COUNCIL OF GOVERNOR GENERAL

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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 Friday, the 29th November, 1867.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble E. L. Brandreth.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Stewart Gladstone.

PRINCIPAL SADR AMINS, SADR AMINS AND MUNSIFS' BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to consolidate and amend the law relating to Principal Sadr Amins, Sadr Amins and Munsifs, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in six weeks. The primary object of the Bill was simply to increase the jurisdiction of the Civil Courts in Lower Bengal and the North-Western Provinces, which were presided over by Munsifs; but when he came to consider the different Regulations and Acts which bore on the subject of those Courts, it seemed advisable to consolidate the whole law on the subject of the Courts subordinate to the High Courts and to the District Judges, that was, the Courts of the Principal Sadr Amins, Sadr Amins and Munsifs. This law was to be found in the provisions of a great many Regulations and Acts scattered over the Indian Statute Book. He would explain shortly what jurisdiction was now exercised by the Courts in question, and then state the alterations proposed. In Lower Bengal, and, he believed, in the North-Western Provinces also, there were in each sadr station the Courts of the Principal Sadr Amin, Sadr Amin and Munsif subordinate to the District Judge; but in most stations in Lower Bengal, the Courts of the Sadr Amin and Munsif had been for some time placed in charge of one person—an officer who exercised the jurisdiction as well of a Sadr

Amin as of a Munsif. Besides those Courts in the sadr stations, there were Munsifs' Courts in sub-divisions, which were situated at a distance of from 30 to 60, and even 100 miles in some cases, from the sadr station. The jurisdiction exercised by those Courts was this. A Munsif had jurisdiction to try suits of every description where the property was of a value not exceeding 300 rupees; the Sadr Amin had jurisdiction to try suits the value of which was between 300 and 1,000 rupees; and the Principal Sadr Amin to try suits above 1,000 rupees and up to any amount in value. It resulted, therefore, that any person resident at some long distance, perhaps 50 or 60 miles from the sadr station, having to institute a suit of a value above 300 rupees, would have to go into the sadr station, always at great expense and trouble. It was therefore obvious that, if the Courts could be brought nearer to the people, there would be a great advantage.

There were, he thought, sufficient reasons why the jurisdiction of the Munsifs should be increased. One reason was that, under the Stamp Act passed last year, the Council had to a certain extent taken away from the jurisdiction of Munsifs. That referred only to suits for immoveable property; but those suits were, without exception, the most difficult suits to try. He would explain how the Stamp Act had operated in reducing jurisdiction. In suits for land, the way to arrive at the value of the suit was this. Under the old law, you took the revenue paid to Government and multiplied it by 3, and the product was held to be the value of the suit; for instance, where the revenue paid to Government for the land was 100 rupees, the value of the suit was taken to be 300 rupees, and that gave jurisdiction to the Munsif. But now, under the new Stamp Act, to arrive at the value of a suit for land, the revenue paid to Government was multiplied by 10, so that, in the case supposed, where the revenue was 100 rupees, the value of the suit would be assumed to be 1,000 rupees, and thus the jurisdiction of the Munsif would be taken away, and the suit instituted before the Sadr Amin. That, MR. HOBHOUSE thought, was one reason why the Council were bound to some extent to increase the jurisdiction of the Munsif. Another reason, as stated before, was the convenience of suitors. In the sister presidencies of Bombay and Madras, Munsifs had for some time had jurisdiction equal to, and in one respect greater than, that proposed to be given. It was, however, better to have no Court at all than a bad one, and if the Munsifs were not competent to exercise jurisdiction up to 1,000 rupees, it would be wrong to give them such jurisdiction; but on that point the Council had the volunteered opinion of the Judges of both the High Courts of Bengal and the North-Western Provinces, who said that they thought the Munsifs competent to exercise jurisdiction up to 1,000 rupees.

Then, of course, if the jurisdiction of the Munsifs were raised, the Council would be obliged at the same time to raise the jurisdiction of the Sadr Amins. While, therefore, it was proposed to raise the jurisdiction of Munsifs to 1,000 rupees, it was also proposed to raise the jurisdiction of Sadr Amins and Principal Sadr Amins, so that Sadr Amins should try suits between 1,000 and 3,000 rupees, and Principal Sadr Amins suits of any amount above 3,000 rupees. Although that provision with regard to Sadr Amins was first suggested by himself, he had since seen reason to suppose that it would not act, because, from certain returns which had reached him, it appeared that, if the jurisdiction of Sadr Amins was to be confined to those suits, the Sadr Amin would have but little jurisdiction at all, as the number of suits of that value was very small. It now seemed to him better to follow the suggestion of the High Court of Bengal, and do away with the office of Sadr Amin, and with the name of Principal Sadr Amin, and introduce instead a person who would really be Principal Sadr Amin with another name, perhaps that of Subordinate Judge, with jurisdiction to any extent above 1,000 rupees, the same in fact as Principal Sadr Amins now exercised.

