

*Thursday,
11th August, 1892*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXI

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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,

1892

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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 Vict., cap. 67:*

The Council met at Viceregal Lodge, Simla, on Thursday, the 11th August,
1892.

P R E S E N T :

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 the Punjab, K.C.S.I.

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

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, K.T., Q.C.

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

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble G. R. Elsmie.

MADRAS CITY CIVIL COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Reports of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be taken into consideration. He said :—

“ Rather more than a twelvemonth has elapsed since I first brought this measure before the Council, and both then and on various subsequent occasions I have explained its provisions, and dealt with objections, at considerable length. In now moving that the Bill be passed, as finally settled by the Select Committee, I will endeavour to be as brief as possible, and I will confine myself almost exclusively to such arguments or representations as have been put forward since I addressed the Council in Calcutta. It will be remembered that a large Select Committee had then framed what appeared to be a workable scheme, but that we thought it desirable to have the details again scrutinized by the local authorities, and the persons locally interested, before it should be passed into law. A few criticisms and suggestions have since been received from the Hon'ble the Judges of the High Court and the Local Government, but almost all of these have been fully dealt with in the final Report which I had the honour to present a fortnight ago, and I do not think it necessary to take up the time of the

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Council with any further observations regarding them. I believe my hon'ble friend Sir Alexander Miller will have something to say about the concurrent jurisdiction of the High Court, but that topic I will leave to him. It has been suggested that special provision is required to prevent Chapter XX of the Code of Civil Procedure from applying to the new City Court, but section 360A, which was inserted at the end of that chapter by Act VII of 1888, provides that nothing in it shall apply to any Court within the limits of any of the Presidency-towns. That is sufficient in itself without any saving clause, and I shall presently move that the last section of the Bill, which is not referred to in our Report and was not intended to be retained, be struck out as superfluous.

"In the last paragraph of their letter the Judges of the High Court unanimously recommend that the Bill be passed into law at an early date, and this has always been the desire of the Local Government. It is also the view held by the native community, as hon'ble members know from the speech addressed to them at Calcutta by my hon'ble friend Mr. Chentsal Row; and I explained on the same occasion that the native community were the persons chiefly interested. The effect of the Bill will be to establish what may be briefly described as a District Munsif's Court in the city of Madras, and to transfer to it the cognizance of ordinary suits, not of the nature of small causes and not exceeding in value Rs. 2,500; which is the pecuniary limit of a District Munsif's jurisdiction in the Madras Presidency. The petty litigation with which Europeans are concerned is generally cognizable by the Court of Small Causes. It must be very rare, for instance, that any member of the Chamber of Commerce or Trades Association is a party to a suit relating to immoveable property of a less value than Rs. 2,500. Nevertheless it is right that every objection which those bodies have put forward should be fully and fairly considered.

"And this is more especially necessary because the Trades Association in their last letter have made the complaint that 'while prominence is given to communications from the Vakils Association, the Mylapore Athenæum and the Mahajana Sabha, the reports of the Chamber of Commerce and of the Trades Association have been *entirely ignored*.' I am sure, if the Association had done me the honour to read my speeches on the subject of this Bill, no such complaint would have been possible. It is based solely on the fact that the Select Committee's Reports give in the margin a list of the papers which have been considered by them, and that this list only sets out the communications addressed direct to the Legislative Department, and not their various enclosures. Thus, in the Report dated 23rd March last the letters of the Chamber and the Association appear only as 'accompaniments' to an 'endorsement from the Home Department;' and similarly

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the latest letters from those bodies—the letters, that is to say, to which I am now referring—are only mentioned in our final Report as enclosures in a letter from the Government of Madras to which they were addressed. Upon this slender foundation the Association has thought fit to charge the Government of India, and myself in particular, with a want ‘of that fairness and impartiality which ought to characterize all proceedings in which an important public matter is concerned.’

“As a further instance of the spirit in which the Association has dealt with this ‘important public matter,’ and I think I may say also of the straits to which it is reduced for arguments to support its position, it states, almost in so many words, that this Council proposes to enact only that the Local Government *may* establish the new City Court, because we are afraid ourselves to assume the responsibility of establishing it. The reasons why the Bill has taken this shape are sufficiently obvious to any unprejudiced mind: it is a mere local enactment, and the Local Government alone can decide the most convenient time for calling the new tribunal into existence.

“Next, the Association expresses in general terms its apprehension that the passing of this Bill may, in course of time, lead to the total abolition of the High Court’s original jurisdiction. I dealt with this aspect of the question so fully at Calcutta that I have really nothing to add to what I then said. It would almost appear that the Association has not taken the trouble to read my remarks: at all events it has not attempted to answer them.

