

Wednesday, March 23, 1864

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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 & 25 Vic., cap. 67.

THE Council met at Government House on Wednesday, the 23rd 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. O. 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 Rajah Sahib Dyal Bahadoor.

SMALL CAUSE COURTS (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. MAINE in presenting the Report of the Select Committee on the Bill to extend the jurisdiction of the Courts of Small Causes in the Towns of Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts, said that the Bill was so framed that if any party to a cause was dissatisfied with the decision of the Court upon any question of Law or Equity, or upon any question as to the admission or rejection of evidence, he might in any suit for a sum in excess of Rs. 500 require the Court to state a case for the opinion of the High Court, and the Court could not refuse to do so. The Bill in fact gave only a concurrent jurisdiction in suits for sums between Rs. 500 and 1,000, and the plaintiff might sue at his option either in the High Court, or in the Small Cause Court; but if he sued in the former and did not recover as much as a thousand Rupees if the action was founded on contract, or three hundred Rupees if founded on wrong, he would be deprived of his costs, unless the Judge who tried the case certified that the action was one which was properly brought in the High Court. If the action were one which on account of its difficulty or novelty or on account of the Small Cause Court having followed some erroneous course of decision, ought to have been brought in the High Court, the plaintiff

would have his costs allowed. The Select Committee had introduced a provision for what he considered to be adequate although it might be moderate, remuneration for professional assistance rendered in case for amounts between Rs. 500 and 1,000. On the other hand the Committee had reduced by one-half the scale of the institution fees in such suits, the scale given in the original Bill being somewhat too high.

CALCUTTA MAGISTRATES' JURISDICTION EXTENSION BILL.

The Hon'ble the Lieutenant-Governor of Bengal presented the Report of the Select Committee on the Bill to extend the jurisdiction of the Magistrates of Police in Calcutta.

MILITARY CANTONMENTS BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy within the limits of Military Cantonments.

TOLLS BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to amend Act VIII of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. ELLIS moved that the Report of the Select Committee, on the Bill to provide for the Registration of Assurances be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON said he had two amendments to propose—

The first was in Section XXVIII. It had been pointed out to him by Mr. Bell, the Judge of the Small Cause Court at Jessore, that the Section as at present framed would operate hardly upon Native ladies, who from their rank or other cause

could not with due regard to the customs of the country appear in public. He would propose that the following words be added to the Section :—

“The provisions contained in this Section relating to the execution of powers of Attorney in the presence of the District Registrar or Deputy Registrar, shall not apply in the case of a Native woman of a rank or description, which according to the customs of the country would render it improper to require her personally to attend at the Office of the District Registrar or Deputy Registrar. In the case of any woman of the rank or description above mentioned, the District Registrar or Deputy Registrar if satisfied that the power of Attorney is the free and voluntary act of the woman by whom it purports to have been made, may attest the same without requiring her personal attendance at his Office. For the purpose of satisfying himself on this point, the District Registrar or Deputy Registrar may proceed or depute some trustworthy person to the residence of the woman to take her examination in the mode prescribed for taking the evidence of Native females of rank.”

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON then moved his second amendment, which was the addition to Section LII of the following words :—

“The application for the enforcement of a bond or other obligation for the payment of money under this Section shall be written on a stamp paper of one fourth the value prescribed for a petition of plaint in a suit to recover the same amount under the provisions of Article 11, Schedule B, Act X of 1862, or any other law for the time being in force for regulating stamp duties.”

The Motion was put and agreed to.

The Hon'ble MR. ELLIS having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. ELLIS then moved that the Bill be passed as now amended. He said—“the necessity and importance of some such measure as that now before the Council has long been recognized and has since 1834 more or less occupied the attention of the Legislature in India. In that year it was suggested by the Court of Directors that Offices should be established for the registration of all transfers in land or any interest in land,—such registration to be compulsory under such penalties as might seem requisite. Draft Acts were subsequently prepared at various intervals by Mr. Amos, the Judges of the Sudder Court of the North-West,

