

**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

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1877.

*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 Tuesday, the 21st March 1876.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I.,  
*presiding.*

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. O. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

CRIMINAL TRIBES ACT EXTENSION BILL.

HIS HONOUR THE LIEUTENANT-GOVERNOR moved that the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, be passed. He said, it would be in the recollection of the Council that the Report of the Select Committee on this Bill was presented at the last meeting; that a certain amendment was proposed and passed on the subject on that occasion; and that the passing of the Bill was postponed until to-day, in order that the amendment agreed to at the last meeting might be put into due form. The amendment accordingly had been framed, and nothing now remained, he believed, than to pass the Bill as amended at the last meeting. With these remarks he had to ask that the Bill be passed according to the motion set out in his name.

THE HON'BLE MR. INGLIS said that on Tuesday last the Council decided that certain words should be inserted in section 21 of the Act, indicating that,

in the case of non-resident landowners, the duty of giving information to the Police devolved upon the agents employed by such landowners in the management of the estate where a criminal tribe that had been brought under the provisions of the Act resided. This amendment rendered necessary a few other alterations in other sections of the Act. These were entered in the list before the Council. The two last amendments related to a totally different matter, and he would, with the permission of the Council, ask leave to withdraw them; as, on consideration, he hardly thought them necessary. He therefore confined his motion to those alterations only which were rendered necessary by the resolution adopted at the last meeting. They were :—

That the following words be added to the title (namely), "*and to amend the same Act.*"

That the following words be inserted in the preamble after "Bengal" (namely), "*and to amend the same Act in manner hereinafter appearing.*"

That the following section be added to the Bill (namely),—

"2. Section eighteen of the said Act shall be read as if in the second clause, after the words 'persons reside,' the following words were inserted (namely), 'or the agents of such landowners or occupiers.'

"Section twenty-one of the said Act shall be read as if in the first clause, after the words 'persons reside,' the following words were inserted (namely), 'or of the agent of any such owner or occupier,'

"and as if in the fourth clause, after the words 'occupier of land,' the following words were inserted (namely), 'or of the agent of such owner or occupier.'

"And section twenty-two of the same Act shall be read as if, after the words 'occupier of land,' the following words were inserted (namely), 'or the agent of such owner or occupier'."

The Motion was put and agreed to.

The Motion that the Bill be passed was carried.

#### DRAMATIC PERFORMANCES BILL.

The Hon'ble Mr. HOBHOUSE introduced the Bill for the better control of dramatic performances, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he gave to the Council last week the reasons for passing a measure on this subject. He had now to explain the nature of the Bill which he proposed. What was proposed was that whenever the Government was of opinion that any dramatic performance was scandalous or defamatory, or likely to excite feelings of disaffection to the Government, or likely to deprave and corrupt the persons present at the performance, or to be in other way prejudicial to the interest of the

public, the Government might prohibit the performance. The copy of the Bill in his hands spoke only of the Local Government. It was intended, however, to give this power to the Governor General in Council as well as to the Local Government. The Bill provided that a copy of the order might be served on the persons about to take part in the performance or on the owner or occupier of the house or place in which it was to take place; and then penalties were imposed for disobedience to the order, and power was given to the Magistrate to seize the scenery, dresses and other articles which were used in the play which was prohibited.

So far the Bill only gave power to prohibit such dramatic performances as the Government had reason to think objectionable. In section 9, we proposed to take further power in particular cases in which the Government might have reason to believe that it was necessary to put particular local areas under further control. And the powers conferred by section 9 were nearly the same as those which, as he explained to the Council on the last occasion, the Lord Chamberlain had in England. It was proposed that, after notification in the particular place, no dramatic performance should take place except in some licensed house; that those about to perform should be bound to give prior notice to the Government, who might then prohibit the performance if they thought fit. The Council would see that we did not establish necessarily any kind of censorship; that the Government would, in the first instance generally depend on the information it might receive as to the nature of the piece to be performed. If it found that the law was evaded: if it found that in a given place, persons continued to exhibit objectionable performances secretly or suddenly, it might then apply to that particular place in which such things were done the more stringent provisions of the law, which would compel them to take out licenses and to give notice of what they were about to do.

The Hon'ble RAJA NARENDRA KRISHNA said the Bill introduced by the Hon'ble Mr. Hobhouse to-day, was a measure which could not fail to check a reprehensible tendency in some of our young misguided authors, who abused their imaginative powers in writing objectionable plays for the stage. No members of a nation that aspired to be reckoned as a civilized race should indulge in personalities, scandal and obscene exhibitions, in order to satisfy their spite or vent their fury on people who did not act according to their standard of propriety, or to excite impure merriment. This Bill very properly proposed to stop the enactment of seditious and obscene representations in theatres. But while he recognised the necessity of such a measure, he would fail in his duty if he did not point out to His Excellency how difficult was the censorship to

be exercised in those matters, especially when these dramas were written in a language foreign to our rulers. He would, therefore, suggest that due attention should be directed in the Select Committee for the selection of persons who would be required to pronounce an opinion as to the objectionableness of a play under the proposed enactment.

