

Friday, February 17, 1865

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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P. L.

*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 and 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 17th February 1865.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble H. B. Harrington.

The Hon'ble H. Sumner Maine.

The Hon'ble Sir C. E. Trevelyan, K. C. B.

The Hon'ble W. Grey.

The Hon'ble H. L. Anderson.

The Hon'ble J. N. Bullen.

The Hon'ble Mahārājā Vijayarāma Gajapati Rāj Bahādur of Vizianagram.

The Hon'ble Rājā Sāhib Dyāl Bahādur.

The Hon'ble G. Noble Taylor.

The Hon'ble W. Muir.

The Hon'ble R. N. Cust.

The Hon'ble Mahārājā Dhīraj Mahtab Chand Bahādur, Mahārājā of
Burdwan.

The Hon'ble D. Cowie.

CALCUTTA GREAT JAIL BILL.

His Honour the LIEUTENANT-GOVERNOR of Bengal introduced the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal, and moved that it be referred to a Select Committee, with instructions to report in two weeks. He said that some time ago, when he asked for leave to introduce the Bill, he had explained to the Council in a few words the reason which had led to its introduction, and the objects which it was intended to effect. It was therefore unnecessary to trouble the Council with any further observations.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL, 1865.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the

Bill to exempt the estates of deceased Officers and Soldiers delivered over to the Administrator General of Bengal, Madras, or Bombay, from the operation of the twenty-sixth Section of Act VIII of 1855. He said that he had no hesitation in asking His Excellency to suspend the rules in reference to this Bill. It was a formal Bill intended to make the law in this country consistent with the law in England, which of course would, in the present case, override the former.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

MARRIAGE ACT AMENDMENT BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the solemnization of Marriages in India, of persons professing the Christian Religion.

The Hon'ble MR. ANDERSON also applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said that he asked His Excellency to do this because the Roman Catholic community felt great anxiety that the Bill should be passed. It would have been passed a month ago had not the Select Committee received a telegram from the Government of Madras, requesting that the Bill might not become law until after the arrival of some suggestions regarding the existing Act, XXV of 1864. Those suggestions had since been received and fully considered.

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the Report be taken into consideration. He said that in performing this duty, it would not be necessary for him to occupy the attention of the Council for more than a few moments. He was happy to say that he had reason to think that the amended Bill had met with the entire satisfaction of the Roman Catholic community, at whose instance the Bill had been introduced, and had therefore attained its principal object. The Select Committee had also proposed to extend Part V of the original Act to all Native Christians, instead of confining it as before only to Converts to Christianity.

The Committee had also proposed to repeal the old Act, XXV of 1864, and to incorporate its provisions with those of the amended Bill. In doing this, it had two objects in view; first and principally, for convenience and facility of reference—and in this he would remark the Committee had followed the course recommended by the Secretary of State—and next, because, by taking the old Act off the Statute Book, it would remove all cause of irritation that might be felt by the Roman Catholic community on the ground that their interests had not originally received proper consideration from the Council.

He had stated that the Select Committee had received a telegram from the Madras Government, intimating that they had some suggestions to make with reference to the Bill. The Committee had since received this communication, which, he must say, was a most clear and able paper. Many of the suggestions which it contained had been anticipated by the Committee: others had been adopted in the Bill. With regard to others, the Committee after full discussion had not deemed it expedient to introduce them into the Bill, although they were proper suggestions and well worthy of consideration. The suggestions of the Madras Government, which had been adopted, were these—first, that licenses granted to Ministers to solemnize marriages should be rendered revocable at the discretion of the Local Governments; and secondly, and principally, that the law in this country should be assimilated to the law of England. This latter suggestion had been effected by slightly altering the text of the old Act which they had incorporated into the new one, to the effect that those marriages alone should be null and void which were performed by persons other than those authorized under this Bill to perform them. With these observations, he begged to move that the report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON, with the permission of His Excellency the President, moved the following amendment: That the reference in the 64th Section to "The High Courts' Criminal Procedure Amendment Act, 1865," which had not yet been passed, should be omitted, and that the last sentence of the Section should stand thus:—"In every case in which an European British subject shall be charged before a Justice of the Peace or Magistrate at any place beyond the local limits of the ordinary original civil jurisdiction of the High Court with any offence under this Act, such charge shall be investigated, and the committal and trial for such offence shall be made and held, according to the rules by which the criminal procedure of the High Court may from time to time be regulated."

