

**Friday,
7th December, 1883**

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

1883

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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 7th December, 1883.

PRESENT.

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

The Hon'ble J. Gibbs, C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

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

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G.

The Hon'ble Rájá Siva Prasád, C.S.I.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble G. H. P. Evans.

The Hon'ble Kristodás Pál, Rai Bahádúr, C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alf.

NEW MEMBERS.

The Hon'ble MR. GIBBON, the Hon'ble MR. MILLER and the Hon'ble MR. AMÍR ALF took their seats as Additional Members.

BENGAL REGULATION XIX OF 1810 REPEAL BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to repeal Bengal Regulation XIX of 1810 within the territories administered by the Lieutenant-Governor of the North-Western Provinces. He said :—

“The object of this Bill, which has been prepared on the recommendation of the Local Government, is to repeal Bengal Regulation XIX of 1810 (*for the due appropriation of the rents and produce of lands granted for the support*

of mosques, Hindú temples, colleges, and other purposes ; for the maintenance and repair of bridges, saráis, kattras, and other public buildings ; and for the custody and disposal of nazúl property or escheats) within the territories administered by the Lieutenant-Governor of the North-Western Provinces. So far as the Regulation vests the superintendence of saráis in the Board of Revenue, it is at variance with the existing practice, as saráis are now managed in the North-Western Provinces entirely by the executive authorities under the immediate orders of the Government, and the Local Government reports that the other provisions of the Regulation, which provide for the management of lands granted as charitable and educational endowments and the superintendence of escheats, are not required for the territories under its administration.

“ Though the Regulation, in so far as it relates to saráis, is obsolete also in the Lower Provinces, it is still in active operation in those Provinces with regard to a few trusts and small endowments administered by the Board of Revenue, and still governs the procedure there with regard to escheats. Under these circumstances, it has been considered best to confine the Bill to the North-Western Provinces and to leave it to the Bengal Legislature to legislate for the Lower Provinces if it thinks necessary.”

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Burma Courts Act, 1875. He said :—

“ The object of this Bill is to make certain amendments in the Burma Courts Act, 1875 (XVII of 1875), which experience has shown to be required.

“ In the Act as it at present stands, the presiding officers of the Courts of the lowest grades are termed Extra Assistant Commissioners of the 1st, 2nd and 3rd class respectively. In 1882, the Subordinate Executive and Judicial Service in British Burma was re-organized, and the designations of the service were changed. The term Extra Assistant Commissioner was restricted to Extra Assistant Commissioners of the 1st and 2nd classes under the old system ; and Extra Assistant Commissioners of the 3rd class were styled Myo-óks. The result is that the present designations of the Subordinate Judicial Officers do not correspond with the designations given to the Subordinate Civil Courts by the Act. This difficulty has hitherto been ignored. Now, however, the Judicial Commissioner, Mr. Jardine, is of opinion that, as the law stands, the nomenclature

ture used in the Courts Act should be adhered to as regards all officers of the Subordinate Judicial Service appointed to preside in Civil Courts. He advises the Chief Commissioner that questions of jurisdiction may arise and may cause inconvenience and loss to suitors; and he reports that a case of the kind has already occurred. This being the view taken by the Judge of the highest Appellate Court, the Chief Commissioner has addressed the Government of India on the subject. He wishes that all doubt on the point should be removed by substituting the words 'Extra Assistant Commissioner' for the words 'Extra Assistant Commissioner of the 1st and 2nd class,' and the word 'Myo-òk' for the words 'Extra Assistant Commissioner of the 3rd class,' wherever they occur in the Courts Act. With this view section 3 of the Bill has been drafted. It gives the amendments made by the section retrospective effect from the 1st April, 1882, the date of the reorganization of the Subordinate Service.

"Further difficulties have also arisen from the provisions of sections 8 and 9 of the Act. Under recent orders, the Chief Commissioner has power to create additional Myo-òkships; but, in consequence of the provisions of section 8 of the Act, additional Myo-òks appointed by the Chief Commissioner can do no civil work unless the sanction of the Government of India is first obtained to the creation of an additional Civil Court. Again, the duties performed by Extra Assistant Commissioners and those performed by Myo-òks are practically of the same description. The exigencies of the public service often render necessary the appointment of a Myo-òk to succeed an Extra Assistant Commissioner or of an Extra Assistant Commissioner to succeed a Myo-òk in the charge of a township; and the result is that an officer who should preside in a Court of grade (a) is appointed to preside in a Court which has hitherto been a Court of grade (b), or *vice versa*. Such changes have from time to time been made by the Chief Commissioner. The Judicial Commissioner is of opinion that, having regard to the provisions of sections 8 and 9 of the Act, such an interchange cannot legally be effected except by, or with the previous sanction of, the Governor General in Council. The inconvenience which would arise if it were held to be necessary to submit a reference to the Government of India on every occasion such as those described is apparent. The administration of the province, and particularly the administration of civil justice, would be seriously hampered. Sections 4 and 5 of the Bill therefore re-enact sections 8 and 9 of the Act in such a form that the Local Government is empowered to vary the number of Courts of grades (a) and (b), and to vary the local limits of the jurisdiction of these Courts without the previous sanction of the Government of India, and section 6 legalizes the variations in the numbers, and limits of the local jurisdictions, of these Courts, which have heretofore from

time to time been made by the Chief Commissioner instead of by the Governor-General in Council or by the Chief Commissioner without the previous sanction of the Governor General in Council.