He had now stated the primary object of the Bill, and would proceed shortly to notice its principal provisions. The Bill was, generally speaking, a Bill for consolidation, but in consolidating, one or two new provisions had been introduced. The first of these was in Section 4 of Part II. Under it, the Local Governments were given power to appoint, as they might think fit, proper persons to be Principal Sadr Amins, Sadr Amins *and Munsifs*, to hold office during the pleasure of Government. That was an alteration of the law as it at present existed, and as it had stood for some time, but one which he thought it proper to make; at the same time it was open to and deserving of the discussion which it would no doubt receive in Select Committee. When a vacancy occurred in the office of Munsif, the District Judge reported the case to the High Court, whether it were in Lower Bengal or the North-Western Provinces, and the High Court appointed a person to the office of Munsif; but that was not the procedure in the case of Sadr Amins and Principal Sadr Amins. When a vacancy occurred in either of those offices, under a provision some time in force, the Local Government had authority to appoint, but in practice it requested the High Court to nominate such person as the Court thought fit, and that nomination was generally accepted. There was good reason why the High Court should be called on to nominate a person to the office of Sadr Amin or Principal Sadr Amin, because those offices were held by officers who had served in the subordinate grade of Munsif, and the persons most competent to judge of the qualifications of those officers were the Judges of the Courts who had seen the work of those officers as Munsifs.

But the case was different with respect to the appointment to Munsifships. The High Court had, in his judgment, very little opportunity of knowing who were fit persons to be appointed Munsifs. If Munsifs were ordinarily selected from the pleaders or officers of that Court, then the Judges of the Court would best decide on the competency of the person to be appointed. But that was not the case. Munsifs were generally selected out of the district where they were to be appointed, or from the different colleges, and, therefore, the persons who were best able to judge were the local officers, and not the Judges of the High Court. The Local Governments had under their immediate control, in their executive capacity, Commissioners, Judges, Collectors, officers of the Educational Department, and a number of executive officers all over the country, who were much more likely to be able to select fit persons than the Judges of the High Court from any knowledge they could have. In his judgment, it was not advisable to place, in any of the judicial body, any power which did not belong to their judicial functions, and speaking from his own experience as a District Judge, he thought the more Judges were relieved of executive, and confined to the execution of judicial, work, the better they would be able to discharge their proper functions. As a District Judge, he would have been glad to be relieved of a number of executive duties which he was obliged to perform. That was his opinion, but the provision to which he referred would no doubt have thorough sifting at the hands of the Select Committee. If that provision were retained in its integrity, when a vacancy in the office of Munsif occurred, the Judge of the district would appoint a person temporarily to conduct the duties of the office: that would be necessary, for otherwise, great difficulties would occur by the work falling in arrear. The Judge would then be called on to state the qualifications of the person he had nominated, and it would rest with the Local Government to make the permanent appointment.

Part III related to the suspension and removal of Principal Sadr Amins, Sadr Amins and Munsifs. All that had been done in that Part was to reintroduce, adapting them to the Code of Criminal Procedure, the provisions of Act XXVII of 1850, Regulation XXIII of 1814, and other Regulations; but it had occurred to him, and also to other gentlemen who had taken the trouble to write on the subject, that possibly the shortest way to investigate the conduct of officers of the Civil Courts was by directing prosecutions to be carried on at the instance of the High Court; because the Judges of the High Courts were the only persons besides the District Judges who could properly determine whether a prosecution was necessary, and in what form it should be conducted.

The object of Section 29 of Part IV was to give the Local Government power, whenever it might think fit, to invest Principal Sadr Amins with the powers of Judges of Small Cause Courts. Under the law relating to the Courts of Small Causes in the Mofussil as it at present stood, the Local Government could appoint any person to exercise the powers of a Judge of a Small Cause Court, but then that was only for a time; the power must be limited and specific, and could only be conferred on certain Courts. There was also, in Act XI of 1865, a provision by which a Judge of a Small Cause Court might be invested with the powers of a Principal Sadr Amin: the converse of that was now proposed, where the business was not sufficient to employ the whole time of a Principal Sadr Amin. Section 29 empowered the Local Government to invest a Principal Sadr Amin with the powers of a Small Cause Court Judge. He himself should be inclined to carry the Section further, and give the Local Government power to invest any officer mentioned in the Bill, whether a Munsif or Principal Sadr Amin, with the powers of a Small Cause Court Judge, stating at the same time to what extent the power was to be exercised. The present limit of jurisdiction of a Small Cause Court Judge was in suits up to 500 rupees in value; but in many cases, the Local Government might with great advantage invest Munsifs at long distances from the sadr station with the powers of a Small Cause Court Judge with jurisdiction to a limited extent. For instance, embankments and works of irrigation were being carried on all over the country, and labourers with very small wages were employed on them: it would be of great advantage to such labourers, if, in places where they were working, competent persons (supposing, of course, that Munsifs were competent) were empowered to try cases of small amount, say up to 100 rupees in value. At any rate it seemed wise to enact that Local Governments should have power to appoint Munsifs in such cases to try cases of small amount without appeal: it would be a great relief to labourers if such powers were given to Munsifs, for it would prevent their being dragged up in appeal to the higher Courts, and if any money was due to them they would get it at once.

