

**COUNCIL OF THE 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 21 & 25 Vic., cap. 67.

The Council met at Agra, on Monday, the 17th November 1873.

PRESENT :

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

His Honour the Lieutenant-Governor of the North-Western Provinces.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble B. H. Ellis.

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 J. F. D. Inglis, C. S. I.

The Hon'ble R. A. Dalrymple.

MUNICIPALITIES (N. W. PROVINCES AND OUDH) BILL.

The Hon'ble MR. HOBHOUSE said that, instead of bringing forward the first motion on the list of business relating to the Bill to make better provision for the appointment of Municipal Committees in the North-Western Provinces and Oudh, he wished to move an amendment to a clause in that Bill.

The amendment was for the purpose of securing to the Local Government a *locus standi* in Court in case of suits brought against Municipal Committees. It was almost of a formal character. It was obvious that, in many such suits, the Local Government would have the most material interest, but difficulties of a technical character had been felt in the Courts and had prevented them from recognizing the Government as a party to the suit.

This amendment was, therefore, for the purpose of giving them that position. MR. HOBHOUSE proposed to move to add to section 28 of the Bill—the clause which gave the Local Government a control over the proceedings of the Committees—the words—

“To every suit or other proceeding brought against a Committee the Local Government shall be made a party.”

MR. HOBHOUSE also desired to move an amendment to clause 22 of the Bill, which gave power to Municipal Committees to make rules declaring what should be considered to be public nuisances. It was found desirable to import into this Bill that which it had been thought fit to import into the Burma Municipal Bill, and to insert, after the word "nuisances," the following words—

"for defining the cases, manner and times in and at which the officers of the Committee may enter upon private property for the detection and abatement of nuisances ;

for determining the rates of hire of carriages, carts and boats plying for hire within the limits of a Municipality."

HIS HONOUR THE LIEUTENANT GOVERNOR said that the Bill, so far as the North-Western Provinces were concerned, was the virtual re-enactment of a law (Act VI of 1868) which had been in operation for above five years. In now re-enacting it for the North-Western Provinces and Oudh, some slight amendments had been found necessary ; but these were few and unimportant. The original Bill had been drawn with the utmost care, and he well remembered the labour and attention bestowed upon it by his friends Sir William Mansfield and Sir Henry Maine. The Act had worked admirably well, and reflected the utmost credit on the care and foresight of those who had taken part in drawing it up in 1868.

The two amendments now proposed had been made at his (THE LIEUTENANT GOVERNOR'S) instance. As regards the first, his hon'ble friend had stated correctly that a practical difficulty had been found in having the Government represented, as it should always be, in the case of suits brought against Municipalities, and the clause proposed completely met the difficulty.

The other amendment had been suggested by the Burma Municipal Bill about to be introduced, and appeared to him an improvement that might advantageously be adopted in the North-Western Provinces and Oudh Bill. It was true that both its objects had been partially met in some Municipalities by bye-laws, providing for the entrance of officers of the Municipality on private premises, and also for regulating the rates of conveyances for hire ; but it was doubtful whether the Committees had legal authority for this procedure, or whether their action was not *ultra vires*. It was, therefore, advisable to place their powers in both respects upon a legal footing, and this was satisfactorily effected by these amendments.

The Motions of the Hon'ble MR. HOBHOUSE were then separately put and agreed to.

NORTH-WESTERN PROVINCES RENT AND REVENUE BILLS.

The Hon'ble MR. HOBHOUSE asked leave to make another motion that was not on the paper, namely, that Sir William Muir be added to the Committee now sitting upon the Rent and Revenue Bills for the North-Western Provinces. His Honour had consented to serve upon the Committee, and of course the Committee were desirous to have his assistance. There were still several suggestions which had been made, which required to be considered carefully while we were at Agra. The principal matter that remained for consideration was that with respect to the clause which related to privileged tenants, and which at present travelled back into time and created them by a retrospective title. The clause, as it at present stood, gave them no retrospective advantage. It did not meddle with any pecuniary arrangements at present existing between landlord and tenant; it gave those who came within the term 'privileged tenants' a prospective and contingent advantage, but gave them that advantage by virtue of a retrospective title.

It was, however, suggested that the object aimed at, or so much of it as ought to be attained at all, could be better attained by a different plan, and the Committee would have to determine this point. There were also many other proposals before the Committee of a less general character, some of which appeared to be calculated to improve the measure.

The Motion was put and agreed to.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble MR. INGLIS moved that the final report of the Select Committee on the Bill to consolidate and amend the law relating to Village Police in the North-Western Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS said that, when he asked for leave to introduce this Bill, he explained that its primary object was to remedy a defect in the existing law, and to render any Village Chankidár who might be guilty of misconduct or wilful neglect of duty subject to punishment, on conviction before a Magistrate, by fine or imprisonment for a short term. While the Bill was before the Select Committee, some alterations had been made in it on the suggestion of the Government of the North-Western Provinces. Section 7 had been added, which extended the provisions of the Bill to the Road as well as to the Village Police, and empowered the Magistrate of a District, subject

to rules to be made by the Local Government, to appoint such number of Road Chaukidárs as might be necessary. The sections relating to the duties, dismissal and punishment of Village Police, and to arrest by Village Police, being also made applicable to the Road Police. By section 13, all orders of, and appointments made by, the Magistrate of the District under section five, six, seven or ten were made subject to the control of the Commissioner to whom he was subordinate, and by section 2, Act III of 1869 had been wholly repealed.