"The Chief Commissioner states that the Deputy Commissioners in certain districts are overburdened by the pressure of civil appellate duties to the detriment of their executive work and that, in order to increase their efficiency as executive officers, it is necessary to relieve them of some portion of their appellate jurisdiction. With this object, sections 7 and 8 of the Bill have been prepared. The latter section, which is based on the recommendation of the Chief Commissioner, gives him authority to invest an Assistant Commissioner with power to hear certain civil appeals which would ordinarily be heard by the Deputy Commissioner. The former section empowers the Chief Commissioner to transfer to Commissioners of Divisions all or any part of the appellate jurisdiction exercisable under the Act by Deputy Commissioners. It seems desirable to provide this second and additional mode of affording the proposed relief to Deputy Commissioners, as it is possible that the result of transferring civil appellate work from the Deputy Commissioner to the Assistant Commissioner may not always prove satisfactory.

"Lastly, under section 38 of the Act, the Chief Commissioner is only empowered to appoint and remove the presiding officers of the Court of the Extra Assistant Commissioner of the 3rd class (now styled the Myo-òk). The presiding officers of all the other Courts under the Act must be appointed by the Governor General in Council. These provisions have been found to cause practical inconvenience, and the Government of India see no reason why the Chief Commissioner should not have, in regard to civil jurisdiction, like powers to those which the Criminal Procedure Code gives him in regard to criminal jurisdiction. Accordingly, section 9 of the Bill amends section 38 of the Act and confers power on the Chief Commissioner to appoint and remove the presiding officers of all the Courts mentioned in section 6 of the Act with the exception of the Court of the Judicial Commissioner; the power to appoint the presiding officer of that Court being reserved to the Governor General in Council."

The Motion was put and agreed to.

INDIAN EMIGRATION BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India.

RANGOON TRAMWAYS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to authorize the making and to regulate the working, of Street Tramways in Rangoon.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Mr. Amir Ali be added to the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

His Excellency THE PRESIDENT said :—

“ I would now ask the members of this Council to remain for a short time, while I make a statement upon the important subject of the Bill, which is now before the Council, for the amendment of the Criminal Procedure Code. The course which I am taking upon this occasion is, no doubt, not provided for by the Rules of Business of this Council, but it is not without precedent, and it cannot be doubted that it is advantageous, upon special occasions, that the Viceroy should reserve to himself the right to make, upon behalf of the Government, a statement in this Council, although no question is technically before it, in reference to a matter of great public interest. And I am the more justified, as it seems to me, in taking this somewhat unusual course, because I have observed that complaints have been made in many quarters of the silence of the Government during the last two months upon the question to which I am about to refer, and that it has been said that they ought, before this, to have given some explanation to the public of the steps which they had been taking in regard to this matter. I, and I am sure all my colleagues, greatly regret that it should have been thought by any one that the Government of India have in any respect acted with a want of consideration for the feelings of the opponents of this measure, or with any want of courtesy to those who have addressed representations to the Government upon the subject. I can truly say that nothing could be further from our intention than any such want of courtesy or of consideration, and I hope I may be pardoned for saying that nothing could be further from my personal character and disposition than to treat those who are opposed to me on any public measure with any want of consideration or courtesy.

"The statement which I am now about to make will show, as it seems to me, conclusively, that this is the case in regard to the complaint of which I have just spoken, because that statement will establish clearly that the Government were not, until within the last few days, in a position to make any public declaration whatever on any part of their proceedings in reference to this matter. And even now what I have to say may be looked upon as somewhat premature, and must, in some respects, be incomplete, because in the absence of two important members of the Executive Council, who have not yet arrived in Calcutta,—His Excellency the Commander-in-Chief and General Wilson without whose presence various matters connected with the measure itself, and the mode of proceeding in regard to it, ought not to be determined by the Government,—I am not yet, on some points, in a position to say more than that these points have still to be considered by the Executive Council. But, nevertheless, under the circumstances to which I have adverted, I have thought it right not to delay to state to this Council, at its first meeting here in Calcutta what has been the action of the Government in regard to this Bill since the conclusion of the sittings of the Legislative Council in this city last March. But as there is no question before the Council at this moment, and as, therefore, this is not the occasion for discussion, I feel bound to abstain from anything like controversy or even argument, and to confine myself for the present as much as possible to a bare statement of facts.

