

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 7

JAN. - APRIL

BOOK NO 1

1868

ABSTRACT OF THE PROCEEDINGS

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1868.

WITH INDEX.

VOL. VII.



Published by the Authority of the Governor-General.

CALCUTTA:
OFFICE OF SUPERINTENDENT OF GOVERNMENT PRINTING
1869.

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor-General of India,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.
1868.

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 Government House on Friday, the 3rd January 1868.

P R E S E N T : .

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

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

The Hon'ble G. Noble Taylor.

The Right Hon'ble W. N. Massey.

The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble E. L. Brandreth.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. Skinner.

The Hon'ble Steuart Gladstone.

The Hon'ble Prasanna Kumára Thákúr, C. S. I.

The Hon'ble Khwája 'Abd-ul-ghani.

The Hon'ble Khwája 'Abd-ul-ghani made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

PEPPER DUTY (COCHIN) BILL.

The Right Hon'ble MR. MASSEY, in moving for leave to introduce a Bill to amend Act No. III of 1861 (to provide for the collection of duty of customs on pepper exported by sea from the British port of Cochin), said that in the year 1861 the Native States of Travancore and Cochin had thought fit to give up the monopoly on pepper, and to impose, instead, a duty on all pepper exported from their ports; but the good intentions of those Governments would have been entirely frustrated if the British ports in those States were continued to be maintained as free ports. The British Government therefore, by arrangement, undertook to levy the same duty on pepper exported from the British port of Cochin as was levied in the ports of the Native States. The British Government had no interest whatever in the matter, and merely collected the duty for the purpose of making it over to the Native Governments after deducting the cost of collection. No provision was made in Act No. III of 1861 for effecting

a corresponding reduction of duty in the British port of Cochin in the event of the Native States reducing the rate of duty on the export of pepper. It was considered by the Government of the day preferable to provide for such a contingency when it should arise by legislative enactment. The contingency had now arisen, for the Native Governments had reduced the export duty leviable in their ports from fifteen rupees to nine rupees, and they had now requested the Government of Madras to move the Supreme Government for an Act of the legislature to effect a corresponding reduction of the export duty leviable in the British port of Cochin. This the Government of India had no objection to do, and the object of the Bill was simply to make the export duty at the British port correspond with the reduced rate now levied by the Native States; but as it was to be hoped that, in course of time, there would be a still further reduction of that duty, provision had been made in the Bill to enable the Government of Madras, by order in council, to make further reductions corresponding with any future reductions which the Native Governments might find it to their interest to make. The Bill was founded on the principle of the comity of nations, the British Government being desirous not to defeat the fiscal arrangements of neighbouring Native States with which they were in amity.

The Motion was put and agreed to.

PANJAB APPEALS' BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to amend the law relating to appeals in the Panjáb and its dependencies, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that he had obtained leave at the end of last session to bring in this Bill. The principal object which he had in view was to correct a mode of procedure relating to appeals which had been introduced into the former system by one of the provisions of the Panjáb Chief Court Act, No. IV of 1866, and had given rise to much perplexity and inconvenience; for while, by the civil procedure in force in the Panjáb, a regular appeal was allowed from each lower Court to the Court next above it, through all the grades of Courts, section 17 of the Panjáb Chief Court Act provided that all special appeals from the decrees of Civil Courts, of whatever grade, should lie to and be heard by the Chief Court only, and not by any other Court. Now a regular appeal, as most of the Members of the Council were doubtless aware, was an appeal in which both law and facts might be questioned; while a special appeal, according to the Code of Civil Procedure, only took place when points of law were in dispute, and lay only from a decision passed in regular appeal. But by the Panjáb appeal system, there was no such thing as a special appeal: the