Act III of 1869 authorized the levy of a house or estate tax for the payment of the Village Police. It was, however, no longer necessary, as the Village Police were now paid from the cess levied under the provisions of Act XVIII of 1871.

In section 8, the duties of Village and Road Police were defined, and clause A of that section enumerated the offences upon which they were required to report. The Government of the North-Western Provinces wished that some other offences should be added to those in this section, and MR. INGLIS had therefore to move that the following offences be added to those specified in paragraph A, clause 2, section 8 of the Bill, namely:—

“Harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking, house-trespass.”

The Village Police were already required by order of the Executive Government to report these offences, but it was considered desirable that they should be specified among those which were already enumerated in the Bill.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS asked leave to postpone his motion that the Bill as re-amended be passed.

Leave was granted.

NORTH-WESTERN PROVINCES REVENUE BILL.

The Hon'ble MR. INGLIS asked leave to postpone the presentation of the final report of the Select Committee on the Bill to consolidate and amend the law relating to land revenue in the North-Western Provinces.

Leave was granted.

NORTH-WESTERN PROVINCES RENT BILL.

The Hon'ble Mr. INGLIS asked leave to postpone the presentation of the final report of the Select Committee on the Bill to consolidate and amend the law relating to the recovery of rent in the North-Western Provinces.

Leave was granted.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble Mr. HOBHOUSE moved for leave to introduce a Bill to amend Act No. X of 1872 (*The Code of Criminal Procedure*).

He said that the motion looked formidable, but the proposal was in reality very simple. The point on which we desired to effect an amendment was with respect to the whipping of offenders who were sentenced to that punishment. It so happened that, in section 302 of the Code, several punishments (transportation, imprisonment and whipping) were specified, for which the Court of Session, if it tried the case, had to forward the offender to the district jail, and then it was provided by a subsequent paragraph that Courts inferior to the Courts of Session should follow the same procedure. The result was that the Judges of Courts inferior to the Courts of Session, who might be far away from the district jail, had to send the offender in some cases sixty or eighty miles for the purpose of being whipped. This not only caused much inconvenience and expense, but was a very serious aggravation of the sentence passed on the offender himself, and therefore it was desirable to amend the Act in that particular. The opportunity might be taken at the same time of seeing whether the course of the decisions in the various Courts rendered any other amendments necessary or expedient.

The Motion was put and agreed to.

MUNICIPALITIES (BRITISH BURMA) BILL.

The Hon'ble Mr. HOBHOUSE then introduced the Bill to provide for the appointment of Municipal Committees in towns in British Burma, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in two months. He said that the introduction was only a formal proceeding, the Bill having been published under an order of His Excellency the Viceroy many weeks ago.

The Motion was put and agreed to.

FOREIGN ENLISTMENT BILL.

The Hon'ble Mr. HOBHOUSE also moved for leave to introduce a Bill to prohibit recruiting in British India for the service of Foreign State.

He said that the circumstances which necessitated the introduction of that Bill were as follows: It was found that a gentleman was recruiting a number of persons who were to be taken to the Straits of Malacca. Well, we knew that a war was going on there, and it was suspected that he was recruiting those persons for the purpose of serving in that war. However, he alleged, and after a little while proved to the satisfaction of Government, that he was doing no such thing, but was recruiting those persons for the purpose of serving as police to the Rájá of Larut, and therefore the parties were suffered to go.

But that compelled the Government to consider what were their powers in such cases; and first they looked to the Foreign Enlistment Act. Under that Act, what they found was that the Government had no power of interference unless the recruiting was taking place for the purpose of serving a State which was at war with another State with which we were at peace. That was not the case here, and the Foreign Enlistment Act did not apply. If the men recruited had been going to Achcen as soldiers, then the Foreign Enlistment Act would have applied. So the Government were placed in this very awkward position; either they must run the risk of suffering that to be done which the Dutch would have resented as a breach of International Law, or at least of comity, or they must run the risk of committing a breach of the law against those men, and of standing an action for damages for false imprisonment, or whatever other action of the kind might be brought. As, therefore, it was impossible for the Government to tell without careful enquiry what the true object was in such cases, and as they had to act quickly in order to act effectually, the Foreign Enlistment Act would hardly answer the purpose. The Penal Code did not touch the point. The Emigration Act might, on one construction of it, answer this particular purpose, though no doubt it was not the purpose intended when the Emigration Act was passed. That Act prohibited any person from entering into contracts with any other person to work for hire out of India, and it was a question whether the Act would not cover such a transaction as the one he had mentioned. However, the opinion of the Advocate General was taken upon that point, and he thought upon the whole that it was only intended to apply to the class of labourers in agriculture or manufactures, and that it did not apply to a case in which persons were hired to serve as policemen in foreign parts.

Mr. HOBHOUSE thought it obvious that the Government ought to have a summary power of interference on occasions on which it was found that persons were going about the country beating up recruits for service in foreign parts. It was impossible for the Government to know the truth of any story

that might be told them about it. If the practice was allowed to go on unchecked, it might eventually lead to serious consequences and very awkward complications, and it would be very much better to arm the Government with direct powers for the purpose of enabling them to interfere on proper terms, to stop open recruiting and the carrying away of numbers of people from the country for service in foreign parts.

The Motion was put and agreed to.

The following Select Committee was named:—On the Bill to provide for the appointment of Municipal Committees in towns in British Burma, and for other purposes—the Hon'ble Mr. Ellis, Major General the Hon'ble Sir H. W. Norman, and the Hon'ble Mr. Dalyell and the Mover.

The Council then adjourned to Friday, the 21st November 1873.

A G R A ;
The 17th Noor. 1873. }

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.