

Wednesday, January 21, 1863

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

VOL . 2

JAN. - DEC.

1863

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 Wednesday, the 21st January,
1863.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding.*
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.

**ARTICLES OF WAR (NATIVE OFFICERS AND SOLDIERS)
AMENDMENT BILL.**

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army).

CONSOLIDATED CUSTOMS BILL.

The Hon'ble MR. ERSKINE presented the Report of the Select Committee on the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.

MAHOBA AND JEITPORE BILL.

The Hon'ble MR. HARINGTON moved for leave to introduce a Bill to bring the Pergunnahs of Mahoba and Jeitpore, in the District of Humeerpore, under the operation of the General Regulations. He said that the Pergunnahs of Mahoba and Jeitpore, the former of which was ceded to the late East India Company in the year 1817, and the latter of which lapsed to the British Government in the year 1849, had hitherto been administered on what was called the Non-Regulation system. Both Pergunnahs were now attached to

the District of Humeerpore, which was subject to the General Regulations. That District had lately been transferred from the Jhansi Division, which was Non-Regulation, to the Allahabad Division, throughout which the General Regulations were in force, and it was thought desirable that the two Per-gunnahs in question should also be brought under the operation of the General Regulations and Acts, in Civil, Criminal, and Revenue matters in order that they might be administered according to the system which was followed generally in the District and Division in which they were now included. That was the object of the present Bill.

The Motion was put and agreed to.

DIVORCE COURT BILL.

The Hon'ble MR. MAINE introduced the Bill for conferring upon the High Courts of Judicature in India, the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England, and moved that it be referred to a Select Committee. He said that, in introducing this Bill, he ventured to think that he anticipated the wishes of the Council by offering no arguments in support of the principle upon which it was founded. Whatever were the difficulty of the questions involved in the establishment of a tribunal having power to decree a Divorce *a vinculo matrimonii* (and he would be the first to admit that the difficulty of those questions was only equalled by the difficulty of discussing them satisfactorily in a deliberate assembly), he assumed that the Council would be of opinion that, so far as they related to principle, they had been solved in England for good or for evil. He imagined that those who had the strongest doubts of the policy of this measure, whether on grounds of public morality, or expediency, would still feel that the privilege of suing for a dissolution of marriage should not depend on an accident of locality, and that nobody would wish to perpetuate the exceptional disabilities under which the Queen's subjects in India were placed in respect of matrimonial law. There were, it should be stated, some reasons why the Council should approach the subject with less misgiving than they would probably have felt if they had been asked to legislate within a shorter period after the creation of the English Divorce Court. They came to it with the advantage of English experience. It would be vain to deny that some of the earlier effects of the establishment of the new tribunal were such as to distress, and perhaps to alarm, the public feeling of England. The number of applications for relief on the files of the Court seemed at first enormous; the scandal occasioned by the publication of its proceedings was far beyond all previous anticipations. These evils, however, at least in their excess, proved to be only temporary. It was shortly proved that the multitude of cases submitted to the Divorce Court arose from the accumulations of past years, and that the

earlier petitioners were almost invariably persons whom the costliness and cumbrousness of the old procedure in Divorce had discouraged and debarred from relief. It was only quite recently that, what might be called the normal statistics of the English tribunal had been disclosed, and there was much reason to believe that the annual growth of cases of this description would not be extraordinary, and that, though greater than could be wished, it was not greater than might be expected. The other evil, the scandal attendant on publicity, had been, it was only just to say, very greatly abated by the good taste and good feeling of English Newspapers, which, co-operating with general sentiment, had reduced the reports of these cases within the narrowest limits compatible with publication. It was probably well known to the Council that the public scandal it occasioned was, for a long time, considered to be the most unfortunate incident of the Court, and an amendment to one of the supplemental Bills, providing that it should sit with closed doors, was, if he remembered rightly, lost by a narrow majority in the House of Commons. It might be asked why, with English experience to guide them, they had not thought of engraving some such provision on this Bill. He was, however, one of those who thought that there was always the strongest presumption in favor of that perfect publicity, which was the oldest characteristic of the administration of English justice, and in this case experience had, to a great extent, borne out the antecedent presumption. For the publicity given to those cases, though it no doubt had its questionable aspect, had been the means of protecting society in England against one of the dangers with which it was menaced by the change in the law. It had rendered connivance or collusion between the petitioner and respondent in a Divorce suit, if not impossible, at all events excessively difficult. However carefully and dexterously the plot might have been laid, it rarely happened that some one was not cognizant of a circumstance which showed the understanding between the conspirators, and the chances were that the attention of the person so cognizant was attracted to the report of the proceedings. It soon became known in England that information of the kind was easily procurable, and to take advantage of this information, one of the last and most valuable of the Divorce Acts was framed. By this Act it was provided that the original decree of the Matrimonial Court was to be only provisional; in technical phrase, a decree *nisi*, and before it was made absolute the Queen's Advocate and the Queen's Proctor were permitted to intervene in the proceedings, showing cause why it ought not to be passed. The ground of their intervention was to be connivance, or collusion, and, for the information which caused them to move, they were indebted to the publication of the proceedings on the first hearing. The Government had incorporated this Act with this Bill, substituting only the Advocate General, and the Solicitor to Government, for the Queen's Advocate,