"It will be in the recollection of all the members of this Council that the last step which was taken with respect to this Bill, on the 9th of March last, was to order that it should be referred, in the usual manner, to the Local Governments for their consideration and report. That reference was duly made, and in course of time the opinions of the Local Governments began to come in. As they came in, they were, of course, each of them carefully examined by the members of the Government. The last of these reports of Local Governments reached Simla on the 24th of July, and the Government then lost no time in carefully and deliberately considering the course which they thought ought to be pursued with respect to this measure, after the examination of the various opinions which had been offered upon it; and they were in a position to address the Secretary of State upon the subject on the 10th of August last.

"I do not think that any one will say, looking to the great importance of this question, and the necessity of proceeding with all due deliberation in regard to it, that any time was lost by the Government, if, having received the last of the opinions of Local Governments on the 24th July, they were ready to

lay their views before the Secretary of State in a despatch which left Simla on the 10th of August following.

"In that despatch, the Government of India, while expressing their opinion that the principles of policy upon which the Bill is founded ought not to be abandoned, proposed certain modifications of the measure, calculated, as they hoped and believed, to remove objections which had been urged against some of its proposals upon grounds which did not raise the question of principle. These modifications were the following :—They proposed that the jurisdiction to be conferred by the Bill upon Native Magistrates over European British subjects should be confined to District Magistrates and Sessions Judges *ex-officio*. They proposed to leave unchanged the present powers of the Local Governments with respect to the appointment of Justices of the Peace; and they also proposed to adopt a suggestion of Sir Charles Turner, the Chief Justice of Madras, for amending section 526 of the Code of Criminal Procedure. That section enacts that 'whenever it is made to appear that a fair and impartial enquiry cannot be had in any Criminal Court or that some question of law of unusual difficulty is likely to arise' the High Court may transfer a case to another Court or to itself. Sir Charles Turner suggested that the High Court should be authorised to make the transfer in any case in which it should be made to appear that 'it was expedient for the ends of justice,' and that it would be desirable to supply what appeared to be a defect in the section by directing that in any case in which, before the commencement of the hearing, the Government, the complainant, or the accused should notify to the Court an intention to make an application for transfer, the Court should adjourn the hearing for such reasonable time as might be required to enable an application to be made and an order obtained upon it.

"These were the modifications which were suggested in our despatch of the 10th August to the Secretary of State. I, in accordance with what I have said just now, shall not upon the present occasion enter into any arguments on these points. Whenever an opportunity for debate arrives, the Government will be quite ready to state the grounds upon which they suggested those modifications, and the views which they entertain in respect to the effect which they will have upon the provisions of the Bill.

"That in brief, was the nature of the proposals contained in the despatch. To make this statement complete, I ought to say that our hon'ble friend and colleague General Wilson, in regard to this despatch as to the former one, maintained the position which he had previously taken up of objecting to the measure altogether. The despatch, as I have said, went home on the 10th of

August; it was considered by Her Majesty's Government at home and by the Secretary of State in Council; and in a reply, dated the 8th of November last, the Secretary of State in Council expressed his concurrence in the proposals of the Government of India. That reply reached Calcutta last Saturday, the 1st of December, and this, consequently, is the earliest opportunity which has been afforded to me since that despatch came into the hands of the Government for making any statement with regard to this matter.

"There is also another question, connected not with the substance of this measure but with the manner of proceeding with it, to which I wish to refer on this the earliest opportunity. In the month of September last, the Government received a memorial from the Chairman of Anglo-Indian Defence Association, which contained two requests. The first was that the papers which had been received from the Local Governments in connection with this Bill should be published at once; and the second was that further proceedings with regard to the Bill should be stayed until Parliament had had an opportunity of considering the Bill and expressing its opinion upon it. In the reply which was sent to that memorial the memorialists were informed that their first request had already been complied with, and that the papers relating to the matter had been published in the Gazette, where they appeared, I think, on the 8th of September. They were published at the earliest moment possible; we only waited until we had ascertained that the despatch we had sent home was in the hands of the Secretary of State, and until we were informed that he had no objection to the publication of the papers. The second request of the memorialists, namely, that any further proceedings with regard to the Bill should be put off until Parliament had had an opportunity of discussing the question and of pronouncing an opinion upon it, related to a matter which was essentially and entirely in the hands of Her Majesty's Government. Any question concerning proceedings in Parliament necessarily can only be determined by the Government at home. Such questions are altogether beyond the scope of the Government of India, and the Cabinet alone can decide what course should be taken upon any matter involving the proceedings of either House of Parliament. The memorial was forwarded by the next mail after it had been received to the Secretary of State, and his opinion on the subject of postponement was asked by the Government of India, who only said that the questions raised by the Bill ought in their judgment to be settled, one way or the other, before the end of the next sittings of the Legislative Council in Calcutta. In the same despatch in which the Secretary of State replied to our general proposals, he replied also to that particular request of the Anglo-Indian memorial, and he informed us that Her Majesty's Government do not see any good reason why a measure, which lies entirely within the competence of this Legislative Council and is already before