whole case might be re-opened, either on a second or even third appeal, according to the interpretation put by the Chief Court, upon the conflicting provisions of the Panjáb appeal system and section 17 of the Panjáb Chief Court Act, in a circular issued by the Court on the subject. If the points in dispute related to both law and facts, or to facts only, the appeal from the decision of the lowest appellate Court—that of the Deputy Commissioner—lay to the Court of the Commissioner, but if the points in dispute related to law only, then the appeal lay to the Chief Court; but instead of being presented in the first instance to the Chief Court, it had to be presented to the Commissioner, who was required to consider the grounds urged in the appeal, as to whether the appeal was one which lay to the Chief Court under the conditions which he had described, and if so, he must forward it to the Chief Court for decision. The Council, Mr. BRANDRETH had no doubt, would easily understand the inconvenience and unreasonableness of such a mode of procedure. He had stated, when he moved for leave to introduce the Bill, that the object he had in view might be obtained by extending the appeal chapters of the Code of Civil Procedure to the Panjáb, but that he could not undertake to advocate such a measure, because it was opposed to the opinions both of the Lieutenant Governor of the Panjáb and the Chief Court. All that he proposed, therefore, was to alter the wording of section 17 of the Panjáb Chief Court Act to the extent only that might be necessary to remedy the anomalous and inconvenient procedure to which it had given rise.

But since he obtained leave to introduce the Bill, the Chief Court had addressed to the Local Government a letter dated the 5th July, suggesting that the sections of Acts No. VIII of 1859 and No. XXIII of 1861 relating to appeals and special appeals, which were excepted from those Acts on their extension to the Panjáb in September 1866, should, by an Act of the legislature, be extended to the province, subject to certain modifications stated in the letter. A copy of the Chief Court's letter was forwarded to the Supreme Government by the Local Government, and the Supreme Government in reply gave its consent to the proposals of the Chief Court. But though the Supreme Government consented, it said that it would have preferred that the appellate system of the Code of Civil Procedure should be introduced into the Panjáb in the form in which it had been introduced into Oudh and the Central Provinces, but if the modifications to which the Code of Civil Procedure had been made subject in Oudh were compared with the provisions of this Bill, it would be seen, he thought, that the Oudh modifications were, practically, not only a much wider departure from the appeal system of the Regulation Provinces, than the provisions of this Bill would be, but that they were more retrograde from that system in a very important respect even than the existing appeal procedure

of the Panjáb. By the particular modification adopted in Oudh, to which he referred, it was provided that any appellate Court might at any time within one year call for the judgment or proceedings of any Court subordinate to it, and revise and alter, or reverse or confirm the same, without any regular appeal or application for review having been preferred. Now it seemed to him that a greater latitude had thus been given to appeal, and a greater element of uncertainty introduced into the proceedings of the Courts, than was occasioned by anything that had been done in the Panjáb. For one whole year, without having received any warning, every decree-holder in Oudh must remain in vague uncertainty as to whether the decree he had obtained was of any value whatever.

The decrees of both subordinate Courts of first instance and subordinate appellate Courts were liable to be set aside by a superior Court without any regular appeal having been preferred, the dissatisfied party not being required to pay anything whatever in the way of stamp-duty.

The greater part of the Bill was taken up with giving effect to the proposals of the Chief Court. These proposals, besides having the effect of getting rid of the anomalous distinction between regular and special appeals, introduced by the Panjáb Chief Court Act, had the further advantage of assimilating to a great extent the appeal procedure for the Panjáb to that which had been prescribed for the other provinces of the empire. The proposals of the Chief Court in fact only modified the appeal system of the Code of Civil Procedure in two respects. One modification was dealt with in the sixth section of the Bill, which provided that "if the lower appellate Court should have reversed or modified the decree of a Court of original jurisdiction upon any other than a preliminary point, a second regular appeal should lie to the Chief Court, or the Court of the Commissioner, as the case might be." He was not quite satisfied himself as to the necessity for the retention of this part of the existing appeal system. It seemed to him that an appellate Court might be quite as liable to err in upholding the decision of a lower Court upon a question of fact, as in setting it aside; indeed that it would hardly set it aside without great deliberation, and without being perfectly satisfied that the decision was erroneous. He trusted, however, that the provision contained in this section would be allowed to stand for the reasons stated by the Court in its letter to the Local Government to which he before adverted, that the Court was averse to introduce the sudden change into the appellate system of the province, which would be the result of the acceptance of the appeal provisions of the Code of Civil Procedure in their entirety.

