

**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 and 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 7th April 1865.

P R E S E N T :

His Excellency the Viceroy and Governor-General of India, *presiding*.

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble H. B. Harington.

The Hon'ble W. Grey.

The Hon'ble G. Noble Taylor.

The Hon'ble H. L. Anderson.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble D. Cowie.

STAMP ACT AMENDMENT BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to amend Act X of 1862 (to consolidate and amend the law relating to Stamp Duties) be taken into consideration. He said that the Select Committee had proposed two additions to the Bill as introduced. One of the additions, which was suggested by his Hon'ble Colleague Mr. Grey, empowered the Governor-General of India in Council to reduce or altogether to remit the Stamp-duty prescribed by Act X of 1862 on any of the deeds specified in the Act in the case of any particular class of persons, or of individual members of any particular class of persons ; the other extended to Courts of Small Causes, constituted in Military Cantonments under the Cantonment Magistrates' Act which was passed last year, the provision contained in the present Stamp Act, under which Stamp-duty was charged on petitions of plaint in suits of a small amount instituted in Military Courts of Requests, or Courts of Cantonment Joint Magistrates exercising Civil jurisdiction, at a lower rate than in the same class of suits when brought in the ordinary Civil Courts and Courts of Small Causes. He had no doubt that the framers of the Act of last year intended that the provision referred to should apply to Courts of Small Causes constituted under the Act, though owing apparently to an oversight the point was not expressly provided for.

The Hon'ble MR. COWIE said that his Hon'ble friend Mr. Bullen, who was a Member of the Select Committee on this Bill, but was unable to attend the Council to-day, had asked him to call His Excellency's pointed attention to that paragraph of the Report which referred to the stamps levied upon instru-

ments transferring property held in trust, where no consideration money passed. The state of society in India was so fluctuating that changes of Trustees were very frequent, and the heavy stamps charged upon transfer of trust funds pressed hardly upon the parties interested, often widows and orphans. He concurred with his Hon'ble Colleague in asking the earliest attention of His Excellency and the Executive Government to the exercise of the power granted in this Bill by removing the stamp-duties on such transactions. He believed that, in English transfers where no consideration money passed, a nominal stamp of five shillings only was required.

The Hon'ble MR. HARRINGTON said, with reference to what had fallen from his Hon'ble colleague Mr. Cowie in respect to the addition which had been proposed to be made to the Bill for exempting from Stamp-duty instruments transferring property held in trust where no money passed, he wished to observe that it appeared to the Select Committee that the proposed addition would go beyond the scope of the present Bill, which had been introduced simply to meet an emergency which had actually occurred. There were other amendments which had been proposed in the Stamp Act ; but these also had been left to be considered whenever the Act came under a general revision. The Select Committee had certainly observed, as noticed by Mr. Cowie, that, under the Bill as now framed, it would be in the power of the Governor General of India in Council to reduce the rate of duty on the particular instruments mentioned by Mr. Cowie ; but any application for such reduction should be made to the Executive Government.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### CIVIL AND CRIMINAL COURTS (PUNJAB) BILL.

The Hon'ble MR. CUST moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Judicature of the Punjab and its Dependencies, be taken into consideration. He said that the alterations made by the Select Committee were not very material. Individually he had not been able to concur in them all, but he thought it right to defer to the unanimous opinion of the other Members of the Committee.

The Motion was put and agreed to.

The Hon'ble MR. CUST also moved that the Bill as amended be passed.

The Motion was put and agreed to.

