assuming also that the expenditure of so large a sum of public money, (though not out of the local municipal funds,) would render impracticable the carrying out many sanitary and municipal reforms, which are known to be urgently required in Calcutta, the Committee have little hesitation in giving it as their opinion, that it would be a fatal error to exhaust so disproportionate a share of the public resources in providing for one out of many public wants. But the Committee are, at the same time, of opinion that no works, other than those of a strictly sanitary character, deserve comparison in importance with the creation of some efficient and safe means of transit over the river at Calcutta.

Although the letter under acknowledgement does not refer, in terms, to any less costly work for the desired purpose, the Committee cannot but suggest, that this is, at least, one mode of meeting any serious objection on the score of outlay.

Whether a floating bridge, in a series of years, may prove

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- contrived to lessen the

----ence to the public, of so large an outlay,

or otherwise) over some considerable period;—these considerations occur to the Committee of the British Indian Association: to discuss them efficiently in a letter would be impracticable; but the Committee take the liberty of alluding to them as questions preliminary to a final disposal of the subject.

In reply to the fourth question in your letter, viz., "How far it would be serviceable were a Railway branch and station established at Sulkeah?" our Committee think, that the bridge should communicate almost immediately with the Railway. If Sulkeah be elected as the best site for a bridge, a Railway branch and station will be necessary there, but upon the whole, the Committee are disposed to consider the Howrah Station as the most eligible and most convenient site, irrespective, of course, of any objection arising from obstruction or inconvenience to the shipping and navigation, which, if it exist, it is needless for the Committee to observe, must be met as far as practicable.

I have the honor to be,

Sir,

Your most obedient servant,
ISSURCHUNDER SINGH,

Honorary Secretary.

British Indian Association

Rooms, .

The 6th July, 1855.

A PETITION

ON THE

BILL TO AMEND THE LAW FOR GIVING RELIEF IN CASES OF FORCIBLE DISPOSSESSION.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

THE HUMBLE PETITION OF THE

BRITISH INDIAN ASSOCIATION,

SHEWETH,

THAT your Petitioners have observed, with gratitude and thankfulness, the patient and careful consideration bestowed by the Select Committee of your Honorable Council upon the objections, universally raised, against the "Bill for the more effectual suppression of affrays concerning the possession of property."

2. That the anxiety evinced by your Honorable Council to provide effectually for the admitted grievance of violent dispossession of property, and the attention which all reasonable suggestions have received at your hands, nave been an inducement and encouragement to your Petitioners further to discuss the subject in its different bearings; and your Petitioners beg leave to represent that, in what they have now to urge, in reference to the amended Bill, they are far from intending to use the language of complaint, but to approach your Honorable Council in a spirit of earnest, though humble, cooperation, in a matter in which your Petitioners are most deeply interested.

- 3. The Select Committee of your Honorable Council date the interference of Magistrates to restore parties dispossessed, from Reg. VI of 1813, and observe, that the interference was "with the view of enabling them to remove at once the origo mali by determining who is in actual possession."
- 4. Your Petitioners humbly suggest, that the law just named did not authorise any other interference of the Magistrates, than as peace-officers, preserving to the Dewanny Courts the summary jurisdiction conferred upon them, by Reg. XLIX of 1793, Reg. XIV of 1795, and Reg. XXXII of 1803, and that the object of the fifth Section of Reg. VI of 1813, appears to have been, to enable the Dewanny or Civil Judge to originate an enquiry which, it had been found, parties were reluctant to institute as plaintiffs.
- 5. Your Petitioners further bring to the notice of your Honorable Council, it was not until the first year of Lord Amherst's administration, that the Government discovered the expediency of substituting for the summary proceeding of a competent Civil Court (which had been conceded by Lord Cornwallis's Council) one not less summary before an inferior Foujdarry Court.
- 6. So indeed the measure of 1824 reads at this day: but two important facts must be borne in mind. First, the Zillah Magistrate of 1824 was, in a majority of instances, also the Zillah Judge: objectionable, therefore, in principle, or in the eye of a jurist, as the transfer of the enquiry from one jurisdiction to the other may have been, there might practically be more of form than substance in the change: the same individual (and he, the most experienced in the district,) conducted the investigation, and it is to be presumed in the same manner (i. e. in treatment of evidence and procedure), but his executive agents were different, and in his magisterial or police character he could possibly act more immediately and effectually upon the evil and the evil-doers. The second fact

