

Tuesday, August 8, 1871

ABSTRACT OF THE PROCEEDINGS

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA
LAWS AND REGULATIONS.**

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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 Simla on Tuesday, the 8th August 1871.

P R E S E N T :

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

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

The Hon'ble John Strachey.

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

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

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

The Hon'ble F. R. Cockerell.

The Hon'ble R. E. Egerton.

PENSIONS' BILL.

THE Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Pensions be taken into consideration. He said that the only amendments of any importance proposed by the Select Committee were in regard to (1st) the reference of claims to pensions or grants of money or land-revenue under certain circumstances to the Civil Courts for adjudication, and (2nd) the extension of the protection from sequestration now afforded to pensions, to charitable or compassionate allowances.

The fundamental principle of the Bill, which in this respect was, as regards its application to the whole of British India, with the exception of a portion of the Bombay Presidency, a mere recapitulation of the existing law, was that as the bestowal of pensions, money-grants or assignments of land-revenue was a pure act of grace on the part of the ruling power, so the latter justly and necessarily reserved to itself absolute freedom of action in regard to the disposal of all claims respecting such allowances; hence no power could be left to the Civil Courts to act adversely to the interests or policy of the Government in such matters.

But it might frequently happen that, when the liability of the Government to pay any pension or grant of money was admitted, and there were no political considerations affecting the determination of the order of succession to such pensions

or grant, the Government might wish to leave the question of succession or participation to be determined in accordance with the ordinary law of inheritance as administered by the Courts.

To meet such cases, a new section (six) had been introduced, the legal effect of which was that the Civil Courts must accept and exercise jurisdiction in regard to cases of this kind referred to them by competent authority, but could make no decree by which the admitted liability of Government could in any way be increased or adversely affected. The decree of the Court would be binding in such cases as between A and B, the rival claimants, but could not operate as regards the Government, except with the consent of the latter.

The expediency of extending the protection accorded to pensions to compassionate allowances was too obvious to admit of question. The considerations which led to the exemption from attachment by civil process of the pensions of discharged public servants applied with equal force to the case of pensions or portions of pensions continued to the family of a deceased pensioner, or a compassionate allowance granted to the family of a person who had died in the public service.

The only other alteration which called for any special remark was the provision contained in section nine of the amended Bill. It was intended to meet the probably numerous cases of grantees who under the conditions of their grants were left to recover the revenue assigned to them from the occupiers of the land, of which the revenue was so assigned, in the same way as the proprietor of land recovered the rent of such land from his tenants.

It was necessary to declare that the want of power in the Civil Courts to entertain suits relating to an assignment of land-revenue, and the provision of the Bill in regard to the mode of payment of grants, should not apply to such cases. It might be said, indeed in one quarter at least it had been implied, that the subject of this Bill was one which might reasonably have been left to be dealt with by local legislation as regards the provinces in which there were Local Councils.

The extension of the existing law to that part of the Bombay Presidency in which it was not at present in force, which was the prominent feature of the Bill, could not have been effected by the local legislature, inasmuch as it involved an interference with the jurisdiction of the High Court.

As the action of this Council was required to provide for that necessary extension, the opportunity had been taken for a general consolidation of the very numerous and diffuse enactments on the subject of pensions, and a comparison of

the enacting matter of the Bill with its repealing schedule would show what a very considerable saving of statutory substance had been accomplished by that operation.

Nor was the course which had been adopted in regard to this measure in any way calculated to prejudice the public convenience, for the practical effect of sections five, eight and fourteen of the amended Bill was to transfer future legislation on all matters of detail connected with the subject of pensionary allowances from the ordinary legislature to the local executive, and he apprehended that this was by far the most convenient and satisfactory manner of dealing with such matters.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS moved that, in section eleven, instead of the words "No pension granted by Government in consideration of past services," the words "No pension granted or continued by Government on political considerations or on account of past services," be inserted. He said that the original intention had been to extend the provisions of section eleven to this class of pensions, but that it had unintentionally been overlooked in Committee. He believed that the policy of the Government, with reference to this subject, might be seriously interfered with, if pensions granted on political grounds were not exempted from the ordinary process of the Courts. He also proposed the introduction of the words "or continued," so as to provide for cases in which pensions had been "continued," though not in the first instance granted by Government.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill as amended be passed.

The Motion was put and agreed to.

OATHS AND DECLARATIONS AMENDMENT BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to amend Act No. V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahometans).

The Council adjourned to Tuesday, the 15th August 1871.

S I M L A ;
The 8th August 1871. }

H. S. CUNNINGHAM,
Offy. Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.