Thursday,
16th March, 1893

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

Jan.-Dec., 1893

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1893

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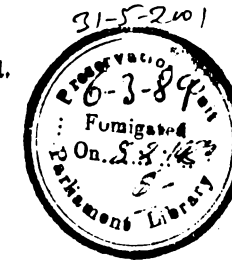

CALCUTTA
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1893

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 Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.

The Council met at Government House on Thursday, the 16th March, 1893.

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.
His Excellency the Commander-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, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Sir C. E. Pritchard, K.C.I.E., C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rashbehary Ghose.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Fazulbhai Vishram.
The Hon'ble C. C. Stevens.
The Hon'ble J. Buckingham, C.I.E.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble J. Woodburn, C.S.I.

CONSTITUTION OF LEGISLATIVE COUNCILS.

His Excellency THE PRESIDENT said:—"When, upon a recent occasion, I made a statement to the Council with regard to the procedure to be adopted under the Indian Councils Act of last year, in so far as that procedure had to do with the right of interpellation and of financial discussion, I said that it was out of my power, for the moment, to make any announcement as to the regulations affecting the nomination of Additional Members.

"I am glad to inform the Council that the difficulty which I then mentioned as having prevented the Secretary of State from giving his consent to our proposals, and which I shall presently explain, has been satisfactorily surmounted,

and I am now able to tell the Council how the matter stands, both in regard to the Local Councils and in regard to that which I have now the honour of addressing.

"It is, I think, important that we should have a clear idea at the outset of the extent to which these questions have been taken out of our discretion by the terms of the Act, and how far we are free to deal with them by means of the Rules which I am about to lay upon the table.

"In the first place, the maximum number of Additional Members has been, in all cases, fixed by the Act. In Madras and Bombay the present strength is represented by a minimum of 5 and a maximum of 9, including the Advocate-General. Under the Act, there is to be a minimum of 9 and a maximum of 21. The condition laid down in the Act of 1861, that one-half of the Additional Members must be non-officials, still remains in force.

"In the Bengal Legislative Council the present maximum number of Councillors is 12, and this figure is raised by the new Act to 20, subject to the old condition that one-third of the Additional Members must be non-officials.

"In the North-Western Provinces the present strength of Additional Members is 9, and the maximum under the Act is 15, of whom, as in the case of Bengal, one-third must be non-officials.

"These maximum numbers were fixed after much consultation with Her Majesty's Government and with the Local Governments concerned. It is, I think, clear that no one can take upon himself to lay down confidently that, in the case of legislative bodies like these, any one particular number is exactly appropriate. Our communications with the Local Governments, to which I have just referred, disclosed a certain amount of variety of opinion, although the divergence was within comparatively narrow limits. I may, however, say that when the question was first taken up—and Hon'ble Members will recollect that this Bill has been before Parliament for at least three sessions—we found a complete consensus of opinion on the part of all the Local Governments consulted in favour of the view that the Councils might, with advantage, be enlarged, and that it was desirable to increase their authority, and to give them a constitution under which they would be able to afford to the Provincial Governments a larger measure of assistance and support.

"There was another point upon which the consensus of opinion of the Local Governments was equally noticeable. It was felt by all of them that what was desirable was to improve the present Councils rather than to attempt to put in their place bodies comprising a large number of persons, and possessing the attributes of Parliamentary assemblies of the European type. It is a little remarkable that, although the measure was, as I said just now, during three successive sessions before Parliament, no serious attempt was, to the best of my belief, made to substitute largely increased numbers for those which are mentioned in the present Act and in the Bills introduced in preceding sessions.

"Another provision of the Act which requires to be specially considered, in addition to those which have reference to the numbers of the Additional Members, is the provision which has reference to the manner in which they are to be nominated. It is laid down in section 1 (*4*) that the 'Governor General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor General, Governors and Lieutenant-Governors respectively, and prescribe the manner in which such regulations shall be carried into effect.'

"It is under this section that the regulations to which I am about to refer have been made.

"Now, it will not escape the attention of the Council that, under the words which I have quoted, the responsibility for these nominations remains with the Governor General and the heads of the Local Governments concerned, and the Secretary of State, in forwarding the Act to us officially, was careful to point out that 'the ultimate nominating authority still rests with those to whom it was entrusted by the Statute of 1861, and that the responsibility attaching to the careful exercise of this authority by no means diminishes as the number of non-official Members increases, and as the scope of their attributes is enlarged.'