The Motion was put and agreed to.

#### INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta. The Committee, he said, had made no changes in the Bill.

#### BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HORE moved that the Reports of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue, be taken into consideration; and in doing so, he would touch very briefly upon the more material changes which the Select Committee had now made in the Bill as previously laid before the Council. In their last report, paragraph 2, they had said with reference to the second paragraph of clause (c), section 4, that the "provisions regarding claims to set aside sales for arrears of land-revenue have been framed on the understanding that the Land-Revenue Code Bill, now pending in the local legislature, which contains safeguards against improper sales, will become law." This Bombay Revenue Code was still before the local legislature, and it was not easy to say when such a large measure was likely to be passed into law. Therefore, the Committee had thought it better to insert in the first section of the Bill a proviso, to the effect that so much of section 4 as related to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue, should come into force on such day as the Governor-General in Council directed in that behalf. For his own part, MR. HORE confessed that he thought this precaution was somewhat unnecessary, and that it arose from the erroneous supposition that the present Bombay law did not provide sufficient safeguards for the recovery of revenue. But the new Code would be no material amendment in that respect; the present law, as far as he was able to see, and as it had been administered by him for a series of years, was perfectly good and sufficient. And if it was thought that it was not sufficiently clear for the use of some of the inferior establishments, it would be very easy for the Bombay Government at once to issue an executive circular of explanation on the

subject. However, the matter was not of very great importance either way, and the provision the Committee had inserted had at any rate the recommendation of erring on the side of precaution.

The next change which had been made was that of striking out the clause (b) which was in the first section and which had reference to sites (under the provisions of sections 5 and 6 of the Bombay Act IV of 1868) of towns and cities. Mr. HORN had pointed out at the time that this proviso was in reality quite superfluous, since exactly the same object was already attained by the greater proviso in section 4 itself; and on further consideration the Committee had struck it out altogether on these grounds.

The Committee had also made a material alteration as regards the date from which the Bill was to have effect. Previously it was provided that the Bill should have effect upon all suits which had been filed after the 7th August 1873. Probably, when this date was inserted in the Bill, it was expected that the Bill would very soon become law, and that it would be necessary to bar a flood of suits which might be filed during the interval devoted to the passing of the Act. But as it had happened, they had been assured by the Bombay Government that there had been no such great flood of suits. They had been assured that the number of these suits had been very insignificant, and therefore they had made the material alteration of admitting the whole of such suits which had been presented to the Civil Courts, and only making the Act take effect from the passing of it. The next change he had to point out was that, in order to make it perfectly clear that the Bill applied to all lands and land-revenue, and to remove doubts raised in certain quarters as to the meaning of the word "land" in the Bombay Regulation XVII of 1827, the Committee had inserted in the interpretation-clause that land included the sites of villages, towns and cities. They had also, in section 17, added a declaration that so much of the Regulation as was for the time being in force in any part of the territories to which this Act extended should be deemed to have been in force, and to have always been in force, in the sites of villages, towns and cities in such parts. This was in accordance with the actual interpretation of the law since 1827, and with the continuous practice ever since these sites passed under British rule; so that, he apprehended, there could be no objection to a more specific definition of land as it in reality existed. They had also improved the definition of "land-revenue" and "revenue-officer," because it had been pointed out that the wording which had been previously adopted might, under some circumstances, include objects which were not strictly of the nature of land-revenue; that was to say, advances made under the Land Improvement Act, and such

other things which were not of the nature of revenue demands, but rather of the nature of loans, and therefore might properly remain within the jurisdiction of the Civil Courts.