## ADVOCATES' AND ATTORNEYS' (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble Mr. HARRINGTON moved that the Report of the Select Committee on the Bill to regulate the admission, removal and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, be taken into consideration. He said that in presenting the Report of the Select Committee he observed that the Bill, in its passage through Committee, had undergone such numerous, great, and important changes, that if the Bill should pass into law, altered as proposed by the Select Committee, it would bear but a faint resemblance to the Bill as introduced; and claiming for the several amendments, suggested by the Select Committee, the merit of being in a greater or less degree improvements upon the Bill, as introduced, he proceeded to remark that, before the Council were called upon to consider those amendments, he thought it would be right that the Bill should be published for a certain time in the *Gazette of India* in order that the public at large, and particularly that portion of it whose interests would be chiefly affected by the Bill, might be made aware of what was intended, and have an opportunity of offering any remarks upon the Bill, altered as proposed, or of stating any objections to the alterations made in the Bill by the Select Committee. He moved, therefore, that the Bill be published for three weeks, and the motion having been assented to, the Bill was published accordingly. Notwithstanding the comparatively short time that the Bill had been before the public, the result of the publication had been that they had received a very valuable communication on the subject of the Bill from the Judges of the High Court at Calcutta, together with a minute by the Hon'ble Mr. Seton-Karr, one of the learned Judges of the Court, and several petitions from the Vakeels and Mookhtars of the High Court and of other Courts, in which the petitioners had set forth at length their objections to the Bill. He had also been favoured with a letter from the Hon'ble and learned Chief Justice of the High Court at Calcutta containing many practical suggestions, the adoption of which appeared to him desirable and likely to conduce to the satisfactory working of the Bill. All these communications had been most carefully considered, and he had been led, in reference to what was stated therein, whether by way of suggestion, or as objections to the Bill, as settled by the Select Committee, to propose several amendments, some of which were very important. The amendments proposed by him in the Bill, and which he believed had the general concurrence of the other Members of the Select Committee to which the Bill was referred, were printed in italics in the copy of the Bill circulated to Hon'ble Members yesterday. It had been objected to the Bill, as settled by the Select Committee, that it would materially interfere with, and, indeed, set aside that

portion of the Letters Patent for constituting High Courts of Judicature at Calcutta, Madras, and Bombay, which related to the appointment and removal of the Vakeels in those Courts, and a doubt had been expressed as to the competency of this Council to alter this part of the Letters Patent or to legislate on the subject. He considered that there was some force in this objection ; but assuming that this Council, in the exercise of its general functions, had power to make rules by the passing of a law such as was now under consideration, for regulating the appointment and removal of Vakeels and Mookhtars in the High Courts, he was disposed to think that it would not be expedient to exercise the power in the present Bill, and he proposed, therefore, that the Vakeels and Mookhtars of the High Courts should be excluded from the operation of the general provisions of the Bill. He did not see how they could in any other way avoid making distinctions between the several classes of legal practitioners in the High Court which would be very invidious, and would certainly give rise to much discontent for which he thought there would be some ground. It was scarcely necessary for him to say that, as regarded character and qualifications, there was a very great difference between the Vakeels and Mookhtars practising in the High Courts and the same classes of practitioners elsewhere, and that, however necessary it might be to legislate at this time for the latter classes, the same necessity did not exist in respect of the former classes. He also proposed to place the Vakeels of the High Courts on a footing of equality with the learned Barristers and Attornies-at-law in those Courts as regarded practising in other Courts. The Vakeels of the High Courts were now at liberty to practise in any of the Mofussil Courts, and he did not think that they should be deprived of this power by the present Bill. The Vakeels naturally attached great importance to the retention of the privilege, and he was of opinion that it might be continued to them, not only with perfect safety, but with great public advantage. These were the most important alterations proposed by him in the Bill. There were some other alterations which he had proposed in accordance with the recommendations of the Chief Justice and the other Judges of the High Court. With regard to the petitions which had been received from certain Vakeels and Mookhtars in the Mofussil, he did not think that the objections taken in them to the Bill were deserving of attention or called for particular notice. For the most part these objections raised questions rather of private than of public interest, and when these two interests came into conflict, as a rule private interests should give way. It was proper he should notice that the present Bill would not disturb or interfere with the rights or privileges of any Vakeels who were now practising in any Court, provided they enrolled themselves as directed in the Bill, nor would it prevent any person who was qualified to practise as a Vakeel under any law or rule having