that body, should be postponed till Parliament meets, and they conclude therefore that the Bill will be taken up in the ordinary course of business, so that it may be disposed of during the usual session of the Legislative Council at Calcutta.

"I stated in the debate on the 9th March last as my personal opinion that, if the opponents of the Bill desired to appeal to the House of Commons, I should be the last person to object to such a course. I entertain the same feeling still and I have made no concealment of it. It will be observed that the Secretary of State in his reply leaves a certain discretion to the Government of India as to the mode of proceeding with regard to this Bill within well-defined limits. I am not yet in a position, in consequence of the absence of the two members of the Executive Council to whom I have referred just now, to say exactly when the next step with regard to this Bill will be taken. It is a subject which will be considered shortly by that Council. The next step, in the ordinary course of business, will be the reference of the Bill to a Select Committee, who will consider the Bill and any amendments which may be proposed in it, and due notice will of course be given to hon'ble members of this Council before any motion to refer the Bill to a Select Committee is brought before them.

"Such is the statement which I desire to make as to the action of the Government of India in respect to this Bill since March last. It shows clearly as it seems to me, that, until last Saturday, when the despatch from the Secretary of State reached Calcutta, the Government here was not in a position to make any public declaration on the subject. The question was one which was originally referred to the Secretary of State, and the proposed proceedings of the Government of India received his sanction. It was one which from the circumstances of the case, could not be dealt with by the Government of India, except in consultation with Her Majesty's Government; and one of the points, that relating to the proposal to postpone the Bill until after the meeting of Parliament, was wholly within the province of Her Majesty's Government at home, and could only be decided by them. Until, therefore, we were in possession of the views of Her Majesty's Government we were debarred altogether from saying anything in public on the subject. I have, however, seen it said that, when Her Majesty's Government at home determined on the course which they were going to take, and the answer which they proposed to send, that course might have been communicated to the Government of India by telegram, and that, after having received that telegram, the Government of India might have made a statement to the public. Now, it appears to me, first, that it would have been inconsistent with ordinary practice, and

with official propriety, to make a public statement of this kind upon a telegram, unless Her Majesty's Government had directed that we should do so. But, further than that, I cannot think it would have been at all safe for the Government of India to have made any such statement upon a telegraphic communication. Suppose that that had been done, and suppose that when the despatch came, and had been made known to the public, it had been possible to say that there was any inconsistency between the statement made upon the telegraphic communication and the precise words of the despatch from the Secretary of State, I leave it to the members of this Council to consider whether that would not have produced a result very far from desirable.

"It seems to me that it was absolutely necessary that I should be in a position to do what I have done to-day, namely, to use the precise language of the Secretary of State in explaining his views. Until the words in which those views were expressed, were in my possession, I could not with any discretion have spoken in public upon the subject. Then I must also say that it appears to me that the proper place to make the first public declaration upon any proceedings connected with a measure which is before this Legislative Council is in this Legislative Council itself. I think that members of Council might have complained perhaps, if I, as the President of this Council, had made any such statement elsewhere. I am sure that most legislative bodies would undoubtedly have felt that in such a case some kind of slight had been cast upon them, although I have such confidence in the good feeling of the members of this body that I believe that, if I had been in a position to make such a statement, and had thought it right in the interest of the public to do so, some weeks ago, and at a time when this Council was not sitting, they would have overlooked any apparent discourtesy which might have been involved in such course; and, if an opportunity had been afforded me, I should probably not have hesitated to avail myself of it. But as I have said before, the information was not in my possession until last Saturday, and this is the first public occasion on which a statement of that kind could have been made.

"I will say no more now. The immediate occasion is not, as I have said, one which admits of the introduction of any controversial matter, but I cannot conclude these few remarks without repeating that those who think that I or my colleagues have felt a cold indifference to the representations of those who are opposed to this Bill, are entirely in error. The silence we have maintained

till now has, as I have shown, been a necessary silence. Now that I have spoken, I earnestly trust that no word which has fallen from me will tend to add to the bitterness of the present controversy."

The Council adjourned to Friday, the 14th December 1883.

FORT WILLIAM; }
The 14th December 1883. }

D. FITZPATRICK,
Secretary to the Government of India
Legislative Department.