

Friday, December 23, 1864

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 3

JAN. - DEC.

1864

P. L.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd December 1864.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding*.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble Sir C. E. Trevelyan, K.C.B.

The Hon'ble W. Grey.

The Hon'ble H. L. Anderson.

The Hon'ble J. N. Bullen.

The Hon'ble Mahārājā Vijayarāma Gajapati, Rāj Bahādur of Vizianagram.

The Hon'ble Rājā Sāhib Dyāl Bahādur.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble Mahārājā Dhīraj Mahtab Chand Bahādur, Mahārājā of Burdwan.

The Hon'ble D. Cowie.

ACTS AND REGULATIONS' EXTENSION BILL.

The Hon'ble Mr. Harington presented the Report of the Select Committee on the Bill to authorize the Governor-General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, certain Acts and Regulations not in force in those Provinces.

GOVERNMENT FORESTS' BILL.

The Hon'ble Mr. Maine introduced the Bill to give effect to Rules for the management and preservation of Government Forests, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that, although this Bill, if passed into law, would bear a bad name—a Forest-Law—he believed it would prove a very innocent measure, and it certainly did not go beyond the exigencies of the case. In the Statement of Objects and Reasons published with the Bill under the 19th Rule for the Conduct of Business, he said that it resulted from the communications addressed to the Government of

India by the newly organized Forest Branch of the Public Works Department, that some of the finest Forests in the world were being rapidly lost to the Government of India and to the public through acts which conduced to the benefit—and sometimes the scarcely appreciable benefit—of an inconceivably small minority of the population. The exact words of Dr. Brandis, the Inspector-General of Forests, were as follows.—

“ If we take a review of the present impoverished state of a large proportion of the Forests in British India, we come to the conclusion that certain main causes have co-operated to reduce them to their present unproductive condition.

“ Indiscriminate felling and reckless mutilation of trees, the lopping of branches for fodder and litter, the wholesale cutting of young trees for fences and roofing, have contributed much and still contribute, to prevent the improvement of the Forests, and many tracts have been entirely denuded, especially in the more arid parts of the country. The effect of this kind of injury is felt principally in districts where Forests are interspersed with villages and cultivation or where the facilities for export have created a demand for timber and other Forest produce. The unrestricted collection of leaves, the extraction of varnish, wood-oil, and various gums and resins, has been another source of extensive injury to the Forests.

“ Another cause of deterioration and destruction of Forests is the practice of temporary and shifting cultivation by clearing and burning the jungle, which is general in almost all hilly districts of India and Burmah. In the Madras Presidency alone, where it is known as Kumari cultivation, has this destructive practice been entirely stopped. The injury done to the Forests is manifold. Besides the destruction by cutting and burning on the spot where the clearing was made, the neighbouring Forest is injured by the spread of the fire. The temporary character, however, of this cultivation is the principal source of evil. The spot cleared and burnt this year is deserted after yielding only one harvest, and thus a new portion of the Forest is every year doomed to destruction.

“ A large proportion of the finest Teak in Burmah has, since the British occupation of the country, been rendered valueless by these hill clearings. On the slopes of the Himalaya, miles and miles of splendid Forest may be seen completely destroyed by the fire of the cultivator, and in the Central Provinces extensive tracts have been denuded to such an extent by Dhya cultivation, that they do not now produce any thing but a scanty and low scrub.

“ Independently of this destructive practice of clearing and burning, the jungle fires, which every year pervade the greater portion of the Forests in this country, do great harm. The origin of these fires may sometimes be traced to accidental circumstances; they are frequently caused by the erratic hill clearings just mentioned, or by the practice of herdsmen to set fire to the jungle during the hot season in order to produce a fresh crop of young and tender grass. These jungle fires are most mischievous. They destroy annually an immense quantity of timber and lying in the Forests; a portion of the young trees and saplings is killed by them, and another portion is so injured as to produce unsound and hollow stems.

' "Cattle in the Forest do much injury to seedlings and young trees, but the far greater injury is done by the camp fires of shepherds and herdsmen, and by their systematic practice of firing the jungle during the dry season."

