

Thursday, August 9, 1877

ABSTRACT OF THE PROCEEDINGS

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 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 9th August 1877.

PRESENT :

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

His Excellency the Commander-in-Chief, K. C. B.

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

The Hon'ble Sir A. J. Arbutnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble Sir J. Strachey, K. C. S. I.

Major-General the Hon'ble Sir E. B. Johnson, K. C. B.

The Hon'ble Whitley Stokes, C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble B. W. Colvin.

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

BOMBAY REVENUE JURISDICTION ACT AMENDMENT BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill to amend the Bombay Revenue Jurisdiction Act, 1876, be taken into consideration. He said :—" It will be in the recollection of Your Lordship and the Council that, at our last meeting, in consequence of a question put by the Hon'ble Mr. Hope in regard to the relevancy of two Acts, which are mentioned in the first section of the Bill, to the subject with which the Bill is intended to deal, it was settled, after some discussion, that the further consideration of the Bill should be postponed until this meeting. It was stated on that occasion, both by my hon'ble and learned friend the Legal Member, and by me, that the draft of this Bill was framed by our late colleague Sir Arthur Hobhouse; and I expressed my unwillingness to assent to any alteration in the wording of the Bill, which was framed by a person so thoroughly competent as our late colleague, without more mature and careful consideration than we could possibly give to the matter seated round this table. This view was assented to by the Council, and since our last meeting I have gone into the question with my hon'ble colleague Mr. Stokes, and have come to the conclusion that, so far as we are competent to form a judgment on the subject, the objection taken by the Hon'ble Mr. Hope to the mention of the Acts to which he referred, is a

valid objection, and that the reference to them had better be eliminated from the Bill. We hold, at all events, that that reference is in no way necessary, and, as far as we can see, it is open to objection on the score of irrelevancy, which the Hon'ble Mr. Hope advances. While, however, we have come to this conclusion, we think it right to say that we feel satisfied from what we know of our late learned and eminent colleague, that he did not put these points into the draft, which was framed by him, without having reasons for doing so which satisfied his own mind, and which we should not venture to impugn. What these reasons may have been we are quite unable to say, and, as I have mentioned, it appears to us clear that the reference to the Acts in question is, at all events, unnecessary. Under the circumstances we have thought it better that not only that particular reference should be eliminated, but that the reference which is made in the Bill as it now stands, to certain other Acts should also be omitted, and that the section should run in this way :—

“ And nothing in section four shall be held to prevent the Civil Courts in the Districts mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government.”

“ I propose, in the event of my motion for the consideration of the Bill being adopted, to move the amendment which stands in my name on the notice paper ; but, before proceeding further, I think it right to mention to the Council that, since our last meeting, a letter has been received from the Government of Bombay suggesting the insertion in the Bill of an additional section repealing two sections, namely, the 9th and 10th, of the Revenue Jurisdiction Act of 1876, which relate to the subject of appeals. With the permission of Your Lordship I will read to the Council the statement of the grounds on which this recommendation is made. It has been made to the Government of Bombay by their Legal Remembrancer in these terms :—

“ But in order to provide against the difficulty which had been foreseen by this Government, two sections were introduced into the Act (9 and 10), one prescribing certain powers of appeal from proceedings of Revenue Officers, and the other authorizing the Local Government to call for records and reverse or modify any order of a Revenue Officer. Such provisions, I need not say, form part of the proper scope of the Revenue Code Bill,” [that is a Bill now before the Council of the Governor of Bombay, and which I hope will shortly be passed] “ and without them that Bill would be incomplete.”

“ And whereas sections 9 and 10 of Act X of 1876 apply only to cases in which, “ but for the passing of that Act, any act or omission of a Revenue Officer would have been open to question in a Civil Court,” it has been necessary in the Code Bill to provide generally for all cases.”