“Turning now to the letter of the Chamber of Commerce, I am glad to say that I only find one remark open to any such objection as I have been constrained to raise to that of the Association. The Chamber alludes to the ‘hurry with which the Bill is being rushed through Council.’ The misapprehension as to this point which occurred last year must have been fully cleared up by my introductory speech. Till now, I have not seen the charge of hurry repeated. As a matter of fact the Bill has been before this Council for upwards of a year, and it was again referred to Madras in March last, although it might have been passed then, because the Select Committee thought it right to avoid even an appearance of haste. We shall see presently that the matter was well known to the Chamber long before 1839.

“The Chamber ‘solemnly deprecates any legislation calculated in the smallest degree to impair the dignity, independence and usefulness of the High Court,’ but this only expresses my own earnest conviction. How the dignity or

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independence of the Judges can be impaired by simply furnishing an auxiliary tribunal to relieve them of such petty cases as they do not think it desirable to call up for trial before themselves has not been explained, and is, as I have frequently submitted, incapable of explanation. The Hon'ble the Judges may surely be left to take care of their own dignity and independence, and we have seen that they are anxious to get the new Court established at once. The measure indeed emanated from the High Court, which shows how entirely fallacious it is to describe it as an insidious encroachment of the Executive. And as for the High Court's usefulness, this must be increased rather than diminished by enabling it to devote all its time to business really requiring for its disposal that learning, ability and experience for which its Judges are so justly esteemed. The lamentable waste of judicial power now exhibited daily in the Court was one of the chief grounds which led to the initiation of this measure.

"The other main ground, it will be remembered, was the 'practical denial of justice to a not insignificant portion of the inhabitants,' which the High Court and the Local Government had long admitted to exist. The section of the community referred to was, as I have already stated, the native inhabitants, who alone are concerned with immoveable property of small value, as well as with most other descriptions of petty litigation, not being small causes. It seems still to be doubted in some quarters whether such a denial of justice really exists, but on that point I do not wish to add anything to what I said in Calcutta. It has been suggested also that such denial of justice as exists is for the most part confined to the Black Town. Even if this were the case, the new Court would be equally needed to provide a remedy; but nothing has been advanced which leads me to think that there is not as great or a greater denial of justice to the inhabitants of the 26 square miles, more or less densely populated, outside the single square mile which constitutes Black Town. Certainly the fact, if it be a fact, that most of the petty cases which are now brought to Court come from Black Town, does not establish that the evil is confined to that area. It would indeed rather indicate the contrary, for it would seem to show that the people of Black Town are not even now backward about coming to Court, while those who are deterred by the delays and expense of a suit in the High Court live in the suburbs. Taking all the suburbs together I should guess that their inhabitants are at least equal in number to the residents of Black Town: they certainly cannot be much fewer.

"The Chamber, however, draws 'attention to the fact that the Deputy Collector of Madras now deals with hundreds of small cases, apparently to the perfect satis-

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faction of applicants.' I presume that the reference is to the Quit-Rent Registration Office. Is the Chamber aware that this is merely an office for the transmutation of names and has absolutely no jurisdiction in disputed cases? In five-sixths of the cases coming before the Deputy Collector there is no dispute at all. He refuses certificates whenever the applicants are not in possession—the usual case in which they would be likely to come into Court—whenever the title-deeds are not produced by them, and whenever an objection is raised by any other party which is not obviously untenable. I cannot give the number of cases in which he overrules objections as untenable, but if they are at all numerous, since the only indication that the objectors are 'satisfied' is that they refrain from coming into Court, it seems pretty clear that there must be, as it is generally admitted that there is, some very strong impediment in the way of resort to the High Court.

"I think I have now dealt with all the objections raised by the Chamber and by the Trades Association. The fact, however, remains that they have both taken up a position of strong hostility to this legislation, and, if their opposition had been either consistent or based on reasonable grounds, I should have been the last to contend that their opinion is not entitled to very great weight. But I think I have shown that they have not adduced any strong reasons, and certainly they have not been consistent. On the contrary, they have twice deliberately declared themselves to be in favour of the very measure which they now oppose. It has indeed been stated that the two measures—that originally proposed and that formulated in the present Bill—are essentially different, and hard things have been said of me as if I had tried to conceal the differences. It is time that I should clear up this point, and this can best be done by quoting the very words of the correspondence. Early in 1889 the nature of the scheme was laid before the merchants and traders of Madras in the following terms:—

