

Wednesday, March 9, 1864

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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 Wednesday, the 9th March 1864.

PRESENT :

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

His Honor the Lieutenant-Governor of Bengal.

Major General the Hon'ble Sir R. Napier, K. C. B.

The Hon'ble H. B. Harrington.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble R. S. Ellis, C. B.

The Hon'ble A. A. Roberts, C.B.

The Hon'ble H. L. Anderson.

The Hon'ble C. H. Brown.

The Hon'ble Maharaja Vezaram Guzzepetty Raj Bahadoor of Vizianagram.

The Hon'ble Rajah Sahib Dyal Bahadoor.

LUCKNOW MUNICIPAL BILL.

The Hon'ble MR. MAINE introduced the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow, and moved that it be referred to a Select Committee, with instructions to report in one week.

c. The Motion was put and agreed to.

MIRZAPORE BILL.

The Hon'ble MR. HARRINGTON introduced the Bill to remove certain parts of country in the District of Mirzapore from the jurisdiction of the local Courts, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

KONKAN BILL.

The Hon'ble MR. ANDERSON, in moving for leave to introduce a Bill to give validity to certain acts and proceedings of the Joint Judge of the Konkan, said that Act XXIX of 1845 empowered the Government of Bombay, with the con-

sent of the Governor-General of India in Council, whenever the state of Civil Judicial business might render it expedient, to appoint in any Zillah within the territories subjects to Bombay a Joint Judge. The Judge of the Konkan having been entrusted with the conduct of certain inquiries under the orders of the Secretary of State for India, the measure which appeared most consistent with economy and the due efficiency of the Judicial administration in the Konkan, was to appoint a Joint Judge. The appointment was accordingly made, and the consent of the Governor-General of India in Council was subsequently solicited. This course had been followed on more than one previous occasion without objection. It had been held, however, by the Judges of the High Court, that the consent of the Governor-General of India in Council meant the *previous* consent. It had become necessary, therefore, to give validity by special enactment to all the decisions made, orders passed, and proceedings held by the Joint Judge, between the date of his appointment, the 25th February 1863, and the date on which the consent of the Governor-General of India in Council was received, the 11th July 1863. The present Bill had accordingly been framed to give the required validity to those decisions, orders, and proceedings.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON having also applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

MINORS' (BOMBAY) BILL.

The Hon'ble MR. ANDERSON, in moving for leave to introduce a Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay, stated that the Bill had its origin in a representation of the Judges of the Sudder Adawlut of Bombay, that instances had occurred in which the property of Minors had received great detriment from the management of natural guardians, and that the Civil Courts had not authority to take charge of property thus endangered, while there were near relatives willing to manage it on the Minors behalf. It was suggested that an Act should be framed similar to Act XL of 1858, by which the property of Minors had been efficiently protected in the Presidency of Bengal. Accordingly, on the establishments of a Council in Bombay for making Laws and Regulations, such an Act was introduced and passed on the 15th of December 1862. On its being forwarded to the late Viceroy for his assent, a question

was raised as to the competency of the Council of the Governor of Bombay to pass such an Act. The question involved might be thus stated. In the 33rd Section of the Bill it was enacted that all orders passed by the Civil Court should be open to appeal, under the rules applicable to appeals in the Code of Civil Procedure. By another Section of the Bill the Civil Court was defined to be the Court of highest original jurisdiction in the district; in other words, the Zillah Court. The only appeal from a Zillah Court was to the High Court. But on turning to Act 24 and 25 Vic., Chapter 104, the Act by which the High Courts were established, it would be found that the 9th Section provided that the High Courts should have such appellate jurisdiction as might be granted by the Letters Patent. The Letters patent might thus be taken as a portion of the Act and the 15th Section of those Letters confined the appellate jurisdiction of the High Court to cases already subject to appeal to the Sudder Adawlut, and "to cases which shall become subject to appeal to the High Court by virtue of such Laws and Regulations relating to Civil Procedure *as shall hereafter be made by the Governor-General of India in Council.*" He (Mr. Anderson) said he could not resist the logical deduction suggested by these facts. It was obvious as a major premiss that the Bombay Council was not competent to create a new class of cases appealable to the High Court. It was equally clear as a minor premiss that the Bill on which the discussion was raised did create such a new class of cases: and it followed as a conclusion that in passing such a Bill the Bombay Council exceeded its competency. Under these circumstances, no other course was open but the introduction of a Bill for the consideration of the Governor General's Council. But he (Mr. Anderson) trusted that he should not be regarded as transgressing the limits of his duty, when he expressed an opinion that the Section in the Letters Patent was quite indefensible. If applied literally,—and it must always be liable to a literal application,—it would so cripple the action of the Councils of Madras and Bombay, as to inflict an almost entire disability upon them. He trusted, therefore, that so patent an evil would at no distant time be met by an effectual remedy. The Bill which he sought permission to introduce was founded on Act XL of 1858, with which omissions as the different circumstances of the Bombay Presidency demanded. For instance, Act XL of 1858 alluded to the Court of Wards, and by an Act of 1793 the Board of Revenue was constituted the Court of Wards; but no Board of Revenue existed in the Bombay Presidency. A part of a Section in the Bill passed by the Bombay Council relative to the stamped paper on which petitions were to be written had been omitted as superfluous. There were also some Clauses, especially one relating to the marriages of Minors, which would require consideration by the Select Committee to which the Bill might hereafter be referred. With these observations he begged to move for leave to introduce the Bill.

The Hon'ble MR. MAINE said that the late Lord Elgin had in truth no option in refusing to assent to the Bill passed by the Bombay Council: he had no power to

act otherwise than he did. There could be no question as to the proper interpretation of the Letters Patent; but he would remind the Council that they were open to amendment at the end of three years from the date on which they came into operation. When the three years expired, the Secretary of State for India would have an opportunity of revising the Letters Patent, and no doubt the observations which had fallen from the Hon'ble Member who had last spoken would have due consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

PORT DUES (AMHERST) BILL.

The Hon'ble MR. MAINE moved that the report of the Select Committee on the Bill to repeal Act VIII of 1861 (for the levy of Port dues in the port of Amherst be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

ACT XXI OF 1856 EXTENSION BILL.

The Hon'ble MR. HARRINGTON presented the Report of the Select Committee on the Bill to extend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal), and having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. HARRINGTON then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON then moved that the Bill be passed.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS' BILL.

The Hon'ble MR. ROBERTS presented the Report of the Select Committee on the Bill to repeal the laws relating to the offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool-Cozant and of Cazee, and to abolish the former Offices.

BURMAH CUSTOMS BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a Treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah).

EMIGRATION (CONSOLIDATION) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Emigration of Native laborers.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill to provide for the Registration of Assurances.

The following Select Committees were named :—

On the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

On the Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the local Courts—the Hon'ble Messrs. Harington, Maine, and Roberts.

On the Bill to give validity to certain acts and proceedings of the Joint Judge of the Konkan—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

On the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

The Council adjourned.

CALCUTTA,
The 9th March 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to Govt. of India,
Home Dept.