"I have gone into this question with my hon'ble colleague Mr. Stokes, and we are agreed that it is not necessary to repeal these two sections at present; that it is not desirable that during the interval which must elapse before the Revenue Code Bill of the Bombay Council comes into operation, there should be no provision for appeals of the nature of those referred to. My hon'ble friend Mr. Stokes, as he probably will tell the Council, is not of opinion that the provisions of the Bombay Revenue Code as they now stand in their Bill at all clash with the provisions of our sections 9 and 10 of the Act passed last year; and his view is that the proper course is to leave sections 9 and 10 of the Revenue Jurisdiction Act in force until the Bombay Revenue Code is passed, and then, when that is passed, if it comes up in such a form as will enable the Viceroy to assent to it, and if it becomes law, the right course will be, in order not to have two laws dealing with the same subject, to pass a short Act repealing the two sections of the Act passed last year, and leaving appeals to be dealt with under the local law, which is called the Bombay Land-Revenue Code."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that, in section 1, lines 8, 9 and 10, the words and figures "Acts No. XI of 1852, No. XXIII of 1871, and Bombay Acts No. II of 1863, No. VII of 1863, and No. III of 1874, or of," and in line 10 the word "other," be omitted.

The Hon'ble Mr. HORE said that as the Motion which had been put was substantially the same as the suggestion made by the Hon'ble Law Member on the last occasion when the Council met, which Mr. HORE had said at the time would, in his opinion, entirely meet the difficulty which he had had the honour of bringing forward, he begged leave to withdraw the second motion which stood in his name on the same subject.

With reference to the other point which the Hon'ble Mover had noticed, which was raised by the letter from Bombay, he had not been made aware of the arrival of that letter; but the omission did not matter since, as he was exceedingly glad to find, it was not proposed to take any action upon it. The proposal made by the Legal Remembrancer of Bombay in that letter had already been made once before in the course of the consideration of the Revenue Jurisdiction Act. It was then very carefully considered by the Select Committee and Sir Arthur Hobhouse, and it was decided, pretty much as it had now been decided, first, that it was quite premature to do anything

on the assumption that the Bombay Revenue Code Bill would very soon become law, and, secondly, that whenever it did become law it would be very easy to put the sections in question into the next Obsolete Enactments Bill which happened to come before the Council.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill as amended be passed.

The Hon'ble MR. HOPE said :—“ I feel it to be a matter of satisfaction that the soundness of the principles of the Revenue Jurisdiction Act, which I last year had the honour of carrying through this Council with the full concurrence and support, not only of some Hon'ble Members whom I still see present, but of Sir A. Hobhouse, Sir W. Muir and the late Viceroy Lord Northbrook, has not been in any instance even impugned by the highest authority. This satisfaction which I feel is not in any way inconsistent with the fact that we are now required by that authority to effect certain alterations in that Act, as will be apparent on consideration of what those alterations are.

“ I will first notice clauses (a) and (c). They refer to claims against Government—

“ (a) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village officer or servant ;’

and

“ (c) to receive payments charged on, or payable out of, the land-revenue.’

“ The present Bill provides that nothing in section 4 of the Revenue Jurisdiction Act shall prevent the Courts in the Old Provinces from exercising any jurisdiction over these matters which they otherwise could have exercised.

“ The Hon'ble Mover, in his speech on July 14th, said that the object of the Revenue Jurisdiction Act was ‘ to exempt from the jurisdiction of the Civil Courts claims connected with property appertaining to hereditary offices
* * * * * and claims to receive payments charged on, or payable out of, the land-revenue.’

“ This seems to me scarcely accurate. I think I may safely affirm that it was not intended to make in these two respects any alteration at all in the existing law.

“The idea was that, as we were making an Act on the subject of the jurisdiction of the Courts, it ought, for convenience of reference, to deal as far as possible with the whole subject, and to embody existing law in concise and indisputable terms. In accordance with this idea, and with the full concurrence of the Bombay Government, both the provisions now in question, and several others, were inserted.

“As to Watans, which are the subject of clause (a), the full powers of the Government to deal with them, which have existed since the beginning of British rule, were declared in Bombay Regulation VI, 1833, repeated in Bombay Act VII, 1863, and saved in Bombay Act III, 1874. Moreover, the Pensions Act excluded the Courts from trying suits relating to any thing payable by Government in respect of any office, and the Government of India in the Legislative Department ruled in 1873 that the terms of that Act were ‘sufficiently large to include all the cash emoluments of the holders of Watans or hereditary offices.’ This clause was originally put into the Bill by the express desire of the Bombay Government, and in their final letter of general objection they said that this clause was ‘unreservedly approved of.’

“As to payments chargeable on, or payable out of, the land-revenue, (c), the case is similar; the Pensions Act covers them all, and they were inserted merely to make the subject complete.

“The Bill now before us will, to the best of my belief, effect no change whatever in the law on these two subjects. The Courts will be excluded as before. I am aware that it has been supposed that cases might arise under (a), not (c), from which the Courts are not barred; but I never heard any one clearly define them. If there be such, they must be of so exceptional and peculiar a nature that no one could object to their being referred to the Civil Courts.