the force of law from so practising, subject to the provision just mentioned. The Bill certainly required that the Vakeels, enrolled under its provisions, should, at the end of each year, renew the certificates under which, after the Bill came into operation, they would practise, and that upon such renewal they should pay a moderate fee; but this requirement only followed the rule at home in respect to certain classes of legal practitioners. The Bill contained a similar provision in respect to the Mookhtars and Revenue Agents who were to be enrolled and admitted in the same manner as Vakeels. Considering the very great pecuniary advantages which these two classes of practitioners, equally with Vakeels enrolled under the Bill, would derive from being allowed to practise in the several Civil and Criminal Courts and Revenue Offices, subject to the conditions of the certificates held by them, he thought that the Government might fairly exact payment of the moderate fees proposed in the Bill both on the taking out and on the renewal of certificates, whether as a matter of public revenue or otherwise. No doubt, the Bill might seriously affect a large number of persons, who were now practising in the Courts and Revenue Offices in the Mofussil under the designation of Mookhtars, but this was unavoidable if anything was to be done in the way of legislation as regarded this class of practitioners. It was in reference to them and to their malpractices as a class, which were notorious, that he was led to bring in the present Bill. In asking for leave to introduce the Bill, he observed that, on this side of India, there was no law for regulating the admission and removal of Mookhtars, and that the consequence was that a large number of utterly untrustworthy and unfit persons had obtained admission into the Office, whereby the interests of justice and the character of the Courts had greatly suffered. If the effect of the present Bill should be to weed the class of Mookhtars of the large number of unfit and incompetent persons now practising as such, and to exclude them from appearing and practising in the Courts and Revenue Offices, it would be a legitimate consequence of the Bill, and was a result much to be desired. The object aimed at in the Bill was to raise the character of the Native Bar in the Mofussil, or rather to create a respectable and trustworthy Native Bar. What was called the Mofussil Native Bar did not deserve the name. For years past it had been a ground of complaint against the administration of justice in the Mofussil, that there was neither independence, honesty nor professional learning amongst the members of the Native Bar. As regarded a large number of the Vakeels practising in the Mofussil, he was able of his own knowledge to say this charge was inapplicable; but taking the Vakeels in the Mofussil as a body, he was bound to admit that the complaint was certainly not unfounded. He trusted that the present Bill, as soon as it had been in force a sufficient time to admit of its provisions being carried fully into effect, would so operate as to

remove all grounds for the complaints which he had mentioned, and that it would be the means of giving to the Courts and Revenue Offices in the Mofussil, a respectable and trustworthy body of competent legal practitioners to aid them in the discharge of their duties. The Bill proposed that no one should be enrolled under its provisions as a Vakeel, Mookhtar or Revenue Agent, who had not proved himself qualified in all respects for the Office by passing an examination to be conducted under proper rules. Once enrolled, no Vakeel, Mookhtar or Revenue Agent would be liable to be suspended as a punishment, or dismissed, except by order of the High Court or other highest Appellate Court in the case of Vakeels and Mookhtars, or by order of the Revenue Board in the case of Revenue Agents. This would give security to the holders of the Office, and he hoped would produce that feeling of independence in which the present legal practitioners in the Mofussil were stated to be so deficient. He feared that the day was still very far distant when the Vakeels in the Mofussil, by their integrity, learning, and ability, might claim to be on a par with the almost unrivalled English Bar in this country and at home, but he considered that this Bill was a large and important step in advance, or towards that end. He had no doubt that the Bill, altered as now proposed, would work very satisfactorily, and that, wherever introduced, it would tend greatly to improve the administration of Civil and Criminal Justice, as also the administration in the Revenue Department, so far as that was affected by the employment of Mookhtars or Agents representing other parties.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the amendments shown in italics in the copies of the Bill last circulated be adopted.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR moved as an amendment that, in Section 10, paragraph (c), the words "in Regulation Provinces" and "in Non-Regulation Provinces" be omitted, and that in the same Section, paragraph (g) should stand thus:—

"In the Courts of the Commissioners of Circuit, Magistrates, and subordinate Magistrates; in the Sudder Ameens and Moonsiffs' Courts, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars ..... Rupees eight."

The Motion was put and agreed to.

The Hon'ble MR. MUIR moved the following amendment of which notice had not been given.

That Section 22 stand thus :—

“ The stamp on such certificate, whether original or renewed, shall be of the following value—

On a certificate authorizing the holder to practise as a Revenue Agents.						
In the Board of Revenue or in any Office subordinate to the						
Board	...	...	...	...	...	Rs. 15
In the Office of a Commissioner or in any Office subordinate to						
the Commissioner	...	...	...	...	...	,, 10
In the Office of a Collector or in any Office subordinate to a Col-						
lector	...	...	...	...	...	,, 5”

The Motion was put and agreed to.

The Hon’ble MR. HARINGTON moved that the last sentence of Section 14 should stand thus :—“ The rules, penalties and fees so made, prescribed and fixed, and every variation thereof, shall be published in three consecutive numbers of the Official Gazette.”

The Motion was put and agreed to.

The Hon’ble MR. HARINGTON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### MUNICIPAL ACT (LUCKNOW) AMENDMENT BILL.