"It was, however, clearly understood, throughout the discussion of the measure, that, subject to this ultimate responsibility, the authority upon whom the duty of making the nomination was thus cast should be encouraged to avail himself, as far as the circumstances permitted, of the advice and assistance of any public bodies whose character and position rendered it likely that they could be consulted with advantage. I will read to the Council the words in

which this part of the subject was dealt with by the Secretary of State. Writing on the 30th June, 1892, he says—

'It appears to me probable, nevertheless, that the diffusion in the more advanced provinces of education and enlightened public spirit, and the recent organization of local self-government, may have provided, in some instances, ways and means of which the Governments may appropriately avail themselves in determining the character that shall be given to the representation of the views of different races, classes and localities. Where Corporations have been established with definite powers upon a recognised administrative basis, or where Associations have been formed upon a substantial community of legitimate interests, professional, commercial or territorial, Your Excellency and the local Governors may find convenience, or advantage, in consulting, from time to time, such bodies, and in entertaining at your discretion an expression of their views and recommendations with regard to the selection of Members in whose qualifications they may be disposed to confide.'

"There can be no doubt, I think, that the language thus used by the Secretary of State reflected the general feeling on both sides of the British Parliament. It would be easy to multiply quotations, but I will content myself with referring to the important statement made during the course of the debate on the second reading by Mr. Gladstone, who, the Council will remember, was then leader of the Opposition.

"He pointed out that the only reasonable interpretation which could be put upon the clause giving the Governor General power, not only to nominate Additional Members, but to make regulations as to the conditions under which they were to be nominated, was an interpretation which assumed that something was meant 'beyond mere nomination.' 'The speech of the Under Secretary,' he said, appeared to him 'to embody the elective principle in the only sense in which we should expect it to be embodied. My construction of the Under Secretary's speech is that it implies that a serious effort should be made to consider carefully those elements which, in the present condition of India, might furnish material for the introduction into the Councils of the elective principle.' Towards the commencement of his speech Mr. Gladstone had pointed out that the proposals of Her Majesty's Government were apparently intended 'to leave everything to the discretion, judgment and responsibility of the Governor General and the authorities in India,' and, after dwelling upon the difficulty and responsibility of the task, he added: 'I am not disposed to ask of the Governor General or of the Secretary of State that they shall at once produce large and imposing results. What I wish is that their first steps shall be of a genuine

nature, and that whatever scope they give to the elective principle shall be real.'

"I should like at this stage to dwell upon the fact that the Government of India, ever since I have had the honour of being connected with it, while it has insisted upon the ultimate responsibility of the Government for these nominations, has constantly urged that any Bill which might be passed should render it possible for the Governor General, and for the heads of the Local Governments, to have recourse to the advice of what, for the want of any more convenient expression, I will describe as 'suitable constituencies.'

"I will venture to quote to the Council an extract from a Despatch sent home by us as long ago as the 24th December, 1889, in which we placed on record our opinion that it would be 'well that the measure about to be laid before Parliament should not absolutely preclude us from resort to some form of election where the local conditions are such as to justify a belief that it might be safely and advantageously adopted.'

"We went on to say that 'we should have been glad if the Bill had reserved to us authority to make rules from time to time for the appointment of Additional Members "by nomination or otherwise," and we should have considered it sufficient if the consent of Your Lordship in Council had been made a condition precedent to the validity of such rules. Such an enactment would have provided for the gradual and tentative introduction of a carefully guarded mode of electing Additional Members.'

"I am glad to have had the opportunity of referring to what we said upon this occasion, because I have seen it not unfrequently stated that the Government of India had strenuously opposed the introduction of anything approaching to the elective principle into the Bill, and that we had accepted it reluctantly and under pressure.