The only other modification of the appeal system of the Code of Civil Procedure proposed, and which was in accordance with the existing Panjáb system,

was that contained in the eighth section of the Bill, which provided in effect that any appeal might be rejected without summoning the respondent. This was a provision in an opposite direction to the last, and in fact it seemed to him it did more to check the evil of appeals in the Panjáb than anything contained in the Code of Civil Procedure would do. A similar provision was contained in the Code of Criminal Procedure, which allowed an appellate Court to reject an appeal without calling for the proceedings of the lower Court. This provision was a departure from the rules of the Civil Procedure Code, which required that a notice should be served on the respondent in every appeal case, but was justified, he thought, by the different circumstances of the Panjáb as compared with those of the North-Western Provinces and Bengal. It appeared from the general report on the administration of the Panjáb territories for the year 1866-67, which he had there, that the number of civil suits instituted was more than the number of civil suits in 1865 in the Bengal, Oudh and Central Provinces put together, that it was more than twice the number instituted in the North-Western Provinces; in other words, while in the Central Provinces, in 1865, there was one suit instituted to 200 persons, in Bengal one suit to 320 persons, in Oudh one suit to 390 persons, in the North-Western Provinces one suit to 403 persons, in the Panjáb there was one suit to every 90 souls. It appeared also that the average value of each suit in the Panjáb was only rupees 52, whereas in Bengal the average value was rupees 883, and in the North-Western Provinces rupees 873. The excessive litigiousness which characterized the Panjáb, and the very small average value of the suits instituted, were, he thought, reasons sufficient to justify the existing rule which allowed of the rejection of appeals without summoning the respondent, and had been retained in this section. In accordance with this rule, he found that, last year, no less than 919 appeals, or 71 per cent. of the total number disposed of by the Chief Court, were rejected without the respondent being summoned, while more than double that number were rejected by the appellate Courts of the Commissioners and Deputy Commissioners. Now it was not to be supposed that a Court presided over by Judges so learned as those Judges who had been selected to fill the highest judicial office in the province must necessarily be—and one of whom at any rate, Mr. Justice Boulnois, the Barrister Judge, could have had no predilection for the Panjáb system of appeal—would have given such extensive effect to this rule, the application of which was entirely optional, unless they had been satisfied that it was a beneficial rule, and it might easily be understood what a relief this rule must give to some thousands of persons every year, from their not being summoned a second time before the Courts where their cases had already been once decided, in accord-

ance with any mere formal procedure, when their presence was not really required. In order, however, to prevent any difference in civil procedure between the Panjáb and the rest of the empire being perpetuated, if it should not be required by the future circumstances of that province, it had been provided in the second section that the Act should only continue in force for five years. No accurate estimate could probably be formed of the effect which this Bill, if it became law, would have on the number of appeals, nor could he say whether or not his Right Hon'ble friend Mr. Massey would ultimately have to provide for the salaries of any additional Chief Court Judges. By the existing system, an appeal lay to the different appellate Courts in their order of jurisdiction; to the Deputy Commissioner from the Tahsildár and Assistant Commissioner with ordinary or special powers; to the Commissioner from the Assistant Commissioner with full powers and the Deputy Commissioner, and to the Chief Court from the Commissioner. He had stated, when he moved for leave to introduce the Bill, that, when the order of a Deputy Commissioner had been confirmed in appeal by the Commissioner, as a rule, no further appeal could lie. This statement however was not correct; this was the procedure, but he was not aware at the time he made the statement that this procedure had been altered a short time previously by Act No. VIII of 1859 having been extended, with certain provisos besides those which excluded the appeal chapters, to the Panjáb, which provisos allowed an appeal to be preferred to the Chief Court unaccompanied by any such restriction as that which he mentioned. Now, by this Bill, if two Courts concurred, there would be no appeal on the facts to the Chief Court, but on the other hand many appeals that were properly special appeals, and were formerly heard by the Commissioners, would lie direct to the Chief Court. Whether there would be an increase or decrease in the total number of appeals to the Chief Court from this change of procedure there were no means of estimating; the number of appeals to the Commissioners would undoubtedly be reduced, but the appeals they would have to hear would take up more time, because, by the existing system, they might remand any case for second decision, but by this Bill they would be prohibited, in accordance with the provisions of the Code of Civil Procedure, from remanding a case unless it had been disposed of on some preliminary point only.

The third section of the Bill was the only one which MR. BRANDRETH had introduced on his own responsibility. It seemed to him that the Chief Court ought to have the same power in regard to removing and trying appeals preferred to subordinate Courts, as Commissioners had by the Panjáb Courts' Act (No. XIX of 1855). That was a power which had not been conferred on the Chief Court

by the Panjáb Chief Court Act. If, however, the Chief Court should be of opinion that they did not require the extension of their jurisdiction provided for in this section, it could be struck out by the Select Committee. With these explanations he asked the Council to allow the Bill to go before a Select Committee, in order that he might be assisted in amending its details, if any amendments were found necessary.