The Bill proposed to prevent all this destruction by enabling the Local Governments to make rules on specified points connected with the conservation of Forests, and breach of those rules would be punished by fine and imprisonment. The only objection he had been able to conceive to the Bill would consist in the allegation that many of the acts at which it pointed were punishable under the Penal Code. In addition to the arguments with which he had attempted to meet that objection in his Statement of Objects and Reasons, he would urge that in order to bring most of those acts under the Penal Code, it would be necessary to show criminal intention, or circumstances from which criminal intention could be inferred. Now almost all these acts were done under conditions which rendered it impossible to ascertain the intention of the perpetrator. Indeed, the probability was that most of them were merely careless acts, or acts innocent in themselves, which only became blameable from the formidable consequences which they entailed—consequences out of all proportion to the advantages derived by the person committing them. He had cited in the paper in his hand certain laws which he conceived to bear some resemblance to the present Bill. On reflection, however, he was inclined to think that the truest analogy was, not between the measure now submitted and the laws he had named, or between that measure and the Forest-Laws of Continental Europe (which were, in the main, stringent game-laws), but between this Bill and certain Acts of Parliament which had recently been forced on the British Legislature by the waste of other products of nature. He would instance the Statutes passed during the last year or two to preserve the Fisheries of Scotland and Ireland, which were being rapidly destroyed by reckless fishing. Let the Council glance at 25 and 26 Vic., cap. 27 (the Scotch Salmon Fisheries Act). There was a resemblance between the present Bill and that Statute which was somewhat curious, considering that the one was drafted without any reference to the other. The Commissioners of Fisheries were by the British Statute empowered to make bye-laws, just as the Local Government, would by this Bill be empowered to make rules; and breach of those bye-laws was made punishable by imprisonment and fine. Under Section 11 of the Statute many acts in themselves innocent were made heavily punishable—for example, fishing during the close time by any means other than rod and line, or even fishing with a rod and line at a period not sanctioned by the Commissioners—having a net with a mesh in it of a form prohibited by a bye-law—impeding the passage of salmon contrary to any bye-law—having in one's possession unseasonable salmon, and even disturbing any bank or shallow where salmon were accustomed to spawn—

all these acts were made offences and punishable. The chief difference between the Acts was, that the British Act was incomparably more severe. Under section 13, for one offence a continuing penalty was imposed which might be almost ruinous to the perpetrator. It was necessary to add that the present Bill would not apply to waste-land as it was commonly called—that is, to lands granted by the Secretary of State to individuals in fee simple or at a rent. Nor would any declaration by the Government that a particular tract of land was Forest affect or abridge any private right acquired either by grant or by prescription.

There was no information before the Government to show whether the Act would be acceptable to the Governments of Madras and Bombay. If no such information arrived before the Bill passed through Committee, it would be better to pass it in the convenient form which the Council had recently adopted, that is, with a section exempting Madras and Bombay until it should be extended to those Presidencies by an order of their Governors in Council.

The Motion was put and agreed to.

MARRIAGE ACT AMENDMENT BILL.

The Hon'ble Mr. Anderson applied to His Excellency the President to suspend the Rules for the conduct of business in order to enable him to introduce the Bill to amend Act XXV of 1864 (to provide for the solemnization of marriages in India of persons professing the Christian religion). He said that, his reason for asking His Excellency to suspend the Rules was, that he had received a communication from a gentleman deputed by the Roman Catholic Clergy of Southern India from which it appeared that the Christian converts to his Church usually celebrated their marriages after Epiphany; and that it was therefore desirable that the amended Bill should be passed with as little delay as possible.

The President declared the Rules suspended.

The Hon'ble Mr. Anderson then introduced the Bill and said that when he had asked for leave to introduce this Bill, he had stated at some length the circumstances which had rendered necessary an amendment of Act XXV of 1864. He did not propose therefore to detain the Council with any lengthened detail of the provisions of the measure which he had now the honour to submit; he would only briefly state that the object of the Bill was to relieve the members of the Church of Rome resident in India from the operation of certain provisions of Act XXV of 1864, which they regarded as inflicting hardship upon them. He was happy to say that the Clergy of that Church with whom he had dis-

cussed the present Bill, had expressed their satisfaction with its provisions, and had stated that their objections to the former Act were now removed.