'The proposal is to add a Judge and a regular side to the Court of Small Causes, and the effect of the changes will be that all cases not of a small cause nature, and not exceeding Rs. 2,500 in value, will be instituted in the Court of Small Causes instead of in the High Court, and ordinarily be tried by one or other of the Judges of the former Court as regular suits, and subject to the general law as to appeals and procedure. The appeal will lie to the High Court, and it has also been *suggested* that a similar right of appeal be conceded even in small causes ranging from Rs. 1,000 to Rs. 2,000 in value which are now tried summarily. The High Court will, of course, be competent to call up cases to their own file, and it is *understood* that they will readily exercise their power in all cases involving questions of mercantile law and usage.'

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"For the regular side of the Small Cause Court a separate Court has now been substituted at the special request of the inhabitants of Madras, assembled in public meeting. The suggestion that an appeal might perhaps be given in small causes between Rs. 1,000 and Rs. 2,000 in value was objected to by the Secretary of State, but will be further considered in connection with the amendment of the Presidency Small Cause Courts Act: the omission of this provision is certainly not the reason for the Chamber's change of front. The High Court has power to call up cases, and I still understand that they will be ready to do this whenever sufficiently strong grounds can be made out, such as that the case involves difficult questions of mercantile law which should not be left for determination by the City Court; obviously the Executive Government could not express, nor did the Chamber understand them as expressing, more than a *belief* that the Hon'ble Judges would do this. In all other respects the proposal originally sketched is identical with the measure now under consideration. Let us now see the replies.

"The Chairman of the Trades Association wrote on the 12th February, 1889, that 'after careful consideration the members are unanimously of opinion that the change proposed would afford great relief to the High Court and be beneficial and a great convenience to suitors.' In his last letter, dated 17th May, 1892, the Chairman has been pleased to describe this emphatic approval as a 'tacit consent' given 'under a misapprehension'; and this in the same paragraph in which he complains of a want of fairness!

"The reply of the Chamber of Commerce alluded to 'the changes referred to as having been under consideration for a long period.' They had only abstained from expressing their views on the subject because they had 'not been definitely informed that those changes had been recommended by the Madras Government.' They then recited the actual proposals, as well as the *suggestion* about appeals in small causes above Rs. 1,000 in value and the *belief* that the High Court would still try important mercantile cases, and finally they informed the Government that the Chamber approved of the proposals, subject to a condition which has been agreed to and is now immaterial. But perhaps it will be better to give their own words, lest I should again be charged with misrepresentation. They wrote:—

'It is observed that the Government of India is under some misapprehension as to the attitude of the mercantile community of Madras towards the proposal, and alludes to the circumstance that that community has not thought it necessary to make any representation against it. The changes referred to have been under consideration for a long

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period, but the Chamber was not definitely informed that those changes had been recommended by the Madras Government for the sanction of the Secretary of State. The Chamber trusts, therefore, that the Government of India will not suppose that the mercantile community is indifferent to a scheme which is calculated to affect the interests of commerce.

'It is gathered from the letter of the Government of India that it is proposed to add a Judge and a regular side to the Court of Small Causes, Madras, so that all cases not of a small cause nature, and not exceeding Rs. 2,500 in value, will be instituted in the Small Cause Court instead of in the High Court, and that an appeal will lie to the High Court. It is further suggested that a similar right of appeal be conceded to small causes ranging from Rs. 1,000 to Rs. 2,000 in value which are now tried summarily, and the belief is expressed that the High Court will readily exercise the power conferred upon it of calling up all cases involving questions of mercantile law and usage.

'I have now the honour to inform you that the Chamber approves of the proposals, provided that the services of a sixth Judge of the High Court are not dispensed with until it is satisfactorily established that the relief afforded by the proposed change will reduce the work of that Court to dimensions that can be efficiently dealt with by a smaller number of Judges than six.'

"So much for the first occasion.

"Again, last September, the members of the Chamber of Commerce and of the Trades Association took a prominent part in calling a public meeting to discuss this Bill as it was then formulated. They were also among the most prominent speakers, and the Chairman of the Chamber, my friend Mr. Turnbull, occupied the chair at the meeting. The resolutions had to be revised, but eventually they were all carried unanimously and a Committee was appointed to submit them to this Hon'ble Council. The third resolution runs as follows :—

'This meeting is of opinion 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, but 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 (with certain exceptions) up to Rs. 2,500, now tried by the High Court, and suits above Rs. 1,000, now tried by the Presidency Small Cause Court.'

