

*Saturday,
16 January, 1892*

ABSTRACT OF THE PROCEEDINGS
OF THE
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,

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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 pro-
visions of the Act of Parliament 24 & 25 Vict., cap. 67.*

The Council met at Government House on Saturday, the 16th January, 1892.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, Kt., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble Nawab Ahsan-Ulla Bahadur, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

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

The Hon'ble J. Nugent.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble Raja Udai Partab Singh of Bhinga.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

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

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

INDIAN BANKRUPTCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Mr. Nugent, the Hon'ble Mr. Woodburn and the Hon'ble Dr. Rash Behari Ghose be added to the Select Committee on the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India.

The Motion was put and agreed to.

BILL TO VALIDATE CERTAIN CHRISTIAN MARRIAGES.

The Hon'ble SIR ALEXANDER MILLER also presented the Report of the Select Committee on the Bill to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872. He said that he understood the practice to be that any observations which he had to make on the subject should be reserved until the Report was taken into consideration.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Hon'ble Mr. Bliss, the Hon'ble Mr. Evans, the Hon'ble Dr. Rash Behari Ghose and the Hon'ble P. Chentsal Rao be added to the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras, and that the Committee be instructed to report within a fortnight. He said :—

"The motion for a Committee to consider a Bill is usually a mere matter of form, but on the present occasion I ask Your Excellency, before putting the formal question, to allow me to make a short statement, as I shall invite the Select Committee to consider some alternative proposals and I am anxious to let the people of Madras know at once how far I think it possible to meet the wishes which they have expressed.

"Hon'ble Members are probably aware that the original Bill has not been received at Madras with that universal approval which I anticipated. I think it would not be difficult to answer most of the objections raised to it, but I desire to avoid unnecessary controversy, and I would rather place emphasis on the fact that every one seems to agree in the fundamental proposition on which the Bill rests, *vis.*, that it is desirable to relieve the High Court of original civil suits of small value arising within the city of Madras. The third and principal Resolution adopted at a public meeting which was held in Madras on the 4th of September last was to the effect 'that there do exist a hardship and a practical denial of justice to a not insignificant portion of the inhabitants of this city under the present system of judicial administration in the presidency-town' which call for an early remedy. It was to meet this hardship and this practical denial of justice that I proposed to establish a regular side of the Small Cause Court, so that on the most essential point, and I think I may say on the only essential point, I may claim to have rightly gauged the popular sentiment.

"But the same Resolution went on to declare 'that the proper remedy should be sought in the creation of a new tribunal, presided over by Judges selected from the legal profession, and having regular jurisdiction to try suits up to Rs.500.' I will not stop to enquire how far this opposition to making the new Court a part and parcel of the Small Cause Court has sprung from the fact, which I mentioned in my former speech, that the Judge of the new Court would have to be an Advocate and not a member of any other branch of the legal profession; for I myself would greatly prefer that Vakils as well as Advocates should be eligible for the new appointment. That, however, is not the ostensible

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ground of the opposition to a regular side of the Small Cause Court. It is said that the regular suits will interfere with the summary jurisdiction, which undoubtedly is the primary work of a Court of Small Causes. I cannot for a moment admit the soundness of this objection. The opinions of most authorities best qualified to form one are that there would be no such interference, and it appears to me that the objection is really based on a misapprehension. I will not, however, pursue this subject further, because I am personally quite willing to accept the alternative of a separate Court upon one condition—a condition which is not likely to be objected to—and that is that the Judge or Judges shall be *ex officio* Judges of the Small Cause Court also, and shall devote their spare time to helping to dispose of claims instituted in that Court. I have already explained how impossible it is to foresee how much business will be attracted to the new Court: it may fall very far short of what even a single Judge can cope with; or it may prove too much for one, but not enough for two.

“I am the more ready to accede to this alternative, because it would greatly simplify the drafting of the Bill and obviate all possibility of question as to how far, if at all, the Court is to be governed by the procedure prescribed by Act XV of 1882. The new Court would obviously be, as I intended the regular side of the Small Cause Court to be, absolutely distinct and separate from the Court of summary jurisdiction. As to procedure, it would be governed exclusively by the Code of Civil Procedure, and in common with all other Courts (not specially excepted like the Small Cause Court) it would be subject to the Court-fees Act and other enactments of general application.

“So much for the main point. Now, as to the pecuniary limit of jurisdiction. It was originally intended that this should be Rs. 2,500, but in view of the proposal (contrary to my own expressed opinion, in which I am glad to find most of the Madras authorities agree) that the High Court should retain a concurrent jurisdiction, I set down Rs. 5,000 in the Bill as introduced. This was always intended to be a tentative figure and open to revision, but I take it that if a distinct Court is created the concurrent jurisdiction of the High Court will cease under the operation of section 15 of the Code, and it is therefore unnecessary to consider the matter further. I revert as a matter of course to the original proposal.

“In the Bill as introduced I proposed to empower the Local Government, with the previous sanction of Your Excellency in Council, to extend the new Court's jurisdiction to a higher limit. I was careful to explain that such sanction would only be accorded if the High Court agreed, and I would readily consent to make

[*Sir Philip Hutchins; Raja Udai Partab Singh of Bhinga.*] [16TH JANUARY,

the concurrence of the Hon'ble the Judges a statutory condition. It will be for the Select Committee to decide whether there shall be a clause permitting the extension of the jurisdiction up to (say) Rs. 5,000 when the High Court, the Local Government and the Government of India all agree, or whether such extension by notification is so radically bad or otherwise objectionable that it is better not to permit it at all. I have already stated the arguments in favour of such a provision; it is not one for which I should be inclined to press with any persistence.

