

*Friday,
24th September, 1886*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
LAWS AND REGULATIONS

Vol. XXV

Jan.-Dec., 1886

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

1886

VOLUME XXV.



Published by the Authority of the Governor General.

CALCUTTA :
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1887.

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 Viceregal Lodge, Simla, on Friday, the 24th September, 1886.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

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

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

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

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble Colonel W. G. Davies, C.S.I.

The Hon'ble Rana Shankar Bakhsh Singh Bahadur, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*) be taken into consideration. He said :—

“This is a Bill which was introduced by my friend Sir Steuart Bayley last December with the object of removing a slight defect in the Lunatic Asylums Act. The Bill as introduced was approved by the local authorities, but certain additional amendments of the Act were suggested by the Governments of Bengal and the Punjab, and it was thought desirable to make a further reference on these suggestions. After considering the replies to this further reference we have added to the Bill clauses expressly legalising the detention of supposed lunatics for a limited time for purposes of observation, and also removing an inconvenience pointed out by the Punjab Government which had been caused by the requirement that lunatics who are Natives of India should in all cases be sent to an asylum at the Presidency. The reasons for these modifications of the Bill are explained in the Report of the Select Committee, and I need not add to the explanations which are to be found there.”

The motion was put and agreed to.

[*Mr. Ilbert.*]

[24TH SEPTEMBER,

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

The motion was put and agreed to.

LIEUTENANT-GOVERNOR'S (N.-W.P.) FUNCTIONS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council be taken into consideration. He said :—

“The passing of this Bill has been delayed for some time because it was proposed to add to it a section validating the exercise by the Lieutenant-Governor of the North-Western Provinces of certain powers [under a Regulation of 1803, which he appears to have exercised without question during the forty years that elapsed between the constitution of his office and the repeal of the Regulation. The proposal was quite reasonable, but there was at the time that it was made just a possibility that its adoption might affect the interests of some parties to a suit then pending, and accordingly the further progress of the Bill was postponed. There is now, so far as I am aware, no litigation before any Court which can be influenced by the addition of the proposed section, and therefore it has been added to the Bill.

“We have also removed from the schedule to the Bill a Regulation of 1800, to which reference has been made unnecessary by the passing of the little Act of this year about the Mirzapur stone-quarries.”

The motion was put and agreed to.

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

The motion was put and agreed to.

BURMA INDIGENOUS TRIBES PROTECTION BILL.

The Hon'ble MR. ILBERT also introduced the Bill to provide for the protection of Indigenous Tribes in Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin, the Hon'ble Mr. Quinton and the mover.

The motion was put and agreed to.

1886.

[Mr. Ilbert.]

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration thinks fit.

The motion was put and agreed to.

UPPER BURMA LAWS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to declare the law in force in Upper Burma, remarking that though it was only formally laid on the table on that day, it had been in the hands of Hon'ble Members for the last few days; and under those circumstances he had no hesitation in asking that it should be taken into consideration at once. It was desirable, for administrative reasons, that there should be no avoidable delay in the passing of the Bill.

The Hon'ble MR. ILBERT also moved that the Report be taken into consideration. He said :—

“When introducing this Bill in July last, I said that its object was to lay the foundation of a system of law for Upper Burma, and I explained the system under which that Province had been provisionally administered under British rule. Since then I have seen statements to the effect that the provisions of the law have been totally ignored in Upper Burma, and that the people of that Province have been deprived of the safeguards against injustice to which they are legally entitled. As such statements are calculated to convey an entirely erroneous impression of the facts, it may be desirable that I should, at the risk of repetition, describe again the nature of the provisional administration which this measure and the Regulations by which it is to be supplemented are intended to supersede. That administration has been conducted in accordance with certain provisional instructions, which were framed by Sir Charles Bernard and approved by the Government of India. The object of those instructions was to apply to Upper Burma the provisions of the Indian Codes so far as they were applicable to the circumstances of the country and suitable to the customs and habits of the people. Certain variations from the precise procedure laid down by the Codes were considered necessary. Among the most important of these variations was the substitution for the method of appeals provided by the Codes of a system of review and revision by superior authorities. With the view of securing regularity of procedure and guarding against failures of justice, special stress was laid on the exercise of the powers of review and revision thus con-