There was only one other point on which he need trouble the Council by noticing. It was stated in the report that "we have empowered the Governor General in Council and also the Local Government to refer, for the decision of the High Court, questions arising in trials and investigations which, but for the proposed Act, might have been dealt with by a Civil Court; and we have required the case to be disposed of conformably to such decision." He was obliged to say that he was unable altogether to approve of this section, or the form in which it had been drafted, inasmuch as it allowed a reference of any question to the Civil Courts. A suggestion for a provision of this sort had come in somewhat general terms from a high quarter, and Mr. HOPE thought that if it had been worked out from the model of section 204 of Act XVIII of 1873 (the North-Western Provinces Rent Act), which permitted the Collector to refer cases relating to questions of law to Civil Courts, it would have been altogether unobjectionable and exceedingly desirable, and also consistent with the line which had been drawn in this Bill in the proviso and other parts of section 4, which had been fully explained in their last Report. The section, as now drafted, allowed the reference of any question to the Civil Court; it left the Local Government without any indication of what was the intention of the legislature as to what class of cases it was contemplated might be referred to the Civil Courts. It would therefore be open to the Local Government either to leave it entirely a dead letter, or so to work it as to make the whole rest of the Act a dead letter. However, as the other members of the Select Committee did not agree with him on this point, he had signed the report, but had just mentioned to the Council the actual difficulty which occurred to him. Any remarks which it might appear necessary to make upon the policy of the measure, as a whole, and the desirability of its being passed, he proposed to defer until the motion that the Bill be passed came before the Council on a future day.

The Hon'ble Mr. HONHOUSE said he was not going to make any observations now about the main principles of this measure, because they would be more appropriate when the motion was made for the Bill to be passed. But he had one or two observations to make on the details which arose upon the Report of the Select Committee. The Council would see that in their last Report in October 1875, the Select Committee introduced very large modifications in the Bill: the present Report altered it very little, only in matters of detail, none of which appeared to him to affect the principle of the Bill.

With regard to the postponement of the operation of the clause marked section 4, clause (c), the Committee did not entertain any doubt that sales were conducted in the Presidency of Bombay with care and with judgment. At the same time when you came to shut people out from taking the opinion of the Civil Court on the validity of a sale, the Committee thought it necessary to provide in the law itself for certain methods of procedure—certain formalities which, however they might be provided for now by executive order, were not provided for by positive law. It was so done when a similar Act was passed for the North-Western Provinces. Simultaneously with a provision which prohibited the Civil Courts from interfering in these matters, provisions were enacted which established a more formal and regular procedure by the Revenue officers.

With regard to pending suits, he could confirm what was said by the Hon'ble Mr. Hope. The Bill originally provided that it should apply to all suits which might be instituted after it was introduced. It was then expected that there would be a great number of suits filed in consequence of the introduction of this measure, and he believed that in Canara such was the case—he could not say positively that it was in consequence of the introduction of the measure, but the Canara litigation was one of those phenomena which led to the introduction of the measure. When the Bill was introduced, the Government were told that there were six hundred suits filed in Canara against the Government, and the number had since increased to about one thousand. The extra four hundred must, he supposed, have been instituted after the Bill was introduced. In point of substance, these suits had been disposed of by the decision of one of them; for they all depended upon one principle, which was decided against the plaintiffs. If the judgment had gone differently, if it had gone against the Government, there would have been required one thousand distinct decisions, a thousand enquiries, a thousand accounts, and so forth; however judgment had been given in favour of the Government, and so the whole of these thousand suits had been practically disposed of by the decision on one single plaint. We were then not afraid of the amount of suits instituted between the date of the introduction of the Bill and the present time. Moreover the Bill had been pending much longer than was expected, and it would be a harsh measure to tell a person, who had instituted his suit two years ago, and who had prosecuted it up to this moment, and perhaps had very nearly got a decree, that his suit was barred, and that his cost and labour went for nothing. The Committee had therefore made the Act apply only to suits instituted after the passing of the Act, believing that in doing so, they should not do the Government or the revenue any material harm, thinking that this amount of consideration to the suitor was reasonable.

With respect to the definition of the word "land" a great deal of objection had been raised. We had been told that it was a sweeping and enormous definition; that it was impossible to conceive anything which should not fall within the definition. The Committee, however, had thought fit to retain the definition, with the one alteration referred to by his hon'ble friend. The fact was that there was nothing in the definition which would not flow naturally from the use of the word "land," properly construed. He himself, speaking as a lawyer, wished the definition to be wholly omitted, not as being wrong, but as being superfluous. But he was told—as he had often been told before in similar cases—that it was better to leave in these words; that the Act was to be construed by a number of persons who were not very familiar even with the English language, and who were not at all familiar with English legal language. This definition included nothing which was not included in the definition of "immoveable property" in the General Clauses Act; therefore, it was the general meaning of the words "immoveable property" and it was also the general meaning of the word "land." He did not think the definition in this Bill extended the meaning of the word one jot or tittle beyond what it extended of its own force. He was indeed informed that some difficulty had arisen in the Presidency as regards sites of villages, towns and cities. How that difficulty had arisen, he did not know. But how any one could conceive that the word "land" did not of its own force include the sites of villages, he could not imagine. Every Revenue officer for the last fifty years had acted on the supposition that land meant land, whether it was the site of a village or not, and if there were doubts as to the validity of their proceedings, it was better to allay them. To that extent, the Committee had extended the definition, but they had not proposed to contract it as had been suggested to them.