"These, then, are the conditions under which we are called upon to frame regulations for the appointment of Additional Members. I think the first observation which it would occur to any one to make would be that, given legislative bodies of the dimensions prescribed for us, or of any dimensions approaching to those laid down in the Act, it would be altogether hop less to attempt the introduction of a representative system in the sense in which the words are understood in Western communities. How, for instance, would it be possible in a province like that of Bengal, with a population of 70 millions, to allot the handful of seats at our disposal so as to divide

the country, either in respect of geographical areas, or in respect of the different communities which inhabit it, in such a manner as to distribute the representation equitably, or to make it really effectual? And I am bound to admit that, to the best of my belief, even those who are credited with opinions of the most advanced type upon Indian political questions have carefully guarded themselves against being supposed to claim for the people of India any system of representation closely imitating the Parliamentary systems of Western Europe.

"We are met, moreover, with this difficulty that, in many parts of India, any system of election is entirely foreign to the feelings and habits of the people, and that, were we to have recourse to such a system, the really representative men would probably not come forward under it.

"Upon a careful review of the whole matter, and of the contents of the Act, as well as of the circumstances under which it had been introduced and passed into law, it appeared to us that the mandate under which we were called upon to act might be summarised in the four following propositions:—

(1) It is not expected of us that we shall attempt to create in India a complete or symmetrical system of representation.

(2) It is expected of us that we shall make a *bona fide* endeavour to render the Legislative Councils more representative of the different sections of the Indian community than they are at present.

(3) For this purpose we are at liberty to make use of the machinery of election wherever there is a fair prospect that it will produce satisfactory results.

(4) Although we may to this extent apply the elective principle, it is to be clearly understood that the ultimate selection of all Additional Members rests with the Government, and not with the electors. The function of the latter will be that of recommendation only, but of recommendation entitled to the greatest weight, and not likely to be disregarded except in cases of the clearest necessity.

"It is in this light that the question has been considered and discussed by us with the Local Governments. We do not believe that the seats placed at our disposal can be distributed according to strict numerical proportion, or upon a symmetrical and uniform system. We do not believe, to use Mr. Gladstone's

words, that, under the Act, 'large and imposing results' are to be at once obtained, but we do believe that, by having resort to sources other than the unassisted nomination of the Government, we shall be able to obtain for these Councils the services of Members who will be in the truest sense representative, but who will represent types and classes rather than areas and numbers.

"We believe that it should not be beyond our power to secure in this manner for the Government the advice and assistance of men connected with different parts of the country, thoroughly aware of the interests and wishes of their countrymen, and able to judge of the extent to which those interests are likely to be affected by any measure of legislation which may be proposed. If we can obtain men of this description, not by selecting them ourselves, but by allowing the great sections of the community a voice in the matter, we believe that the persons selected will bring to our deliberations a very much greater weight of authority than they would have possessed had we been content to rely upon nomination alone.

"It would be impossible for me, within the limits of such a statement as I desire to make this morning, to explain in detail the rules as they will affect each of the four Local Governments concerned. I may say, however, that in each case we have provided by our Rules for the appointment of a number of non-official Additional Members in excess of the minimum determined by the Act, and also that we propose to use at once to the utmost the power of increasing the number of Additional Members in Bengal and the North-Western Provinces, by proclaiming the full maximum allowed under the Act. And I may here explain, in order to avoid misapprehension, what was the nature of the difficulty to which I referred just now, and also upon a former occasion, as having prevented the Secretary of State from at once giving his consent to our scheme as it stood. It was this: we had proposed that officials should be ineligible for 'election,' or, to use the strictly correct term, for 'recommendation.' A doubt, I believe, arose as to the legality of this exclusion. The legal point was eventually decided in favour of the rule as we had framed it, but, on a full consideration of the case, the Secretary of State in Council came to the conclusion that it was not proper that the whole official class should be subjected to such a disability, and the omission of the rule was consequently proposed by His Lordship and agreed to by us.

"It may, perhaps, interest my hearers if, as an illustration of the manner in which the new Rules will operate, I mention the leading features in the Bengal scheme.

"We have provided that, out of the 20 Councillors who may be nominated under the Act, not more than 10 shall be officials. Under the Act at least one-third of the Additional Members must be non-officials. This would give the Bengal Council 7 unofficial Members. Under the Rules there will be 10, and of these 7 will be nominated by the Lieutenant-Governor on the recommendation of the following bodies and associations :—

A.—The Corporation of Calcutta ;

B.—Such Municipal Corporations, or group or groups of Municipal Corporations, other than the Corporation of Calcutta, as the Lieutenant-Governor may from time to time prescribe by notification in the Calcutta Gazette ;

C.—Such District Boards, or group or groups of District Boards as the Lieutenant-Governor may from time to time prescribe as aforesaid ;

D.—Such Association or Associations of merchants, manufacturers or tradesmen as the Lieutenant-Governor may from time to time prescribe as aforesaid ;

E.—The Senate of the University of Calcutta.