[*Mr. Ilbert.*]

[24TH SEPTEMBER,

ferred, and all those who are familiar with the administration of justice in frontier tracts are aware how much better these powers are adapted to the circumstances of such tracts than the ordinary procedure of appeal provided by the Codes. I need not go through the other variations between the instructions and the Codes. They are all of a similar character, and such as were rendered necessary by the exceptional and transitional state of things with which we had to deal.

"I believe that these instructions have worked satisfactorily, and have proved to be well adapted to their purpose. Careful inquiry has been made into all cases in which officers of the British Administration have been charged with oppressive conduct, or abuse of the powers entrusted to them : and the result of the inquiry has been in each case to show that the charge either had been grossly exaggerated or had no foundation in fact. As to one point there can be no room for doubt, namely, that, notwithstanding the difficulties with which our officers have had to contend, the administration of justice in Upper Burma under British rule has constituted an immense advance on anything which existed under the late regime.

"I am aware that the 'instructions' are open to technical objections, on the ground that certain Indian Acts, including the general Codes, were extended to Upper Burma by the mere fact of its incorporation in the Indian Empire, and that the instructions issued last spring are not in precise accordance with those Acts. But it was obviously impossible to work those Acts immediately and without modification in a Province so situated as Upper Burma. The choice practically lay between adherence to the letter of the law and observance of its spirit, and we preferred the latter course. In asking the Council, as I do by this Bill, to give retrospective validity to the provisional instructions of last spring, I confidently affirm that I am not asking them to condone any act, omission or practice inconsistent with the substantial interests of justice.

"I have said that the law embodied in this Bill will be supplemented by Regulations under the Statute of 1870. Until this Bill has been passed, there will be no authority competent to submit those Regulations in the manner required by the Statute. But much time has been devoted to them during the last few months : they have been carefully considered by the Government of India in consultation with the local authorities ; they are now in a very forward state of preparation ; and I believe that a very short time will elapse before they become law. When it is remembered how long a period elapsed before anything like a settled system of law was introduced into such Provinces as

1886.]

[*Mr. Ilbert; Major-General Chesney.*]

Oudh and the Punjab, it will be seen that the Government is not chargeable with undue delay in the performance of its task of providing a Code of laws suitable to the circumstances of its new Province.

"To return to the Bill. The alterations made by the Select Committee are neither numerous nor important, and are all, or nearly all, based on suggestions made by Sir Charles Bernard after consultation with his officers.

"There are certain provisions of the Bill which ought to come into force simultaneously with the Regulations to which I have referred, and we have therefore postponed their operation for a period which will not, I hope, exceed a few weeks. We have also defined somewhat more precisely the local area to which certain parts of the Bill are to apply. There is no present intention of importing British law into the Shan States, and therefore we have excluded those States from the operation of the laws which we declare in force in Upper Burma, merely reserving a power, which may possibly be useful hereafter, to introduce into any portions of those States such laws, if any, as may be required. We have made a few additional modifications in the Acts scheduled for application to Upper Burma in the narrower sense of the word, and we have made a few additions to the list of those Acts. But, as will be seen from our Report, none of these alterations are of any material importance, and the Bill which I am asking the Council to pass is, in all its substantial features, that which was introduced last July."

The motion was put and agreed to.

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

The motion was put and agreed to.

MILITARY COURTS OF REQUESTS ABOLITION BILL.