Sir C. Jackson, Mr. Thornhill, and Mr. Grant the Solicitor of the East India Company, and lastly in 1858 by the Judges of the Sudder Court at Madras. These several projects of law have been consulted in framing the present Bill, and much advantage has been derived from the accumulated information on the subject of registration in India contained in the correspondence connected with the former drafts. The result has been the preparation of a law for the registration of Assurances, which, although it does not extend compulsory registration so far as was advocated at one time, will be an immense improvement upon the present law, according to which registration is optional. The several Committees to whom the original Bill, of which the Bill now before the Council is on amended form, was referred have, I think, wisely determined not to make the law of registration too stringent on its first introduction, leaving its extension to the future, when the people at large from their experience of this limited measure shall have become fully sensible to the advantages of registration, and be prepared to receive without fear a more complete and extensive law on the subject. The measure as it is now presented to the Council will, it is trusted, secure the formal registration of every important transaction relating to immoveable property over a large portion of the empire, and by bringing together in central offices in each district all documents relating to such landed property, greatly facilitate all transfers of land by rendering comparatively easy the investigation of title. The prevention of suits founded on false claims supported by false witnesses and forged documents will in a considerable degree be attained as regards landed property of importance, and as regards the registration of documents relating the less important transfers of land and to moveable property, of which the registration is permissive, a considerable pressure will be created towards their registration by the favour with which registered documents will be regarded by the Courts of Law, and the suspicion which will attach to unregistered documents. This has been found to be the effect in Oude, where though there is no compulsory registration, facilities for registration have been afforded to the people, and where the habit of registering documents, both relating to immoveable and moveable property, is of recent but rapid growth. As regards the Bill now presented to the Council, it will be in the recollection of most Hon'ble Members that when the Select Committee presented their report last year, they recommended that the Bill as amended by them should be republished. Although this delayed the passing of the Bill for a year, it was considered advisable in consequence of the numerous and important alterations which had been made in the Bill since its introduction, and in order that the opinion of local Governments and the public generally should be obtained regarding these changes in the Bill. Many very valuable suggestions have accordingly been received during the past year,

and have been carefully considered by the committee. Many alterations and amendments have been consequently made, which there is reason to hope have rendered this important measure more complete. Among these I may mention the extension of its operation to the local jurisdictions of the High Courts of the Presidency Towns of Calcutta, Madras, and Bombay. Again, in the Bill as originally drawn, it was proposed to limit the time allowed for bringing actions on unregistered instruments, the registration of which under the Bill was permissive, to two years from the date on which the cause of action arose as regards suits relating to immoveable property, and to six months as regards suits relating to moveable property. Further enquiry and reflection have however convinced the Committee that it was not desirable to alter the law of limitation now in force. That law was one that had been well considered and of comparatively recent introduction, and it was felt that any sudden change which would have for its effect to shorten and alter the periods of limitation for suits, would unsettle and confuse the minds of the Native community, and that the alteration itself as affecting a most numerous class of documents, such as pottahs, bonds, and notes of hand, might among a people who are slow to learn the changes of the law prove a course of considerable hardship. It has throughout been the desire of the Committee, while adhering to and preserving the principles upon which the original project of law was based, to make its application as little oppressive as possible, and to this feeling it has been found necessary to sacrifice in some degree the compulsory character of the registration. Acting upon this feeling also, it has been decided to alter those provisions of the Bill which would make the law applicable at once to the whole of India. For although there are no doubt advantages in making an Act of this kind universally applicable throughout India there were difficulties and objections to this course, which have induced the Committee to modify the provisions of the Bill in this respect, and to declare that in those territories which are not subject to the General Regulations, it shall be left to the Governor-General in Council and the local Governments to determine when the Act shall be brought into operation in those territories. The difficulties and objections to which I allude were that in some of the territories above described, such as British Burmah and the Central Provinces, portions of the country were in a condition to admit of the Bill being applied, while in other portions, the condition of the people was not such as to recommend the application of a measure designed to meet a more advanced state of civilization. In Mysore although the local authorities approved of the Bill, the Chief Commissioner thinks that it would be premature to introduce it at present, while other more pressing reforms in the judicial administration have only been recently set on foot and required time before they could be consolidated and enforced. On the other hand, in the Provinces of the Punjab and Oude there are already in existence systems of