"We have provided that each of the above groups shall (except as hereinafter provided in Rule VII) have at least one Councillor nominated upon its recommendation, but that the Corporation, the Mercantile Associations and the Senate shall have not more than one each.

"It is, however, further provided that the Lieutenant-Governor may nominate to such of the remaining seats as shall not be filled by officials, in such manner as shall, in his opinion, secure a fair representation of the different classes of the community, and that one seat shall ordinarily be held by a representative of the great landholders of the province. It was in our belief absolutely necessary that a part of the seats at our disposal should be reserved in this manner, and filled up by nomination pure and simple. Only by such a reservation was it possible to provide for the representation of those sections of the community which, although sufficiently important to claim a voice in our deliberations, happen to be in a minority, and therefore unable to secure by means of their votes the return of a Member acceptable to themselves. Members thus nominated, although not owing their nomination to the suffrages of their follow-citizens, will, we hope, be regarded as distinctly representative of the class from which they are taken.

"It is also laid down that it shall be a condition in the case of any person recommended by a Municipal Corporation, or group of Municipal Corporations, that he shall be a person ordinarily resident within the Municipality of the district in which it is situated, or in some one of the Municipalities constituting the group, or of the districts in which they are situated. A similar condition is laid down with reference to persons recommended by District Boards.

"There are other provisions relating to matters of detail, but I do not think it necessary to trouble the Council with them, as the Rules will be published forthwith.

"The Rules for Madras and Bombay, and for the North-Western Provinces and Oudh, differ in some particulars, but are conceived in the same spirit. These also will be published without loss of time.

"It remains for me to say a few words with regard to the manner in which it is proposed to deal with the Council which I have the honour of addressing.

"The Government of India has, from the first, held that the reform of the Viceroy's Council must, to some extent, be dependent upon, and subsequent to, that of the local Councils. It seemed to us that, if the difficulty of obtaining an effectual system of representation was great in the case of the local Councils, it must, *á fortiori*, be greater still in the case of a Council entrusted with the duty of legislating for the whole of India, and, in our belief, the strongest argument in favour of dealing, in the first instance, with the local Legislatures was that we were likely to find in them, when they had been strengthened and reformed, the most convenient electoral bodies for the purpose of choosing a part at all events of the Additional Members who will be appointed to the Legislative Council of the Viceroy.

"This view found much acceptance in Parliament. In his speech in the House of Lords on March 6th, 1890, Lord Northbrook said—'For the present he would not be disposed to go further in respect of the Supreme Council except, perhaps, to allow a selection by each of the subordinate local Legislatures.'

"In the same debate Lord Ripon remarked that 'he was glad to concur with his noble friend who had just spoken' (Lord Northbrook) 'in the expression of a desire to see the elective or representative element introduced into those Councils. If that step were taken, it would be desirable to introduce the

same element into the Council of the Governor General, very likely in the manner suggested, by selection from the local Councils.'

"We have made a proposal of this kind to the Secretary of State. The maximum number of Additional Members who can be nominated to the Governor General's Council is 16. Of these at least 8 must, under the Act, be non-officials. We have recommended that there shall be 10 non-officials. We have suggested that 4 of these might be selected and recommended to us by the local Legislatures of the four Provinces having local Councils, that one at least would be required to represent the interests of commerce, and that one might perhaps be chosen from the Calcutta Bar. We propose that the discretion of the Viceroy with regard to the sources from which the remaining 4 might be obtained should be interfered with as little as possible. There may be found in those provinces which do not possess Legislative Councils certain classes and sections of the community so far accustomed to collective action in the promotion of their common interests that they would be qualified to unite in submitting a recommendation in respect of any seat which the Governor General may desire to fill up from a particular province, and we have been in communication with the Governments of these provinces upon this subject. It is, however, clear that whatever arrangement may be made with this object should be as elastic as possible. We might, for example, find from time to time that the consideration of some particular measure requires the presence in this Council of a Member specially conversant with the subject, or with the territories which the contemplated legislation will affect, and this contingency must certainly be provided for in the case of those provinces which have no local Legislatures, and for which such legislation as is required must be undertaken in the Council of the Governor General. We do not, therefore, in the case of these provinces see any necessity for such detailed rules for the submission of recommendations as have been proposed for the local Councils. We shall, however, endeavour as far as possible, in the event of a Member being required for this Council from any of the four provinces not having local Councils, to give that Member, by resorting as far as possible to the system of recommendation, a more representative character than would attach to him if he were arbitrarily selected by the head of the Government.