The Hon'ble MAJOR-GENERAL CHESNEY moved for leave to introduce a Bill to abolish Military Courts of Requests as established by Indian Military Law. He said :—

"Courts of Requests were first established in India by a Regulation of the year 1810, and the object was stated to be to afford means to sutlers and others of obtaining a remedy in case of debt against military officers and soldiers and also to encourage sutlers and others to settle in military cantonments. The

[*Major-General Chesney; Mr. Quinton.*] [24TH SEPTEMBER,

law was first recognized by the English Statute Law in 1825; at that time practically a sutler or trader in a camp had no remedy against an officer or soldier for the recovery of small claims, and these Courts were established only to afford such means of remedy. But in course of time, as Small Cause Courts have extended throughout India, the necessity for separate Courts of this kind no longer exists; in fact, the Courts are merely the relic of a state of things which has long passed away, and moreover, as stated in the Statement of Objects and Reasons, Military Courts of Requests are in many respects more severe than either the English law contemplates or the Government of India would now be prepared to allow if legislating in the first instance. It is therefore proposed to abolish Military Courts of Requests, so far as such abolition is not repugnant to the provisions of the English Army Act.

"The Statement of Objects and Reasons explains the nature of the proposed Bill."

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL CHESNEY also introduced the Bill.

The Hon'ble MAJOR-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

ODDH WASIKAS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871, be taken into consideration. He said :—

"The Select Committee have altered the Bill in two points. They have, firstly, omitted those portions of it which contained any reference to the 5th Oudh loan, as the Local Government have brought to their notice that there are no pensions under that loan now remaining, all allowances or pensions payable on account of it having been commuted in accordance with the terms of the treaty under which the loan was made.

"Secondly, they have re-drafted section 2 of the Bill so as to make it clear that the allowances are declared to be within the meaning of the Pensions

1886.]

[*Mr. Quinton.*]

Act with no ulterior object but only for the limited purpose of barring the jurisdiction of the Civil Courts in respect of claims relating to these allowances except on certain conditions, and of protecting them from attachment at the instance of creditors.

“There is nothing novel in these provisions. They have in effect been acted on since the annexation of Oudh, and rules on these matters were drawn up under section 14 of the Pensions Act of 1871, the applicability of which to the Wasika allowances has only within a recent period been the subject of doubt. In the Statement of Objects and Reasons I intimated that the legislation respecting the Taj Mahal's pension in 1880 suggested a question as to Wasikas being pensions within the meaning of the Pensions Act of 1871; and a year or two ago, Mr. Young, then the officiating and now the substantive Judicial Commissioner of Oudh, ruled that these allowances were liable to attachment under civil decrees as being outside the Pensions Act. On the correctness of this judgment I offer no opinion, but it is opposed to the practice which has obtained under the orders of Government for 30 years, and, unless that practice was inexpedient, has rendered legislation inevitable in the interests of the Wasikadars themselves. The Government believes, however, that the practice which has hitherto obtained is salutary, that these allowances should not become the subject of litigation in the Civil Courts, and that the holders of them should not be reduced to destitution by the attachment of them in execution of civil decrees.

“The letter of the Commissioner of Lucknow printed as a paper on the Bill, memorials received by the Select Committee and by the Government, and notices of the measure in the public Press show nevertheless that the scope of the Bill has been misapprehended, and that in many quarters a notion prevails that under cover of this enactment Government intend to facilitate the resumption or reduction of Wasikas at some future time and to appropriate funds for which they are bound to account as trustee.

“As to the former point I hope the explanation I have just given of the meaning and effect of the Bill will dispel all misunderstanding; and as to the latter, if I am called upon to notice such imputations, I can only say that the Bill makes no alteration in the position of Government in respect of these allowances, and that all courses now open to claimants against Government on account of them will be equally open to them after the Bill becomes law.”

The motion was put and agreed to.

[*Mr. Quinton.*] [24TH SEPTEMBER, 1886.]

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

The motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. QUINTON also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Rent in Oudh.

The Council adjourned to Thursday, the 30th September, 1886.

S. HARVEY JAMES,

SIMLA :	}	<i>Offg. Secretary to the Government of India,</i>
<i>The 30th September, 1886.</i>		<i>Legislative Department.</i>