registration which, although differing from that prescribed in the Bill, are on the whole successful and suited to the present condition of these territories. It was thought therefore desirable not at present to disturb the existing arrangements, leaving it to the local Governments to determine when the provisions of the Bill now before the Council should be introduced. From what has been communicated from the Government of the Punjab and from Oude, it is probable that this period is not far distant, for many of the objections urged by the authorities of these provinces to the Bill as framed last year, will have been removed in the amended Draft of the Bill. It is very satisfactory to find that the registration as it exists in the Punjab and Oude, has steadily progressed in popular favour, and that even in the less perfect form which registration has assumed in those Provinces, it has done much to check fraud and to reduce litigation. As an instance of this I may mention that, in the city of Lucknow, out of 715 cases in which registered bonds were produced in evidence during the year 1862, there were only 7 cases in which the bonds produced were found unreliable. Among other alterations in the Bill, the Committee have agreed to the suggestions made them to leave the local Governments entirely free in determining the Agency by which the proposed law is to be administered, and the method of their remuneration either salaries or fees, or partly by salaries and fees. A Section has also been added providing for the convenience of persons transferring landed property when those persons are at a distance from the place where such property is situate, and may think it desirable to effect the registration of documents relating to such property at the Presidency Towns. It will be at the discretion of the Registrar General to allow of such registration before him. The history of the introduction of registration in Oude and the marked success which has attend it, show much the success of a system of registration is dependent upon the care bestowed by the local officers under the direction of the Government on the first introduction of the measure into a province. Much of the success of the measure now before the Council will depend upon the exercise of a close supervision by the Registrar General upon whom it is proposed to appoint over the subordinate officers, and the selection of the lowest grade of these officials. In the careful choice of a respectable agency and in the multiplication of the Registration Offices so as to render registration easy, and, so to speak, to bring it close to every man's door, the popularity of the new law and its observance will greatly depend: and I trust that the local Government will not hesitate upon the first introduction of the measure to recommend, whenever necessary, a wise liberality in the payment of the lower Registration Agency, until such time as registration shall become self-supporting. I think we have every reason to anticipate the cordial co-operation of all the local authorities, who have in their communications

regarding the Bill shown so much hearty concurrence in its principles and in the necessity for such a law. It is probable, indeed we may consider it certain, that it will be found advisable hereafter to enlarge and extend the law now proposed to the Council, and it may hereafter be possible to extend to documents, the registration of which is now permissive the compulsory Sections of the Bill. The Council will, I think, have reason for congratulation on passing a measure which, as has been described by my Hon'ble friend Mr. Maine, is almost "a condition precedent to any amendment of Civil justice in India," leaving to the future the amendment and enlargement of the law. If to any considerable extent the present law imposes a check upon the frequency of false suits and the systematic forgery of documents which is unfortunately so general throughout India, an immense benefit will have been conferred on the people of India, and that this will be the result of the measure now before the Council, I think we may confidently expect. I trust that as being in charge of this Bill, I may be allowed to express the great obligation the Council are under to my Hon'ble friends Mr. Harington and Mr. Maine, for the valuable time and labor they have bestowed in perfecting this Bill, and to them the largest portion of the credit due to its success will undoubtedly be owing."

The Hon'ble Mr. MAINE said that the Bill has been so long before this Council and its predecessor, and before their Committees, and so many persons had successively had charge of it, that there was some danger, in giving any one person credit for it, of doing injustice to former Members of the Legislature. All, however, who had been associated with his Hon'ble friend Mr. Ellis, would testify to the zeal, patience, and sagacity which he had brought to bear upon the measure, and the Council and the public had much reason to be grateful to him for his labors. The Bill which had now come to maturity was one of which it was almost impossible to over-estimate the importance. Everybody who had turned his attention to the improvement of Civil Justice in India must have found his calculations baffled by one peculiarity of the Country, the doubt which hung over the authenticity of all documentary evidence. So far as regarded one great class of documents, documents relating to real property, these doubts would shortly be dispelled through the operation of this measure. The modified compulsion to register other classes of documents which the Bill originally imposed, the Select Committee had not thought fit to insist upon, and on the whole he agreed with the Committee. In a country like this, where the vast mass of the population lived entirely by usage—and where the difficulty attending legislation was not so much that of passing laws as of promulgating them, of bringing them to the knowledge of the people—cruel injustice might be done by changing anew the law of limitation, and hence he (Mr. Maine) concurred in the inexpediency of a double law. What importance belonged to that part of the Bill which provided for a voluntary registration, would now depend upon the Courts, which he ventured to think, would always require an