The Bill also extended the operation of Act XXV of 1864 to the territory subject to the Government of the Straits' Settlement, and provided a more comprehensive form of registry of marriages than that which was appended to the former Act.

He had the honour to introduce the Bill, and to move that it be referred to a Select Committee with instructions to report in three weeks.

The Motion was put and agreed to.

PÁRSÍS' MARRIAGE AND DIVORCE BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill for regulating the Laws as to marriage and divorce among Pársís, said—"I have the honour, Sir, to move for leave to introduce a Bill for regulating the Law as to marriage and divorce among the Pársís. It may be in the recollection of the Council that when, my hon'ble friend Mr. Maine introduced the first Chapter of the Indian Civil Code he alluded to the question of whether the Pársís should be included within the operation of the proposed Code. On that occasion I stated that I had been entrusted by the Pársí community with the charge of their Draft Code of Laws relative to inheritance, succession, marriage, and divorce; that I proposed to divide these subjects and submit first to the Council a measure relative to marriage and divorce, and after the Civil Code had been fully considered, to submit another Bill exempting the Pársís from the operation of such parts only of that Code as might be repugnant to their religious feelings and social usages. My hon'ble friend Mr. Maine was so kind as to express his approval of this course; and I have recently had the great satisfaction of receiving an assurance from the President of the Pársí Law Association, that the manner in which I propose to deal with their requirements, has the approbation of the Pársí community. I therefore now proceed to the performance of the duty entrusted to me, by asking for leave to introduce a measure for the regulation of marriage and divorce among the Pársís. This portion of their Code can be dealt with more easily than the part relative to inheritance and succession. On the latter subjects, there is considerable difference of opinion on questions of principle between the Pársís of Bombay and those of the Mofussil, but with respect to marriage and divorce, all Pársís are entirely in accord. I believe also that generally all the authorities, both in England and India, who have considered the subject, have agreed that, as to marriage and divorce, the Pársís

are entitled to separate and immediate legislation. The necessity for such legislation has long been foreseen. I remember to have read a letter on the subject written so long ago as 1843 by Sir E. Perry, then a Puisne Judge of the Supreme Court in Bombay ; but the urgency of taking some action was demonstrated in 1856, when Her Majesty's Privy Council decided in the case of *Ardasseer Cursetjee v. Peerozebhaee*, that the Supreme Court on its ecclesiastical side had no jurisdiction to entertain a suit brought by a Pársi wife against her husband for restitution of conjugal rights, or for maintenance. This decision practically left the Pársis without any tribunal to enforce the duties and obligations arising out of the marriage union, with the exception of those connected with mere property. It is true that they had still the ancient institution of the Panchayat ; but that tribunal, having no power to enforce its awards, had abandoned almost entirely all exertion of its old authority, and had ceased to command respect. Under these circumstances it is, I think, to the credit of the Pársis that, all legal restraint being withdrawn a greater degree of moral laxity was not introduced. Still, surrounded as they were and in constant contact, commercial and social, with races practising polygamy, it cannot excite surprise that demoralization to some extent ensued. When the Government of Bombay, on the recommendation of the Government of India, appointed a Commission presided over by a most accomplished scholar and jurist, Sir Joseph Arnould, to investigate the claims of the Pársis to separate legislation ample evidence was afforded before that Commission, that several cases of bigamy had occurred in the Pársi community. Facts of this kind could not but be regarded with grave apprehension by the higher order of Pársis, zealous of the long traditions of their religious faith and anxious for the social respectability of their race. The Report of the Commission, a most lucid and exhaustive document, induced the Government of Bombay again to urge on the Government of India and on Her Majesty's Secretary of State, the propriety of meeting the urgent wants of the Pársis, by adequate legislation. It is a consequence of the investigation of Sir Joseph Arnould and of his able colleagues that I have the honour to occupy the attention of the Council on the present occasion. The measure which I wish to introduce is based generally upon the usages existing and regarded as binding by the Pársis of Bombay and the Mofussil, and it is adapted to the feelings and requirements of those communities. It prohibits among the Pársis, and subjects to the penalties prescribed by the Penal Code, the offence of bigamy. It defines clearly the grounds for divorce and for judicial separation, and provides an inexpensive and as it were a domestic authority for the determination of such cases. For this purpose it revives and gives a legal sanction to the ancient and salutary institution of the Pársi Panchayat, and it guards that institution from abuse and decay,

by giving, in certain cases, an appeal from its decisions to Her Majesty's High Court of Judicature.