- is, that a vast change had taken place in the quality of officers called upon to put the law of 1824 in force, before the next change occurred, viz. in 1840,—a change apparently brought about by the labors and reports of the Police Committee in 1838, and therefore perhaps it is, that an objection which might sound merely theoretical, has became of practical moment and consequence.
- 7. It appears moreover, if not from the terms of the Regulation, (which are certainly ambiguous), from constructions of the Sudder Court that the powers of the Magistrate under this law of 1824, on whatever considerations those powers may have been originally granted, were very restricted, being confined to an enquiry into de facto possession when held or forcibly assumed by those who claimed a proprietary right; disputes concerning possession between cultivators, farmers and others, not pretending to ownership, or between proprietors and their tenants, continued still cognizable by the Civil Courts under the old law. In fact it was not until the date of the more complete measure of 1840, that the anomalous jurisdiction vested in the Police Magistrate was extended to embrace generally all cases of dispossession attended or likely to be attended with violence, whether landed proprietors, dependant talookdars, farmers, ryots, or any other class of persons were concerned in the quarrel.
- 8. That Act, in terms, expressly limited the enquiry to one of fact simply, (except as to newly formed land), viz., who was in possession when the dispute arose, but nevertheless provided for the contingency (as the rescinded Regulation of 1813 had done) of the investigation being so complicated as to produce no definite result. That Act also expressly provided, that documentary evidence might be a part of the proof, although the issue was merely the fact of actual dispossession.
- 9. That your Petitioners, in their petition of December last, the object of which was to obtain a reconsideration of a

Bill of a very different character to the present one, state, that the Act of 1840, combined with others in 1817, 1825 and 1848 (passed for protecting the public peace,) was sufficiently well adapted, if rightly administered, to fulfil the object in view; but that the agency employed to carry out these laws was, in the higher grades often inefficient, and in the lower grades often corrupt. Had your Petitioners been, at that time, led to consider the singularity in principle of the jurisdiction, created for the first time by Reg. XV of 1824, and the examples to be found in the jurisprudence of other nations, where the same evil has been, in a very different manner, provided for, your Petitioners would have thought it their duty, not merely to point to the inefficiency and defects of the present system, but to have urged upon the attention of your Honorable Council, the force of those examples, and the expediency of reverting to the principle of the law as it existed in this country from the commencement of British legislation until the measure of 1824.

- 10. Your Petitioners believe that the English criminal code contains the nearest approach to the change effected in the laws of this country by Reg. XV. of 1824, viz. in the statutes of "Forcible Entry," which, however, were passed at a period of English history, when violence and aggression-towards the poorer landholders was the rule, and under circumstances which called more imperatively for severe and summary remedies, than could be said of society in the Bengal Mofussil even at a period long anterior to 1824.
- li. But the Indian legislature, in a most material particular, refused to follow (if indeed they intended to follow at all) the English form of innovation upon established rules; inasmuch as, in England, although the enquiry preliminary to reinstatement of one forcibly dispossessed was transferred from the ordinary Civil Court to the Justice of the Peace, yet it was directed that he should "enquire of the matter by the

people of the county and, upon their verdict, put the party in possession" (Stat. 8 Hen. VI. c. 9.) And when, subsequently, in the reign of James 1st, this form of remedy was confirmed and made further applicable, it was provided that it should be "upon indictment of such forcible entries, or forcible withholdings, before them (the Justices) duly found." Thus, in England, an enquiry into the facts of dispossession and violence, under these statutes, was and is made on the spot, by a jury presided over by independent gentlemen of property and standing in the country,—a mode of remedy and enquiry which, to the minds of your Petitioners, is not only unobjectionable, but of a most enlightened as well as popular character, and every way calculated to satisfy those whose interests it may affect. Indeed, so fully impressed are your Petitioners with a sense of the advantages of a popular tribunal for settling popular tumults and disputes, both in its ability to appreciate evidence and its familiar and historical character among the people, that had your Petitioners not determined to make the jury and punchayet system the subject of a distinct Petition to your Honorable Council, your Petitioners would have here urged that the summary enquiries under which disputants are to be restored to or maintained in possession of land, &c., be made, as a rule, with the aid of a Punchayet or popular referees.

- 12 Thus, it is apparent that the analogy between the English remedy and the power conferred on Mofussil Magistrates by the Indian Councils, is very weak; and the former can, as appears to your Petitioners, be in no way cited as a precedent for the latter.
- 13. That on the other hand, as seems to your Petitioners, it is by no means difficult to trace whence the Indian legislators of 1793 borrowed the summary relief to one "forcibly dispossessed of land" as preliminary to final trial of the right.
 - 14. Originating with the interdict of the Proetor in the Ro-

man Civil Law, some mode of interference, summarily, to protect possession, has, your Petitioners understand, been generally adopted into the legal systems of Europe.