explanation where a litigant might have registered a deed and had omitted to do so. He (Mr. Maine) however agreed with his Hon'ble friend that the measure must sooner or later go much further, and that a time would come when, on the production of any document in any Indian Court, the Court would at once have all reasonable certainty of its genuineness and authenticity. Besides these objects, another object of registration was to give purchasers of real property the means of ascertaining the existence of documents affecting the state of the title. How far the measure was efficient in that respect, would depend on the way in which its machinery was worked; and it would be the duty of the local Governments and of the Supreme Government to see that the Registers were kept in such order as to afford the utmost facility in the search for incumbrances. The Bill as a whole, was one which the Council might fairly be congratulated on passing.

The Hon'ble Mr. HARRINGTON said of the several Members of the late Legislative Council for India who were present when the original Bill was introduced into that Council by Mr. Henry Forbes, the Member for the Presidency of Madras, he alone had the honor of a seat in this Council at the present time, and, consequently, he was the only Member of the Council who had had the opportunity of watching the progress of the Bill from the time of its introduction until, after passing through its several stages, it had at length been advanced to a state which admitted of their placing the Bill with confidence on the Statute Book of India. The Bill had been prepared with great care and ability by Mr. Forbes, in communication with the Judges of the late Sudder Adawlut at Madras, and in bringing in the Bill, Mr. Forbes had fully explained its provisions and the objects contemplated in its introduction. On Mr. Forbes' retirement from the service, the charge of the Bill devolved upon Mr. Ellis, and he was sure that they would all agree that the Bill could not have fallen into better hands. In presenting the first Report of the Select Committee on the Bill, Mr. Ellis took the occasion to pay a high and well-merited compliment to Mr. Forbes for the services rendered by him in connection with the Bill; but, with becoming modesty, Mr. Ellis made no mention of the prominent part taken by himself in carrying on the Bill and in settling its details. This omission had been supplied to-day by Mr. Maine, who had borne testimony to the zeal, assiduity, and ability displayed by Mr. Ellis in bringing the Bill to maturity. He desired to express his full concurrence in what had been said by Mr. Maine in Mr. Ellis' praise, and he regretted very much that the Council was so soon to lose the benefit of the Hon'ble Member's services. He (Mr. Harrington) looked forward to the most satisfactory results from the operation of the present Bill. He believed that the Bill would have an important effect in checking fraud and forgery, and in diminishing litigation. It must be admitted that these were great benefits to be obtained by means of any legislative measure, and it was a satisfaction to him to think that for all time the names of Mr. Forbes and of Mr. Ellis would be honorably associated with the Bill.

OFFICIAL TRUSTEE BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to constitute an Office of Official Trustee be taken into consideration, said that the only really material alteration made in the Bill was in respect of the rate of remuneration to be allowed to the Official Trustee, and he thought that on the whole the rates the Select Committee proposed to allow were the best.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

LUCKNOW MUNICIPAL BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow be taken into consideration, said that there were two principal amendments made by the Select Committee. The one was as to the nature of the rates to be levied under the Act. An Octroi might not at all times be the best mode of taxation, and therefore the Committee of any Town other than Lucknow to which the provisions of the Bill might be extended were empowered to determine in what particular form rates should be imposed. The other great alteration in the Bill was the addition of a Section, under which the provisions of the Bill might be extended to any Town under the direct administration of the Governor-General in Council. It had been suggested to him by Mr. Temple that there were certain places in the Central Provinces and other Non-regulation Districts to which the Bill might with great advantage be extended. The Bill provided that the Governor-General in Council should declare who should be the *ex-officio* Members of the Committee in any place to which the Bill was so extended.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

MIRZAPORE BILL.

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee on the Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the Local Courts be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON also moved that the Bill be passed with the addition recommended by the Select Committee.

The Motion was put and agreed to.

MINORS' (BOMBAY) BILL.

The Hon'ble MR. ANDERSON moved that the Report of the Select Committee on the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON also moved that the Bill be passed with the alterations recommended by the Select Committee.

The Motion was put and agreed to.

The Council adjourned.

CALCUTTA,
The 23rd March 1864. }

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