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ACT XXXI OF 1860, CONTINUANCE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to continue Act XXXI of 1860.

The Hon'ble MR. MAINE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

SUCCESSION AND INHERITANCE (PARSEES') BILL.

The Hon'ble MR. ANDERSON in moving for leave to introduce a Bill to define and amend the Law relating to Succession and Inheritance among the Parsees said:—"I have the honour, Sir, to move for leave to introduce a Bill to define and amend the law relative to inheritance and succession among the Parsees.

In performing this duty, I am seeking to acquit myself of the obligation imposed upon me of submitting to the Council the requirements of the Parsees as exhibited in their Draft Code. I have already introduced a Bill relative to Marriage and Divorce, and I now ask leave to introduce one relative to Inheritance and Succession.

I trust that I shall be able to satisfy the Council that the change which the proposed Bill contemplates is not one of an extensive character. The principal provision will be the reduction of the share of female relatives in succession to intestate property.

I should mention that in 1836 the Parsees were compelled to petition the Government of India to be relieved from the operation of the English law of primogeniture in relation to succession to immoveable property. When the Recorder's Court (afterwards the Supreme Court) was established in Bombay,

its Charter was framed in accordance with that of the Calcutta Court. Due provision was at the time made, that succession to the property of Hindús and Mahomedans should be regulated according to the law and usages of persons professing those forms of religious faith. But the fact was overlooked, that there was in Western India, and especially in Bombay, a race which was neither Christian, Hindú, nor Muhammadan. The inconvenience arising from this omission was not felt for some years, as family disputes were usually arranged among the Parsees themselves; but when such differences became the subject of suits in the Supreme Court, it was then ascertained that Parsees being neither Hindús nor Muhammadans, succession by them to freehold property in the Island of Bombay must be regulated by the English law of primogeniture. This being utterly opposed to their feelings and usages, they applied to the Supreme Government for relief, and Government in its legislative capacity, after due enquiry, passed an Act (IX of 1837) which provided "that all immoveable property situate within the jurisdiction of any of the Courts established by His Majesty's Charter shall, as far as regards the transmission of such property on the death and intestacy of any Parsee having a beneficial interest in the same, or by the last Will of any such Parsee, be taken to be and to have been of the nature of chattels real and not of freehold."

I mention these facts because they indicate the difficulties with which Parsees have had to contend, and prove that the Government of India has not declined on a former occasion to afford them relief. The Parsees now seek to be exempted from what will probably soon be the law of British India as to the right of females to share equally with males in succession to intestate property. The Council is aware that the first Chapter of the Indian Civil Code, the Chapter which relates to inheritance and succession, is now under the consideration of a Select Committee. It will be my object to exempt the Parsees from the operation of a few Sections of that measure, but I cannot at present make the provisions necessary for this purpose in the proposed Bill, because that Chapter has not yet become law. I, therefore, for the sake of saving time, ask leave to introduce the Bill, and if permitted to do so, I shall hereafter move in Committee that the Parsees be relieved from the operation of certain Sections in the Civil Code relative to intestate property, the law as to succession to such property being regulated in their case by the measure now in contemplation.

I ought to explain, more for the information of the Parsees themselves than for that of this Council, that the course thus sketched out will, I believe, be far more conducive to their best interests, than the enactment of the Code which they have prepared, in its integrity. They have sought in that Code to

regulate bequests by will, as well as to provide for succession to intestate property. It is my duty plainly to state my opinion that this part of their Code would not work. It is hopeless to expect that, if the highest legal intellects have found it impossible to deal with the subject of Wills in less than some three hundred Sections, such a subject can be disposed of in three or four Sections of the Parsee Code. There is nothing in the part of the Indian Civil Code relating to Wills which is inconsistent with Parsee feelings and usages, except so far that Parsees are generally averse from all testamentary arrangements. I would therefore leave them subject to the general provisions of the admirable Civil Code which has recently been introduced, and only exempt them from a few particular Sections relative to intestate property which are opposed to their social and religious usages.