The Motion was put and agreed to.

GENERAL CLAUSES' BILL.

The Right Hon'ble Mr. MASSEY moved that the Report of the Select Committee on the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes be taken into consideration. He said the Select Committee had made a few alterations in the Bill, and he also would propose two or three amendments which would have the effect of rendering it more complete. The Committee had introduced, in Section 2, a definition of "Barrister," and had provided that, in the case of any one whose personal law permitted adoption, the word "son" should include an adopted son, and the word "father" an adoptive father. The latter amendment, looking to the fact that the practice of adoption prevailed amongst the great bulk of the population to which the Acts of the Governor General applied, would no doubt be considered desirable. Had such a provision existed when the Legislative Council passed Act No. XIII of 1855—the Indian version of Lord Campbell's well-known Act—there would have been no room for the doubt, which he understood had recently been raised, as to whether a Hindú could recover from a Railway Company damages for a wrongful act or neglect causing the death of his adoptive father. A section had also been taken from Act No. V of 1849, which provided that when any enactment declared that a duty of customs or excise was leviable on any given quantity of goods, a like duty was leviable, according to the same rate, on any greater or less quantity. That amendment was desirable as the Act referred to would be repealed by the Bill to repeal obsolete enactments. A clause had also been introduced to provide that judicial notice should be taken, not only of the Acts of the Governor General in Council, but also of those of the three local legislatures. To that clause he should presently have to propose a slight addition. He would also have to move a formal amendment in section 1 to make the date correspond with the year in which the Act would actually be passed; in the Bill the date stood "1867;" he should move to substitute the year "1868." Clause 17 of section 2 defined the word "obligation." It had

been suggested to him that the definition was rather too narrow, and might have the effect of introducing confusion into Acts where the expression was used. The term "obligation" had two significations; first, the scientific meaning of the jural relation created between parties by the concordance of their will by which that relation was determined, and, secondly, the popular sense of the instrument evidencing the relation. The word was used in the Bill in the latter sense, and though this was its ordinary meaning, there was no doubt that it was not technically accurate. He was therefore inclined to think that that definition ought to be omitted.

The 7th section of the Bill provided that judicial notice should be taken of the Acts and Regulations heretofore made or hereafter to be made by the ~~Governor General of India in Council, the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant Governor of Bengal in Council~~, whether the same were of a public or private nature. It had been suggested to him by His Honour the Lieutenant Governor of Bengal that this clause omitted to provide for the case of future Legislative Councils, which the Governor General in Council had, under the Indian Councils' Act, power to constitute. To meet that suggestion, MR. MASSEY would propose to insert after the word "Council" in the last line but one of the section, the words "or by the like authority in other parts of British India." These were the only amendments he (MR. MASSEY) had to propose in addition to those recommended by the Select Committee.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

COTTON FRAUDS' BILL.

The Hon'ble MR. SHAW STEWART requested permission to correct an error into which he had inadvertently fallen at the last meeting of the Council. In introducing the Cotton Frauds' Bill, he had stated that the Secretary of State had expressed his approval of the change in the scope and object of the Act proposed by the Bombay Chamber of Commerce. But since the last meeting, MR. SHAW STEWART had, through the courtesy of the Home Secretary, seen the despatch to which he had referred, and perceived that no opinion was expressed as to the desirability of the change proposed. The Secre-

tary of State limited his opinion to an approval of the operations of the officers of the Cotton Frauds' Department, in a direction not contemplated by the Act. He expressed no opinion of the proposed change in the scope of the Act, which MR. SHAW STEWART was led to believe he had done. MR. SHAW STEWART regretted the mistake he had made.

The following Select Committee was named :—

On the Bill to amend the law relating to appeals in the Panjáb and its dependencies—The Hon'ble Sir W. Muir, the Hon'ble Mr. Shaw Stewart, the Hon'ble Prasanna Kumára Thákúr and the Mover.

The Council adjourned till the 10th January 1868.

CALCUTTA, }
The 3rd January 1868. }

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).