"This is the Scheme which, in so far as this Council is concerned, we have submitted to the Secretary of State in terms closely corresponding to those of which I have now made use. We shall at once embody our proposals in a set of rules which will be forwarded for the final sanction of Her Majesty's Government. I have every hope that rules will have been agreed to and will be in operation before the next Calcutta session.

1893.] [*The President*; *Mr. Fazulbhai Vishram*; *Sir Philip Hutchins.*]

"I have now explained, as far as is necessary, the procedure which will be followed in giving effect to both portions of the Indian Councils Act. It is not unlikely that our proposals will disappoint the expectations of those who would gladly see us travel further and faster along the path of reform. We claim, however, for the changes which we have been instrumental in procuring that they will, beyond all question, greatly increase the usefulness and the authority of these legislative bodies. We are able to show that the number of Additional Members has been materially increased; that we have considerably widened the functions of the Councils by the admission of the right of interpellation and the discussion of the Financial Statement; and, finally, that we shall no longer rely on nomination, pure and simple, for the selection of Additional Members. These are all substantial steps in advance. I hope the Government of India will have the assistance of all concerned in carrying out the Rules in such a way as to secure in the most effectual manner the objects with which they have been framed. It is highly probable that experience will suggest improvements in matters of detail, and I need not say that, in so far as we are not bound by the limits indicated in the Act, we shall be glad to consider the Rules as to some extent experimental and tentative, and that we shall welcome any suggestions which may be offered to us for the purpose of making them work as satisfactorily as possible."

QUESTION.

The Hon'ble MR. FAZULBHAI VISHRAM enquired whether the Government of India contemplate any arrangement regarding the emigration of Indian labourers to Australia, and, if so, whether such emigration will be subject to the provisions of the Act (XXI of 1883 as amended by Act XVIII of 1890) that applies to the emigrants proceeding to the Mauritius, Bourbon and the West Indies, or whether some other, and, if so, what, measure or measures are proposed to be adopted for the protection of the labourers in question.

The Hon'ble SIR PHILIP HUTCHINS replied:—"The only Australian colonies from which applications for Indian labour have at any time been received are Queensland and South Australia.

"Negotiations for importing Indian coolies into Queensland and the Northern Territory of South Australia were opened as long ago as 1881, but, so far as Queensland is concerned, the project was abandoned two years later. The Government of South Australia went so far as to pass, in consultation with the Government of India, an Ordinance for controlling Indian emigration, but

nothing was done to bring it into practical operation, and the Government of India heard nothing further till 1891, when an amending Ordinance was received from the Colonial Government. By this enactment a provision in the earlier measure, which required the appointment of an Immigration Agent-General or Protector of Emigrants, was repealed. The Government of India objected to the alteration and informed the Colonial Government that they regarded this condition as essential for the well-being of the emigrants, and would be unable to legalize emigration to the Northern Territory unless an Indian officer, acquainted with the language and habits of Indian coolies, were accepted as Protector.

" No further official communication has been received on the subject, and there has been no emigration up to date. Should emigration to any of the Australian colonies ever be established, it will probably be brought under the Indian Emigration Act, XXI of 1883, and it will be necessary to make some such arrangements for the protection of the coolies as prevail in British Guiana, the emigration laws of which were generally followed in the preparation of the South Australian Ordinance."

PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER asked for leave to postpone his motion that the Bill to amend the Presidency Small Cause Courts Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Mr. Woodburn, the Hon'ble Mr. Mackay, the Hon'ble Dr. Rashbehary Ghose, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Fazulbhai Vishram and the mover. He said :—

" I had hoped at the time when giving notice of this motion that all the papers connected with the Bill to which it refers would have been in before now ; that there would have been time for the Select Committee to consider the various objections which have been taken to the Bill as it stands, and to present a Preliminary Report before the end of this session. Although I never intended to propose to pass the Bill during this session, I thought that a preliminary report such as that to which I have referred would probably be of very great assistance both to those in charge of the Bill and to those officers and persons who might desire to criticise it. I found, however, that for want of the proper materials no such preliminary report

as I desired would really have the effect for which I wanted it, and that therefore I should merely be giving a certain amount of trouble to a number of gentlemen who have something else to do if I were upon this occasion to ask them to meet as a Select Committee. I propose, therefore, simply for the present to announce that I will, so far as I can, endeavour, before we meet again next cold weather, to examine all the criticisms which may be made on the Bill, so as to be in a position then to lay it before the Select Committee with the fullest information as to what the feelings and wishes of the classes who may be affected by the Bill will be. I may, however—as I think it will tend to clear the air, and as every one must be aware that the Government of India can have no object in bringing forward a Bill of this kind, except to supply the mercantile classes of the country with the most satisfactory tribunal which the nature of the circumstances will permit—I may, I say, for that reason explain, as regards the only two points which, as far as I know, have been made the subject of animadversion, the opinion which I hold (I can speak positively for myself, but not for any one else), and which I think is the generally accepted view, on the subject of those two points.

"The first of those points is the qualification of the Judges. As the present Small Cause Court stands, one-third of the Judges—that means two, because there is no case in which there are more than six—two of the Judges in each Court must be advocates of some one of the High Courts in India; or as I saw it put, and very properly put, the other day in one of the notes that came before me, they should be taken from the ranks of the practising Bar; but for the remainder, three or four, as the case may be, there is absolutely no qualification whatever prescribed, and it would be within the power of the nominating authority to nominate to those Judgeships any person whomsoever. I do not suppose it would be likely that any person having absolutely no qualification would be appointed; but unquestionably it is possible, if not probable, that the qualifications selected might be very deficient, and therefore I do think it extremely important that a professional qualification of some kind or other should be laid down for every person who is to be appointed a Judge of a Small Cause Court. Whether the particular qualifications mentioned in the Bill are the best I do not pretend to say. They have been laid down partly with reference to existing practice, and partly with reference to the qualification required for the Judges of the High Court, but I should be quite prepared to accept any modification of those qualifications which the Select Committee, when it meets, or

this Council at large, should consider desirable; and the question whether the special qualification of being a practising barrister should be confined to the Chief Judge alone, or should extend, as now, to one-third of the Judges in each Court, is one as to which I am absolutely indifferent. If it be considered desirable that this special qualification should continue to apply, as it does at present, to one-third of the Judges in each Court, I for one have no objection whatever to it. It is, I admit, a thing which is, as far as I know, unique, that there should be any exceptional qualification for some among the puisne Judges in any Court, or that there should be any difference whatever between the second and the last Judge, except that which necessarily arises from the difference in date of their appointments; but, if it is thought desirable that such a difference should continue, I have no reason whatever to oppose it, and certainly would not oppose it.

"The other point is one, perhaps, of a little more difficulty. The history of all these Small Cause Courts has been the same; and in saying this I am not speaking only of the Small Cause Courts of India, but of the County Courts in England, the Civil Bill Courts in Ireland, and the corresponding Courts in France. In every case they have been originally intended to give a cheap, ready and not particularly discriminating remedy for the collection of small debts. In every case it has been found that wherever you attempted to draw a line as to the extent of the jurisdiction of these Courts the attempt had failed, and that there were always cases just a little above the jurisdiction, undistinguishable in principle from those just within it, and then the jurisdiction had to be extended and the line drawn a little higher; and so on. Thus, to take as a fair illustration the County Courts in England, established forty years ago with a maximum jurisdiction of £20 and an exclusive jurisdiction of £5, these have grown until they have now in some respects an unlimited jurisdiction, in some they go as high as £300, in all cases as high as £100, whilst the jurisdiction to be exercised without appeal extends up to £20 in all cases in which no interest in land is affected, except with leave of the Judge; but where the Judge gives leave, or where land is affected, you have an appeal given in every case down to the lowest. Well, the same thing precisely has happened in India, and Courts which, when originally established, were intended for the recovery of what I am surprised to find are regarded as small causes here have had their jurisdiction gradually extended. I certainly should never have looked upon a case involving Rs. 1,000 as a small cause, but having been established with a jurisdiction up to Rs. 1,000, they have been extended and now they have a