There are two points to which I wish briefly to advert, as considerable discussion was raised upon them in Bombay. The first is whether the Legislature should explicitly sanction the validity of infants' marriages and betrothals among the Pársís, and whether it should award civil redress or impose criminal penalties for violations of duties and obligations supposed to arise from such contracts.

Sir Soseph Arnould's Commission and the Government of Bombay both consider that the proper course is, not to prohibit such marriages by explicit legislation, but at the same time not to assert and vindicate the obligations arising from such contracts by express provisions.

If disputes regarding these marriages can be amicably arranged, the Legislature should not object; but it cannot be called on to recognise customs which it deems injurious, and which many Pársís deem injurious, which derive no sanction from the religious law of the Pársís, but have been gradually adopted from the Hindus around them.

The other point is, can the Legislature recognize difference of religious belief existing before a Pársí marriage as a valid ground for declaring such marriage null and void, and can it recognize a difference of religious belief occurring after a Pársí marriage, as a valid ground for rendering such marriage voidable? On this point, the proposed Bill will take the view at which the Government of Bombay arrived, that difference of religious belief before marriage cannot be recognised as a valid ground for rendering a Pársí marriage null and void. The Legislature should not interfere with a contract entered into, advisedly by competent parties. But with respect to a change of religious belief occurring after marriage, the Bill will propose that such marriage be not inherently valid, but voidable at the instance of either party, due provision being made for the future maintenance of the wife.

I have now mentioned as briefly as I could the principal provisions of the Bill which I wish to introduce. I trust that the Council will be willing to grant the relief, for which the Pársís earnestly pray. I will not again dilate on the claims which the Pársís can advance to the indulgent consideration of the Legislature, but I cannot but think there is a curious interest in the reflection that we are about to legislate in respect to one of the most important relations of life, for a race, strangers like ourselves in this land, which has preserved one of the most ancient forms of religious belief, a race whose High Priest is expressly stated to have

entered Jerusalem with the Assyrian conqueror, and whose form of worship was seen in one of the earlier visions of Ezekiel. The influence under an overruling Providence, of the civilization of the Magi upon the civilization of the Jews, is one of the most pregnant questions of historical speculation. Two broad results all scholars will deduce—the entire abandonment of idolatry among the Jewish people, and the more exoteric enunciation of the doctrine of a future state. To such speculations I can of course only for a moment advert. But if a French historian can find traces of the characteristic versatility of his countrymen in the foolish Galatians with whom St. Paul remonstrated, it may be permitted to one coming to this Council from Western India to see, or to fancy that he sees, the commercial honour and independence of the Pársis foreshadowed in the statement of the Father of History, that the fire-worshippers of his time placed indebtedness second in the list of the gravest offences.

I ask the permission of Your Excellency and of the Council to introduce a Bill for the regulation of the Law of marriage and divorce among the Pársis.”
The Motion was put and agreed to.

POWERS OF FINANCIAL COMMISSIONER OF OUDH BILL.

The Hon’ble Mr. Cust asked leave to postpone the motion (which stood last in the List of Business) for leave to introduce a Bill for regulating the judicial power of the Financial Commissioner of Oudh, until the next meeting.

Leave was granted.

The following Select Committees were named :—

On the Bill to give effect to Rules for the management and preservation of Government Forests—The Hon’ble Messrs. Harington, Maine, Anderson and Cowie.

On the Bill to amend Act XXV of 1864 (to provide for the solemnization of marriages in India of persons professing the Christian religion)—The Hon’ble Messrs. Harington, Maine, Anderson and Muir.

The Council then adjourned.

WHITLEY STOKES,

*Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).*

CALCUTTA,
The 23rd December 1864.