"Two of the points here referred to—the qualifications of the Judge and the granting of an appeal from a Small Cause Court decree for more than Rs. 1,000—are to be considered, and will I hope be satisfactorily met, along with the amendment of the Presidency Small Courts Act. Neither of these is an essential part of the resolution, and in all other respects the Bill now on the table

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gives effect to everything desired by the resolution. Now, of course, I do not know whether the resolution which was submitted to us under Mr. Turnbull's signature expressed the real views of himself and his colleagues, or whether they merely agreed to it by way of compromise in order to get some other resolutions carried ; but I submit with confidence that in either case they are completely bound by it, and that it no longer lies in their mouths, unless a complete change of circumstances has taken place, either to say that no hardship, no denial of justice, exists, or to oppose the creation of the new Court which the resolution declares to be the proper remedy for that evil.

"There is just one other paper, my Lord, to which I ought to refer before I bring this already long speech to a close, and that is a letter from the Secretary to the European and Anglo-Indian Defence Association, dated 16th April last. In my speech at Calcutta I am afraid I passed over one of their suggestions rather too curtly, as I feared I was fatiguing the Council. It was one that certainly deserved further notice if I had not been abundantly satisfied that it would not apply to Madras, which was the only place in question. The suggestion is that the ministerial officers should relieve the Judges of some of their work, and that it would be cheaper to strengthen the ministerial staff of the High Court than to create another tribunal. This matter came under the consideration of the Madras High Court when I had the honour of being one of its Judges, and every sort of business which, in our judgment, could properly be entrusted to ministerial officers was so transferred by an order under section 637 of the Code. But from the further explanations now offered by the Association I gather that what they really mean to suggest is that a Master or Commissioner might be appointed to take accounts and conduct enquiries into other similar matters which might be specially referred to them by the Court from time to time. Whether this would be effectual in Calcutta or Bombay is more than I can say, but such an officer is certainly not wanted in Madras. If a Barrister, as is obviously intended, he would have to be paid at least as high a salary as the Judge of the City Court, and he would have but little work and would afford the Court very much less relief. There was an officer of this description some years ago, but it was found necessary to abolish the appointment, and there has been no such change of circumstances as to render it desirable to call it again into existence."

The Hon'ble SIR ALEXANDER MILLER said :—

"When this Bill was first introduced it contained a provision applying section 15 of the Civil Procedure Code to the Court about to be instituted,

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I confess that it appeared to me—apart from the very doubtful question whether it is or is not within the authority entrusted to this Council to interfere with the original jurisdiction of a chartered High Court—at any rate a proposition which involved very important and, as it seemed to me, very serious consequences. But my difficulty was entirely removed when my hon'ble friend Sir Philip Hutchins was willing to assent to a clause which expressly preserves all the jurisdiction of the High Court and merely establishes a Court alongside of it having a more limited jurisdiction and to which the Judges of the High Courts may themselves, if they think fit, refer cases which otherwise come within their jurisdiction. Strange to say, the only body which has expressed itself anxious that the jurisdiction of the High Court should be taken away are the Judges of the High Court themselves. The majority of the Judges of the Madras High Court have expressed a wish that the concurrent jurisdiction should be abolished, and that this City Court should be made the sole Court to have cognizance of cases which come within the jurisdiction given to it. However, I certainly, for one, could not, with the views which I hold, have assented to that course ; but it is rather singular that the Trades Association and the Chamber of Commerce, who now treat this Bill as an attempt to destroy the independence of the High Court, are more anxious for the retention of the High Court jurisdiction than the Judges of the High Court themselves. It seemed to the Select Committee that the criticisms which were offered by the bodies which I have mentioned were mutually destructive. The High Court Judges, as I have said, thought that it would have been better to exclude altogether the concurrent jurisdiction of the High Court in respect to suits of small value, and they say that course is preferable to an endeavour to keep them out of the High Court by what they call "penal" clauses. They seem to think that the sole reason for not excluding the concurrent jurisdiction of the High Court was to be found in an observation, entitled to very great weight, by Sir Henry Maine, which they proceed to combat ; but in point of fact, even if there had been no question of the right of this Council to interfere with the jurisdiction of the High Court—if the terms of the Act of Parliament had been so clear that no question could possibly arise—I, at any rate, should still have thought it very much better to retain the concurrent jurisdiction, because I consider that a plaintiff who is willing to pay for it has a perfect right to the services of the highest Judges in the land. I should take care that, if he chooses to go to a Court which involves more expense than the Court which might have given him the relief which he desires, he, and not his opponent, should pay for the luxury ; but I have a very strong feeling that we ought not to debar any man, who is willing to incur the additional expense, from the services of the highest Judges in the