- 15. That, as your Petitioners are informed, the proceeding of Reg. XLIX of 1793 was, in all probability, taken immediately from the "interdict" of the law of Scotland; and your Petitioners conceive it would much extend the benefit and the value of the remedy in this country, if the action of 'c declarator" were also borrowed from that law, and permitted to be pursued simultaneously with the interdict. Your Petitioners beg leave here to refer to Mr. Bell's Dictionary of the law of Scotland After shewing that in the bill or petition for an order of interdict, the petitioner's right and the act of encroachment or unlawful proceeding are stated, and that it closes with a prayer that the proceeding be stayed until the question of right be tried in a proper court, and for expenses, Mr. Bell says,--" the action of suspension and interdict, and the declaratory action may be conjoined, and the right in dispute settled in the course of the conjoined action." And your · Petitioners find from the same book, that the action of declarator is available to declare and judicially ascertain a right of property or possession "although there be no one disputing the right, and even although no immediate interest to challenge it has emerged."
 - 16. Your Petitioners are humbly of opinion that a judicious adaptation of the remedies adverted to in the last paragraph, to the circumstances and judicial procedure of this country, will tend much more effectually to check the evil against which the Bill under consideration is directed, than the exercise by Zillah Magistrates of extraordinary powers for that purpose.
 - 17. That your Petitioners, in asking that the summary restitution of property be once more considered a civil remedy, are, at the same time, disposed to think, that a wide discretion may be usefully given to the judge upon the summary

enquiry to be made, viz., to determine which, if either of the parties litigant, should, under all the circumstances of the case, be maintained in possession of the disputed subject pendente lite, also that the judge should have power to appoint a receiver or curator, upon sufficient cause shewn, in analogy to the jurisdiction conferred by Act XIX of 1841.

- 18. That your Petitioners desire, earnestly but respectfully, to urge, that the people of this country will continue to be dissatisfied with any legislation, upon this important subject, which leaves the power of summarily restoring or transferring possession of land or rights in land, with the Zillah Magistrates, whose ordinary functions cannot, (as your Petitioners believe,) efficiently prepare them for the exercise of so difficult a discretion, even were their experience, speaking generally, adequate to the task. And as to the supposed advantage of promptitude to be gained by leaving the whole matter to the officer responsible for the peace of the district, experience has proved that idea to be delusive and mistaken: the majority of enquiries under Act IV of 1840 have occupied weeks, not to say months.
- 19. That the variety of subjects embraced by the proposed law is, your Petitioners think, also worthy of reconsideration by your Honorable Council. Your Petitioners find, that from being originally confined to "land and crops" the field for this summary enquiry has been expanded to nearly every species of real right, corporeal or incorporeal, viz. "land, premises, watercourses, fisheries, trees, crops, or other produce of land," also the "use of any land or water."
- 20. That your Petitioners think it unnecessary to dwell upon objections, in theory, to a summary or preliminary, and therefore imperfect, investigation of the actual possession or enjoyment of incorporeal rights in land. What they desire to urge is, the necessarily encreased difficulty of dealing with such cases, in which some primá facie enquiry into the right, is unavoidable, as the issue must be, not the bare fact of user, but

user as of right; and that this consideration materially enhances the importance of providing a tribunal every way competent to deal with investigations of right and property.

- 21. That whilst this petition is in draft your Petitioners have become acquainted with what they take leave to designate as the very able letter of the late Judge of Nuddeav communicated in April last by the Government of Bengal to your Honorable Council. This is a powerful confirmation of the general views of your Petitioners above expressed, and some index to what, your Petitioners believe, would be furnished by an indiscriminate examination of the details of Act IV cases, their difficulties and defects. With the 8th clause of Mr. Sconce's letter, in so far only as it proposes to continue in the magistrate any jurisdiction to determine who shall possess land or real rights, your Petitioners, of course, do not concur, and the 9th clause relates to a bill which is not treated of in this petition.
- 22. That your Petitioners are by no means desirous of fettering or lessening the police powers of magistrates, but, on the contrary, earnestly hope to see their hands much strengthened, as conservators of the public peace, with ample powers both to prevent and to punish all disturbers; nor do your Petitioners consider that the powers, which the Bill under consideration confers, or any similar powers, can assist or really strengthen the magistrate, but that they rather encumber him with duties scarcely connected with his legitimate care and office, which is to "keep the peace"—and that, without regard to private disputes.
 - 23. One objection, your Petitioners cannot but be aware, which was (and with truth) made to the system of civil procedure introduced by Reg. XLIX of 1793, and which occasioned the law of 1813, your Petitioners do not meet by what they have proposed above. That objection is, that the remedy, if voluntary, may frequently be inoperative from the