jurisdiction up to Rs. 2,000. Further, there is from the Small Cause Court no direct appeal; but there is a curious complicated clause—I have seen it described as a hateful clause—by which a kind of revision can be effected by invoking the interference of the High Court—more expensive, more cumbrous and less efficacious than an appeal. Whatever may happen in other respects, in my opinion, that power of revision, which is sanctioned I believe by clauses 38, 39 and 40, ought to go. They cannot, in my opinion, ever work well, and, whether anything is substituted for them or not, I consider that they ought not to stand. It will be perfectly understood that the power of revision which the High Courts have under a clause in their Charter would be absolutely unaffected by the removal of those clauses. I have on another occasion expressed a strong opinion that, whether we have a right or not—and that is a subject on which I decline to express any opinion—to interfere with the original civil jurisdiction of the High Court under its Charters, we ought not in any case to interfere, and so far as I am concerned I do not propose to interfere, with the original jurisdiction of the High Court.

"But on the other question I am perfectly clear—that there is no Judge living, from the Lord Chancellor of Great Britain downwards, who ought to be entrusted with authority to decide a question involving Rs. 2,000 without an appeal. Whether the matter should be settled by restricting the jurisdiction to Rs. 1,000, or by giving, as the Bill proposes, an appeal in cases of value between Rs. 1,000 and Rs. 2,000, or, in the manner I have heard suggested, by giving concurrent jurisdiction in cases between Rs. 1,000 and Rs. 2,000, allowing the defendant an absolute right to remove such cases into the High Court if he pleases, and barring him of any appeal if he chooses to consent to the case remaining in the Small Cause Court—any of these solutions of the question I should be willing to assent to. But to leave a Court with power to dispose of cases involving £150 or thereabouts in value in a single hearing, and at the discretion of a single man, I consider would amount to a failure of justice. My own view would be that every cause, however small, should be appealable; and I may mention as an illustration that the most hotly contested case in which I was ever concerned—one which was heard on five different occasions, and which twice went to the Court of Appeal in England,—was one in which the value of the cause, estimated as causes are valued in India, was twopence—the case of *Brown* versus *The Great Western Railway Company*. But, as I have said, my sole desire is that these Courts should be made as efficient for their purpose as the means at our disposal will permit, and, if the classes who are most interested in these causes would think it better to limit the jurisdiction

to the original sum of Rs. 1,000, abolishing all appeals, and all revisions except such as come under the 26th clause of the Charter of the High Court, I should be perfectly willing to acquiesce. Questions of that kind I should desire to leave to the discretion of the Select Committee, and I should wish to put upon that Committee every one who would be interested in the matter and capable of giving an opinion upon the points in issue. In the meantime I propose, when I have got the opinions already asked for on the Bill, to give such publicity to these as I reasonably and properly can, in order that the whole question may be thought out, and that I may get as much assistance as possible from the parties interested, so that by the time we meet next cold weather I may be able to get the Bill into a form in which it will be generally acceptable."

The Hon'ble SIR PHILIP HUTCHINS said:—"Although I am not strictly in order in offering any remarks with regard to the statement just made by the Hon'ble Sir Alexander Miller, I think the Council will be glad to know that the postponement of this Bill till next cold weather will not cause any serious administrative inconvenience. Hon'ble Members are aware that the Bill arose originally out of complaints that the Calcutta Court was not getting through its work in a satisfactory manner; there were great delays and constant adjournments, entailing heavy expense on litigants. I am in a position to say that there is no longer any ground for complaint in this respect. The report on the working of the Court during last year reached me a few days ago, and it shows that the duration even of contested suits has been reduced to two months, while uncontested cases are now disposed of, on an average, in twenty days, which is just half the time occupied in Madras and Bombay."

Leave to postpone the Motion was granted.

INLAND EMIGRATION ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented the Report of the Select Committee on the Bill to amend the Inland Emigration Act, 1882.

The Council adjourned to Thursday, the 23rd March, 1893.

J. M. MACPHERSON,
Offg. Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 22nd March 1893.

S. G. P. I.—No. 385 L. D.—17-5-18.—50.