With respect to the definition of the term "land-revenue," the Committee had made an alteration (section 5, clause (f)) which excluded suits to set aside cesses or rates. The Bill had described these as "any cess or rate authorized by the Government." It was objected that the clause might empower the Government to impose a cess or rate without any authority whatever, and the Civil Courts would not be able to interfere. Of course such a thing never was intended for one moment: the possibility of the Government acting wholly without the warrant of law was not contemplated. But in order to meet the objection that had been taken, the Committee had provided that the cess or rate must be authorized by the Government under the provisions of any law for the time being in force.

The only other point in the Report which he considered it necessary to notice was that which related to what were now sections 12 and 14 of the Bill. These were the sections which enabled the Government to refer any question that they thought proper for the decision of the High Court. Now, although it might be very proper to remove whole classes of cases from the cognizance of the Civil Courts, yet it seemed to him that there was no case in the world in which there might not arise some question which those who had to decide the case might prefer to have decided by the more rigid methods of a Civil Court. These sections therefore left a safety-valve in such cases, and whenever the executive Government thought that they had got a case on which they would prefer the decision of the Civil Court, they were empowered to take it. The principle of such a provision was not an uncommon one. It was known in England, and when particular subjects were committed to the jurisdiction of Commissioners, not being a Court of law, it was sometimes provided that if in their discretion they desired to have a judicial decision on a particular point, they might refer the case for the purpose to some particular Court or other, such as the Court of Chancery, the Judicial Committee of the Privy Council, or any other Court which might be named. The Committee had imported that provision into the Bill, and they were exceedingly sorry that they could not carry the judgment of Mr. Hope with them. But as it was, the provision seemed to the rest of the Committee desirable, and not in any way to contravene the broad principles of the Bill in those cases which affected the incidence, the amount, or the assessment of the revenue. Such cases, except in certain instances, were still generally withdrawn from the cognizance of the Civil Courts, but the assistance of the highest of those Courts might be obtained when wanted.

Those were the only points on which he wished to make any observations, and he hoped the Council would accept the recommendations of the Select Committee.

His Excellency THE PRESIDENT said :—"The Council are very much indebted to the Hon'ble Members who have served from time to time upon the Select Committees to which this Bill has been referred. The Bill has now been before the Legislative Council for nearly two years and a half, and the Government of India both in its executive capacity, and also meeting, as we now do, in Legislative Council, has considered with the greatest possible care and attention the objections which have from time to time been raised against the provisions of this Bill. All those doubts and objections which the Government and the Select Committees considered worthy of attention have now been

met; and whatever may be the opinions of some people upon the provisions of the measure, this I think we may say—that no Bill has ever received more careful and patient consideration. I may add that I believe that in the whole of India there will not be found men more capable of giving a sound opinion upon the matters contained in this Bill than the Members of the Select Committee. Mr. Hope who, from his own personal knowledge of the subjects dealt with by the Bill, has been able to render most valuable assistance. We have had on the Committee the assistance of Sir William Muir, whose knowledge of land-revenue in the North-Western Provinces is so well known, and Sir Alexander Arbuthnot, who is a high authority on questions relating to the land-revenue in Madras. Mr. Bayley, who has had large experience upon the same subject, has also afforded valuable assistance to the Committee. No man, to my personal knowledge, could have devoted more careful and continuous attention to any measure of importance, such as this undoubtedly is, than my hon'ble friend Mr. Hobhouse has to this measure. Therefore, I believe that the Council will do well to accept the amendments proposed by the Select Committee in the Report now presented, reserving any discussion which Hon'ble Members may wish to raise upon the principle of the Bill till this day week, when it is proposed that it should be passed into law."

The Motion was put and agreed to.

#### SUNDRY BILLS.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills:—

To declare and amend the laws to be administered in Oudh.

To regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

To amend the law relating to Opium.

To amend the law relating to Merchant Seamen.

The Motion was put and agreed to.

#### PRESIDENCY MAGISTRATES AND OPIUM BILLS.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Cockerell be added to the Select Committees on the following Bills:—

To regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

To amend the law relating to Opium.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the better control of dramatic performances—The Hon'ble Mr. Inglis, the Hon'ble Rájá Nárendra Krishna and the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to Tuesday, the 28th March 1876.

WHITLEY STOKES,

*Secretary to the Government of India,  
Legislative Department.*

CALCUTTA; }  
The 21st March 1876. }