reluctance or apathy of plaintiffs. This certainly was so with the law of 1793, a law of a harsh and arbitrary character in many of its provisions, which, although connected with a civil remedy, were really penal and severe in the highest degree, and calculated rather to strike terror than to be accepted as a benefit. Many of your Petitioners are not disposed to admit of the objection, as general and inherent in the character of the people; still less do they believe, that it could be of any practical consequence, were the police establishments of the country what they should be. Indisposition on the part of the subject, from any cause, to try a disputed right by resort to law, should, your Petitioners humbly submit, be met by stringent measures to prevent the subject taking the law into his own hands, rather than by any attempt or experiment to overcome that indisposition by force,—rather by legislating against the breach of the law than by legislating to enforce a resort to law. Some, however, of your Petitioners whose opinions deserve consideration, and many public officers well qualified to judge and having the good of the country at heart, think otherwise, viz., that the existing circumstances of the country render it expedient, if not indispensable, that the magistrate should possess means to compel a settlement of those agrarian claims and disputes, which are the prevailing and interminable cause of or excuse for violence and bloodshed throughout these provinces. Should your Honorable Council coincide in this view, your Petitioners ask, that some such plan as the following be adopted. It is proposed, that whenever it may appear to a magistrate, upon any judicial enquiry into an affray, riot, assault, &c., before him, that a disputed right of any sort connected with land has occasioned and is likely to prolong a serious disturbance of the public peace, it shall be the duty of that officer, irrespective of his judgment in the criminal case, to forward the whole of his proceedings in that case to the Judge (having jurisdiction to

make such enquiries,) with his own opinion and views. The Judge, on receiving this record from the magistrate, shall, if he coincide in opinion with that officer, summon the several disputants before him and thus originate a summary proceeding, in order to determine the question of possession as above suggested by your Petitioners. The option to proceed further should, your Petitioners submit, be still left to the parties, who, there can be little doubt, will then feel the necessity, and be as it were driven, to try the right.

- 24. That your Petitioners have but few comments to make upon the details of the draft amended Bill. In case, however, your Honorable Council consider your Petitioners' recommendations upon the principle of the law as irrelevant, or, for any cause, not to be carried into practice, your Petitioners have to remark:
- I. That the introduction of the words "without authority of law," in sections 2 and 6, may lead to ambiguity or at least to quibbles; whilst their omission, especially if the 7th section be retained, cannot render doubtful the authority of the law.
- II. That every possible publicity should be given to the proclamation issued simultaneously with the summons under Sec. 3; to which end it should be published and affixed at the Police Thannah, and at the Moonsiff's Cutcherry of the district, as well as at the places specified in the Bill: also that no report from a Darogah or Tuhsildar should be received as evidence in any suit brought under this law unless sworn to or made under solemn affirmation by the officer making the report, to the extent of his knowledge or means of belief of the facts reported.
- III. Considering the great distance from the scene of disturbance at which zemindars and others may be residing when their agents or tenants have been forcibly dispossessed, your Petitioners suggest, that one month is not an unreasonable time to allow for preferring a complaint.

- IV. It would be exceedingly useful, and save much harrassment, to the suitor, as well as, doubt and difficulty to the adjudicating authority, if the leading principles which should guide the latter in complicated cases, were put into a declaratory enactment. Such principles of decision may (as seems to your Petitioners) be readily gathered from the reports of appealed Act IV cases, and from the English cases under the Forcible Entry statutes.
- V. That it would be useful to give those who are to exercise judgment under this law, the privilege, under some restrictions, to review their own judgments, as the civil judges are empowered to do.
- V1. The offence provided against in the 8th section is of the last importance; it is one for which no plea in extenuation can be admissible; those guilty of it will usually belong to the more wealthy class of mofussil residents: therefore, your Petitioners think that the maximum fine fixed is too low, and propose that it be raised to at least Co.'s Rs. 1,000.
- VII To execute an erroneous judgment in spite of appeal, will often press hardly upon the suitor; your Petitioners ask, that a discretion be vested in the appellate court to suspend execution upon sufficient cause shewn, at any time previous to the order of execution being granted, or within four weeks from the date of judgment.
- VIII. All appeals from decisions of the inferior Criminal Courts, passed under this law, should, your Petitioners think, lie to the Sessions Judge; and that it is not expedient in any case to give a Magistrate the appellate jurisdiction in these cases.
 - IX. In conclusion, your Petitioners understand, that it has been found in practice, that the formulæ of grounds and occasions for special appeal in the 12th section do not furnish a sufficiently definite rule: your Petitioners venture to suggest the adoption of a phraseology, which shall assimilate the reasons for

a special review by the highest court to those which afford ground in the English system for reviewing the verdict of a jury, or which the Court of Privy Council consider, (as your Petitioners understand,) ground for appeal, whether as regards the law or facts of a case; in fine such a phraseology as shall embrace every miscarriage, material to the decision, in the conduct of the trial or in the judgment; e. g. "whenever there has been a material miscarriage in law or principle in the decision, or in the investigation,"—or it might be negative,—"for any cause affecting the decision on the merits save the mere weight or balance of opposing testimony"

And your Petitioners as in duty bound shall ever pray.

ISSURCHUNDER SINGH,

Honorary Secretary.

British Indian Association Rooms,

* The 3rd August, 1855.