"It seems hardly necessary for me to say that none of my proposals will, in any way, trench on the independence of the High Court. Their Lordships the Judges will be relieved of the necessity of dealing with the petty cases which fall within the cognizance of the new Court, but they will have full power to call up such suits to their own file, and I have already expressed a hope that this power may be freely exercised, at all events at the commencement.

"I ask that it be an instruction to the Committee to submit its report within a fortnight, but it must not be supposed that I wish the Bill to be rushed through the Council. I have no intention of bringing it on for final consideration before about the middle of March. My object is simply that the people interested may have the longest possible notice of the Committee's decision as to the alternative proposals which will be laid before it."

The Hon'ble RAJA UDAI PARTAB SINGH OF BHINGA said :—

"After what has already been said about the Bill before the Council, a lengthy reference from me would be superfluous. I would, however, remark that the Allahabad High Court having no original jurisdiction, the somewhat alarming note that is sounded in the reference to the introduction of the 'thin end of the wedge' has little or no application to the people of the United Provinces. As regards Madras, the papers before the Council clearly show that the residents of the town itself want some such relief as is provided in this Bill. But at the same time I venture to submit that the objections to the proposal of raising the pecuniary limit, vesting in the Local Government the power to raise it still higher without having recourse to legislation or reference to the High Court, and the increase of court-fees under the proposed changes, appear to be weighty and deserving of careful consideration."

The Hon'ble SIR PHILIP HUTCHINS said that as the Raja of Bhinga had given some attention to the subject and appeared to take an interest in it, he would propose that his name should be added to the Select Committee.

*MADRAS SMALL CAUSE COURT; AMENDMENT OF RANGOON 9
PORT COMMISSIONERS' ACT, 1879.*

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[*Sir Philip Hutchins ; Mr. Bliss.*]

The Motion that the Hon'ble Mr. Bliss, the Hon'ble Mr. Evans, the Hon'ble Raja Udai Partab Singh of Bhinga, the Hon'ble Dr. Rash Behari Ghose and the Hon'ble P. Chentsal Rao be added to the Select Committee on the Bill, and that the Committee be instructed to submit its report within a fortnight, was then put and agreed to.

**RANGOON PORT COMMISSIONERS' ACT, 1879, AMENDMENT
BILL.**

The Hon'ble MR. BLISS moved for leave to introduce a Bill to amend the Rangoon Port Commissioners' Act, 1879. He said:—

“The reasons which have rendered the introduction of this Bill advisable are fully set out in the Statement of Objects and Reasons attached to the Bill. Briefly they are, that inconvenience has in practice been found to arise from the provision in section 71 of the existing Act that no Commissioner shall directly or indirectly lend money to the Commissioners or be interested in any contract made by, or on behalf of, the Commissioners. Rangoon is a comparatively small place, and if all the firms to which different members of the Port Commission belong are to be prohibited from accepting contracts from, and from carrying out works on account of, the Port Commission, it will be difficult to get certain works carried out economically and efficiently, or perhaps at all. On the other hand, if all gentlemen whose firms are capable and desirous of executing works for the Port Commission are to be compelled to decline to serve on the Commission, in order to enable their firms to do business with it, the interests of the port will suffer by the absence from the Commission of the very persons whose services on it will be most valuable. It is, therefore, proposed to amend the law by granting permission to members of the Port Commission to tender for and carry out Port Commission works, with the previous sanction in writing of the Local Government, and by the simultaneous addition of a proviso that no Port Commissioner shall vote or take any part in any proceedings relating to any such tender or contract. The law will thus be assimilated to those which regulate in this respect the administration of the port of Calcutta and of the municipalities in Lower Burma.”

The Motion was put and agreed to.

The Hon'ble MR. BLISS also introduced the Bill.

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

The Motion was put and agreed to.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Tariff Act, 1882. He said:—

"The amendment which I propose is very simple. Under section 5 of the Act of 1882 power is taken to impose customs-duties in accordance with the existing tariff on goods passing by land out of or into foreign European settlements situated on the line of coast within the limits of the Presidency of Fort St. George. This provision is necessary in order to prevent advantage being taken of the existence of these settlements for the purpose of evading payment of the customs-duties of British India. But no similar provision exists with regard to foreign settlements situated within the limits of the Presidency of Bombay, and the cause of this difference is that, at the time the Act of 1882 was passed, we had a treaty with Portugal which established a sort of customs-union between British India and Portuguese India. This treaty was considered to be in more than one respect disadvantageous to the interests of British India, and, as the efforts made to effect suitable modifications of it have unfortunately failed, the treaty has come to an end, and it becomes necessary to make such alteration of the law as shall prevent advantage being taken of the Portuguese settlements on the West Coast for the purpose of evading payment of our customs-duties. With this object provision is made in the Bill, which I propose to introduce, for the levy of customs-duties at the prescribed rates on goods passing by land into or out of foreign European settlements bordering on any part of the territories administered by the Governor of Bombay in Council, thus applying to Bombay the provisions which already exist in the case of Madras."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill. He said that, as it was necessary, in order to prevent evasions of the payment of customs-duties, that the proposed amendment of the law should come into force imme-

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[*Sir David Barbour ; The President.*]

diately, he would ask His Excellency to suspend the Rules for the Conduct of Business, so that the Bill might be passed at the present meeting of the Council. He might also mention that, owing to the adjournment of the Council yesterday, it was necessary to provide in the Bill that the alteration in the law should have effect from the 15th January.

THE PRESIDENT declared the Rules to be suspended.

The Hon'ble SIR DAVID BARBOUR moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 29th January, 1892.

S. HARVEY JAMES,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA ;
The 22nd January, 1892. }