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land with respect to any case however petty. The Madras Trades Association are very strong, indeed, in their opposition to any interference, however minute, with the original jurisdiction of the High Court, and, calling attention to the last paragraph of the last Report but one, they point out that if the Indian Legislature is incompetent to abolish the original jurisdiction of the High Court, it is also incompetent 'to enact a penal clause the effect of which must be to hinder suitors from resorting to the High Court in the exercise of its original jurisdiction;' and they go on to say that the result of the procedure established by this Bill will be that, in course of time, the original jurisdiction of the Madras High Court will be abolished altogether, and that it will become a mere Court of Appeal. I can only say that it appears to me that they cannot have read the provisions of the Bill which they were criticising. Under the Bill, any party who pleases is at liberty to bring in the High Court any suit which he might have brought if this Bill had never been introduced, and it is entirely in the discretion of the Judge of the High Court himself, before the case is tried, to say whether it is a case which ought properly to have been brought in the High Court, or which ought to have been brought in the City Court; and what they call the penal consequences mean nothing more or less than this, that the plaintiff, if he wishes for the luxury of an expensive Court, when, in the opinion of the Judge who tries the case, he had an adequate remedy of a less expensive kind, should pay for that luxury himself; while, on the other hand, the defendant has no cause of complaint at having to pay the full costs if the Judge who tries the case thinks that it was a proper one to be brought before the High Court. So far, indeed, from interfering with the independence of the Judges, we are giving them a new and independent discretion. It is not a new thing either, for this is exactly the discretion which late County Courts Acts have given to the Judges of the High Court in England, and I have never heard it suggested that the independence of that Court has been in any way interfered with by any modern legislation.

" On the other points of the Bill I am contented to leave the matter to the speech of my hon'ble friend Sir Philip Hutchins; but I would add this, that, as regards the suggestion made in some of the criticisms for relieving the Judges of the High Court by giving judicial powers to ministerial officers of that Court, the experiment was tried in England under the Bankruptcy Act of 1869, and was a most lamentable failure. I believe that any attempt of the kind would involve one of two things—either a constant appeal to the Judges to set right the mistakes of the ministerial officers, or the appointment of men far

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above the requirements of their ministerial duties to do the judicial work. There would be no beneficial gain in either case : in the first case, there would be a waste of time and money ; and, in the second case, it would be creating an unnecessarily expensive machinery to do the ministerial work, which ought to be done by a cheaper and totally different class of officers."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS moved that section 19 of Bill No. III (*as revised*) be omitted.

He said that he had explained in the course of his speech that the reason why this section was superfluous was because section 360A of the Civil Procedure Code distinctly stated that nothing in Chapter XX should apply to any Court within the local limits of the High Courts' original jurisdiction. The City Court was such a Court, and section 360A prevented the chapter of the Civil Procedure Code from applying to that Court. He, therefore, thought that the section was superfluous and should be omitted.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that in section 15, sub-section (2), line 3, of Bill No. III (*as revised*), after the word "for" the words "an appeal from" be inserted.

He said that the section as it stood ran as follows :—

"The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for a decree or order of the High Court in the exercise of its original jurisdiction."

He explained that the omission of the words which he proposed to insert was no doubt a printer's error, and that the meaning obviously was "an appeal from a decree or order of the High Court," &c. The insertion of the words would make the meaning of the sub-section more clear.

The Hon'ble SIR PHILIP HUTCHINS said that he accepted his hon'ble friend's amendment.

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

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LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved that the Bill to further provide for the administration of Towns in Lower Burma be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller and the mover, with instructions to report after a month.

The Motion was put and agreed to.

PORAHAT ESTATE BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to annex the estate of Porahat to the Singbhum District, and for certain other purposes. He said :—

"The estate of Porahat is a small estate which was confiscated in 1858, and apparently has been administered by the Deputy Commissioner of Singbhum ever since without any regular incorporation in the district. But Sir Charles Elliott is of opinion that it would be proper that it should be formally attached to the Lieutenant-Governorship of Bengal and put under the Deputy Commissioner as part of his district. A proclamation has issued formally annexing the estate to the Bengal Province, and now it is necessary to introduce a Bill for the purpose of making it part of the district. The Bill is drawn on the same lines as that which was enacted in 1886 in respect to Jhansi and Morar, and it is of a purely formal character."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Calcutta Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned *sine die*.

J. M. MACPHERSON,

SIMLA ;
The 12th August, 1892. }

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