“The case of (b) remains. Here I think we must frankly admit that the alteration is a real one. At the same time, it is not ordered to be made in consequence of any difference of principle, and it is not likely to have any very extended application.

“As to principle, I am glad to observe that the Secretary of State does not say anything even to imply that the measure regarding ináms was in itself either unjust, unnecessary, or unsound. The ground assigned is merely that the attachment felt by a population to an old protective privilege should not be disregarded even though such protection may really be unnecessary. As to

this ground, I hope I may venture to say, without disrespect to the high quarter by which it is put forward, that it seems to me quite sufficient to justify the legislation we are considering to-day. Popular prejudices must always form an element in the calculations of the statesman, and it is perhaps only just and politic that some concession should be made to prejudices which have been expressed so emphatically and persistently as in the present instance.

“Regarding the application of this clause (b), I quite concur with what fell from the Hon’ble Mover as to its being very limited. The misapprehensions as to the scope of this part of the Revenue Jurisdiction Act contributed in no slight degree to swell the distaste with which the measure was regarded. It was supposed that the Act would affect cases of title to, or ownership of, land, and a certain ‘Chikli Tanna case’ was cited as a type. It was also imagined that the Act would affect questions of succession, and here a certain Kaira case was the exemplar. The fact, however, is that the Act did not touch either one class of cases or the other.

“What it did touch was, as I said in Council on 28th March 1876, a small residue of cases which the summary settlement Act VII of 1863 had failed to draw in, and which would arise from time to time as the survey settlements were effected. As regards those cases, the fact is that the argument previously used—that they were too inconsiderable to justify the maintenance of special legislation, reserving for them a resort to the Civil Courts which was unknown in the rest of India—is also good for leaving this resort untouched when it is found to be clung to sentimentally as an ancient privilege. The worry and waste of time and money which litigation involves will indeed continue, together with other inconveniences which were cited when the Act was passed, but the people will, on the whole, lose more by this than the Government. The Government, which, it has been shown in the debates in this Council, apparently gains about three out of four civil suits brought against it, will not risk very much; and the people, if they really relish the expenses and uncertainties of litigation, may be left to enjoy them,—the more so in that the tendency of revenue officers to keep things smooth and to decide in favour of the subject whenever they decently can has been established beyond dispute. As an illustration of this, supplementary to the now famous one regarding the views of local officers in the Canara case, which was afforded by the Bombay High Court in the Kabilpur judgment, I now feel at liberty to mention that, so far from I myself having been the promoter of, or responsible for, the proceedings which led to the Kabilpur suit, that suit would never have occurred if the advice I tendered had not been set aside.

“ With reference to this clause (b), then, I would say in conclusion that I think the Council may pass it, not only because, as the Hon’ble Mover has said, it is the Government’s ‘plain duty to obey,’ but with an intelligent and ready assent.”

The Motion was put and agreed to.

MADRAS DISTRICT JUDGES BILL.

The Hon’ble Mr. STOKES moved for leave to introduce a Bill to enable the District Judges of the Presidency of Fort St. George to suspend and remove certain ministerial officers. He said that this was a small matter, and he would explain the necessity for the Bill in a very few words. Section 23 of the Madras Civil Courts Act, 1873, provided that the ministerial officers of the Courts of the Subordinate Judges and District Munsifs should be appointed, and might be suspended or removed from office, by such Subordinate Judges and District Munsifs respectively, subject to the approval or confirmation of the District Judge within whose jurisdiction these Courts were situate; but the District Judge had no power in the first instance to suspend or remove those ministerial officers of his own motion. The proposed Bill would give him such power, which would obviously be useful in case of fraudulent collusion between Munsifs and their sarishtadars, instances of which were said to occur from time to time, *occasione oblatâ*. The Bill had been suggested by the High Court at Madras, and was supported by the recommendation of the Madras Government. Similar legislation appeared to be needed in the Lower and North-Western Provinces of the Presidency of Fort William. But as neither of the two High Courts and two Local Governments here concerned had complained of the defect, the Bill was, for the present, confined to Madras.

The Motion was put and agreed to.

The Council adjourned *sine die*.

SIMLA;
The 9th August 1877. }

A. PHILLIPS,
Secretary to the Government of India,
Legislative Department.