The Hon’ble MR. CUST moved for leave to introduce a Bill to amend Act No. XVIII of 1864 (to provide for the appointment of a Municipal Committee for the City of Lucknow). He remarked that last year an Act was passed by the Council to provide for the appointment of a Municipal Committee in the city of Lucknow, and by Section 21 the Governor-General in Council was empowered by an order in the Gazette to extend this Act to any other place under the immediate administration of the Government of India. It was overlooked at the time, that provision which might be very suitable for one of the largest cities in India—Lucknow—might not entirely be adapted to smaller places, where, nevertheless, Municipal government was highly desirable. Such had proved to be the case, and it appeared that every Municipal Committee must by law consist of no less than 25 members, whereas it was stated to be impossible to constitute, in some places, a Committee consisting of so large a number of competent members; and this had proved an obstacle to the extension of the Act to Fyzabad, a place in every other respect very suitable for Municipal institutions.

The Motion was put and agreed to.



## SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble MR. ANDERSON moved that the Report of the Select Committee on the Bill to define and amend the law relating to Succession and Inheritance among the Parsees, be taken into consideration. He said—"The object of the Bill is to relieve the Parsees from the operation of that portion of the Indian Succession Act, 1865, which related to intestate property, and to state the provisions by which partition of such property should be regulated for that community. The only alteration of importance made by the Select Committee is the addition of a Section stating the particular clauses of the Indian Succession Act from which the arsees are to be exempted. This provision could not be introduced into the original Bill, because the Indian Succession Act had not then become law. I mentioned, however, when I obtained leave to introduce the Bill, that I should in Committee move the addition of the clause to which I now advert. The other alterations made by the Select Committee are merely verbal.

The Bill, then, as it now stands has two prominent features—first, it exempts Parsees from the provisions of the Indian Succession Act relative to intestate property; secondly, it provides that the share of daughters in relation to such property shall be equal to one-fourth of the share of sons. The Indian Succession Act provides that daughters shall succeed equally with sons to intestate property. A large number of Parsees, principally residing in the Mofussil, consider that daughters should have no share at all, or at most only a minute fraction. The great majority of the Parsee community, and especially of those residing in Bombay, consider that the course proposed in the present Bill should be followed. That course, it will be observed, is a *via media* between the two extremes just stated.

I had expected to receive from Bombay a communication relative to this Bill. None, however, has reached me, and none, I am informed, has been received by the Government of India; but I some time ago received a private letter from the President of the Parsee Law Association, informing me that the Parsees approved of the Bill, and suggesting some amendments. These I placed before the Select Committee, but, on consideration, the Bill as it stands, was preferred. The only amendment of importance which was urged, was a suggestion that the Parsees should be exempted from the operation of the 108th Section of the Indian Succession Act,—the Section which may be called the mortmain Section. My friend the President of the Parsee Law Association urged on me that this Section was inapplicable to Parsees, as they were in no degree priest-ridden. I would remark that the Section alluded to imports into India the 9th Geo. II., cap. 36, commonly called the Statute of Mortmain. Now opini-

ons may differ as to the propriety of that law; but it will be generally conceded that if such a law is made applicable to any portion of the community subject to the Succession Act, it must be made applicable to all who are so subject. I freely admit that the Parsees are not priest-ridden; but there is a principle which underlies all laws of mortmain, and which addresses itself to a sentiment of deeper growth than priestly influence. That sentiment is the desire which many men of all creeds and races feel on their deathbeds to make terms, as it were, with the mysterious future by a liberality exercised at the expense of their heirs. It is one of the subtlest of those mixed questions of law and morals, to what extent a man is justified in influencing by testation the distribution of his property. The wisdom of successive generations has determined, with reference to this kind of testation, that there ought to be the most ample security, not merely that the testator is in possession of his faculties, but that his mind is in an entirely healthy state, capable of looking before and looking after, and in no way thrown off its balance by the fear of approaching dissolution. On considerations of this kind the laws of mortmain have been founded, and to such considerations the Parsees are as subject as their fellow-men. I was unable therefore to recommend the amendment proposed by my friend to the Select Committee for adoption. And I may add that Parsees make such munificent use of their wealth during their lives, that the Legislature is bound to guard, in some measure, their heirs from any testamentary profusion in favour of public objects, which the fear of death may possibly suggest.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

His Excellency THE PRESIDENT said that, as this was the last meeting at which his Hon'ble friend Mr. Anderson would be present, he felt bound, before adjourning the Council, to express the regret which they all felt at losing the services of so able a Member, and the hope which they all entertained that Mr. Anderson's successor would be like him.

The Council then adjourned.

CALCUTTA,  
The 7th April 1865. }

WHITLEY STOKES,  
*Offg. Asst. Secy. to the Govt. of India,*  
*Home Dept. (Legislative.)*