The Parsee scheme of distribution of intestate property is briefly this :—

To the widow twice as much as each daughter :

To each son twice as much as the widow.

For example, if there be a widow, two sons and two daughters, the property would be divided into twelve equal shares, of which each son would take four, the widow two, and each daughter one.

I should here mention that a difference of opinion exists upon this point between the Parsees of Bombay and those of the Mofussil. The latter would give :—

Twelve annas in the Rupee to the sons :

Two annas in the Rupee to the widow ; and

Two annas in the Rupee to the daughters.

Some, however, would give a little more to the females. Sir Joseph Arnould's Commission, after taking a great deal of evidence, reported in favour of the scale proposed in the Bill I ask leave to introduce, which is that recommended by the Parsees of Bombay. I do not consider that this difference of opinion should suggest any difficulty to the Council. Apart from the undoubted facts that the Parsees of Bombay constitute the great numerical majority of the race, and that they, in a still more marked degree, represent the wealth and intelligence of the community, I would point out that the question practically before the Council will be whether the Parsees shall be exempted from the operation of a law which gives females an equal share with males in succession to intestate property. The scale proposed in the Bill therefore presents a less divergence from the standard of the Civil Code than that which is advocated by the Parsees of the Mofussil. I shall have no hesitation, then, in recommending it for the sanction of the Council, and I should mention that the Parsees of the Mofussil have most emphatically stated that they altogether

prefer the distribution proposed in the Bill to that which is laid down by the English law.

The only other provision in the Bill of any importance is, that a table of proximity of relationship has been framed in accordance with Parsee usages, which differs in some respects from that proposed in the Indian Civil Code.

To prevent any possible misapprehension I should state that the present measure has been prepared by the Parsees themselves. It will require some verbal modifications to render its operation complete and effective, but my object at present is to show that I have not come forward to advocate what I may deem, on theoretical grounds, the interests of the Parsees; but that I am merely submitting to the Council a measure proposed by the Parsees themselves, and which they have now for several years urged on the attention of the Government of India and of Her Majesty's Secretary of State.

I have the honour, Sir, to move for leave to introduce a Bill to define and amend the law relative to inheritance and succession among the Parsees."

The Motion was put and agreed to.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend the Procedure of the High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than their usual place of sitting. He said that this Bill, of which one of the objects was to dispense with the services of the Grand Jury, provided, as originally framed, for the extension to the Mofussil of the system now in force in the Presidency Towns, under which a great part of the Criminal Procedure of the High Court was regulated by Rules of Court—Rules made under an Act of Parliament. But the Secretary of State and the majority of the Judges of the High Court had given their opinion, that advantage might usefully be taken of this opportunity to settle many of these matters in the Mofussil by express legislation. He did not suppose that the amendments suggested by the Committee differed widely from the Rules which would have been made if the Bill had not been altered. But as they constituted a considerable addition to the length of the measure, he thought they should be seen by the Public before the Bill was passed.

The Hon'ble MR. MAINE then moved that the Report and Bill as amended in Committee be published for three weeks in the *Gazette of India*.

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. TAYLOR then introduced the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances.) He said that in consequence of a communication which had just been received from the North-West Provinces, and also in consequence of several suggestions having come in from other quarters, he thought it desirable to postpone for a short time the passing of the Bill. Instead, therefore, of moving that the Bill be passed, he would, with His Excellency's permission, move that it be referred to a Select Committee with instructions to report in one week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to remove the Great Jail of Calcutta from the control of the Sheriff, and transfer it to that of the Government of Bengal—His Honour the Lieutenant-Governor, and the Hon'ble Messrs. Harington, Maine, Bullen, Taylor, and Cowie.

On the Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances)—the Hon'ble Messrs. Harington, Maine, Taylor, and Muir.

The Council then adjourned.

WHITLEY STOKES,

*Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).*

CALCUTTA, }
The 17th February 1865. }