The only other provision he would notice was Section 32, by which it was proposed to raise the appellate power of District Judges from 5,000 to 10,000 rupees. There were much the same reasons for making this alteration in the law as there were for making an alteration in the jurisdiction of Munsifs. The late Stamp Act had, in the manner he had already explained in the case of Munsifs, taken away a great deal of the jurisdiction of District Judges in matters of immoveable property. That was one reason why it might be desirable to restore to District Judges that part of their appellate jurisdiction of which the Stamp Act had deprived them. There was also another

reason which had, he thought, some force. According to the law as it at present stood, when a suit was for 5,000 rupees, it might go through a triple process: first as an original suit before the Principal Sadr Amin, then to the District Judge in what was called regular appeal, and then to the High Court in what was called a special appeal. But in regard to suits between 5,000 and 10,000 rupees there was no such procedure. If the suit was one of 5,000 rupees, it was tried as an original suit either by the District Judge or Principal Sadr Amin; it then went to the High Court in regular appeal, and there was then no further appeal. But in suits for 10,000 rupees (if the District Judges had power to try such suits in appeal) the case might first be tried by the Principal Sadr Amin, then go in regular appeal to the District Judge, and in special appeal to the High Court, and further in appeal to the Privy Council. He did not quite see that full force in this reason, which others he had consulted ascribed to it, but he thought there was a certain amount of reason in it, namely, that it put all suits of 5,000 or 10,000 rupees on the same footing in regard to special appeal. There was no other provision in the Bill which it was necessary at that stage specially to notice.

The Motion was put and agreed to.

TENANCY OF LAND (PANJAB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to define and amend the law relating to the tenancy of land in the Panjab, said that his object in proposing the Bill was to extend to the Panjab the provisions of Act X of 1859 (to amend the law relating to the recovery of rent), of Act XIV of 1863 (to amend Act X of 1859), and of the Oudh Rent Bill,—a Bill which had recently been introduced in this Council,—with such modifications, omissions and additions, as the different circumstances of the Panjab, or as the different conclusions drawn from the experience gained in the Panjab, appeared to require.

One of the principal modifications which he wished to propose would be that, whereas by Act X of 1859 the tenant acquired a right of occupancy after cultivating his land for twelve years, he (MR. BRANDRETH) would only allow a presumption of such a right to be raised in the tenant's favour after he had held his land for a given period,—a presumption which might be rebutted, and the title based thereon by the tenant set aside, if (to take for instance one of the grounds he wished to recognize) the landowner was able to show that other tenants of the same class and holding under similar circumstances in the neighbourhood had commonly been ejected from their holdings. Another

modification would be as regarded the fixing of rates of rent. The Oudh Bill allowed the rent claimable from all tenants having a right of occupancy to be enhanced to within 12½ per cent. of the rent paid by tenants-at-will; but there were so many different classes of hereditary tenants in the Panjab—many tenants different so little from proprietors—that some distinctions, besides those adopted for Oudh, as regarded rates of rent, would have to be drawn, and also a wider discretion left to the Revenue Courts in dealing with the claims of landowners to the enhancement of rent. Most of the provisions which he proposed introducing into the Bill, had been either approved or suggested by a Committee which had assembled at Lahore a few days ago by order of the Lieutenant-Governor to consider the question of tenant-right in the Panjab. It seemed unnecessary, however, at this time to go into the details of the proposed Bill, as this was not an occasion which, he believed, by the Rules of the Council, would admit of their being discussed, and though even some of the details should hereafter be objected to, yet the general principle of the Bill, which he before stated, namely, that of extending the provisions of Rent Acts at present in force in other parts of the empire to the Panjab, with such modifications as the different circumstances of the Panjab required, was not likely, he imagined, to be opposed by the Council. With this expectation, therefore, and without going into details, which he should be so much better able to enter into when the Bill, if he was allowed to introduce it, was before the Council, he moved for leave to bring in the Bill.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to Principal Sadr Amins, Sadr Amins and Munsifs, and for other purposes: The Right Hon'ble Mr. Massey, the Hon'ble Mr. Brandreth and the Mover.

The Council adjourned till the 6th December, 1867.

WHITLEY STOKES,

Assistant Secretary to the Government of India,
Home Department (Legislative).

CALCUTTA;
The 29th November, 1867.

S. G. P. I.—No. 77 L. D.—26-6-11