and Queen's Proctor. The Bill, he might now mention, followed very closely the English Acts, consolidating into one measure the body of English statutory matrimonial law. In one point only it was proposed to depart from the tenor of the English Acts. In conformity with the practice of the High Courts when exercising original jurisdiction, and with the approval of the great majority of the Judges of those Courts,—of all the Judges indeed, with one exception,—they proposed to omit the provision of the English Acts for the trial of questions of fact by Jury at the option of the parties to a Divorce suit. There did not seem to be sufficient reason for placing matrimonial suits on a different footing from other Civil proceedings in India. He would not have adverted to the point if one of the Judges of the High Court of Bombay,—the only Judge, he might remark, who was opposed to the Bill on principle,—had not stated that he saw no reason why the English system of trial by Jury in Divorce cases should not be adopted in India. He (Mr. Maine) must observe, however, that in adopting the system of inquiry practised by the Indian Supreme Courts, they certainly, if he might so speak, anticipated the results towards which English experience in this matter seemed to be pointing. It was true that the English Divorce Acts conferred on either of the parties the power of demanding a Jury if they thought proper, but the reason of this probably was, that the English Judge of the Divorce Court had no power of assessing damages. The proceedings before the Divorce Court took the place, under the recent Statutes, not only of the investigation which used to take place before the House of Lords, and of the inquiry before the Ecclesiastical Court, but also of the action for criminal conversation in which damages were recoverable. Still, though the Judge of the Divorce Court in England had no power of assessing damages without a Jury, the fact was, that the demands for Juries on the part of the litigants were steadily diminishing, and the vast majority of cases were probably now tried by the Judge solely. Nor was it an immaterial consideration that the duty of serving on Juries in the Divorce Court was regarded with the utmost repugnance by the gentlemen liable to it, and no small difficulty was practically experienced in completing the requisite number. He was disposed also to attach great weight to that stricter decorum which it was always possible to observe when these cases were tried before a Judge, than when they were investigated, necessarily with much greater fullness, before a popular tribunal. These reasons would, he trusted, be thought by the Council to justify the Government in taking the course recommended by the majority of the Judges, rather than that suggested by the Chief Justice of Bombay. There were many other points on which opinions were expressed by the learned Judges of the various High Courts, but these were points of detail which would more fitly be considered by the Select Committee. The only remaining observation he had to

offer was, that the scheme of the Bill was this : it was accommodated to the existing matrimonial jurisdiction. Whatever were the limits of the matrimonial jurisdiction which the High Courts had inherited from the Supreme Courts, to those limits would extend the new power of decreeing dissolution of marriage. The Bill would necessarily be delayed on account of the legal difficulties which he mentioned on a former occasion.

The Motion was put and agreed to.

HUMEERPORE BILL.

The Hon'ble MR. HARINGTON moved that the Select Committee on the Bill to remove the District of Humeerpore, in the North-Western Provinces, from the operation of the General Regulations be discharged, and that the Bill be withdrawn. He said that the District of Humeerpore, in the Province of Bundelkund, formed, for many years, part of the Division of Allahabad; but, in 1858, owing to events arising out of the Mutiny, it was severed from that Division, and transferred to the Division of Jhansi, which is a Non-Regulation Province. It was then considered that it would be inconvenient that that District should be administered on a system different from that which prevailed in the rest of the Province, and a Bill was accordingly introduced to remove the District of Humeerpore from the operation of the General Regulations. It was then supposed that the annexation of Humeerpore to the Jhansi Division would be permanent. But circumstances had since arisen which had rendered it expedient to transfer the District again to the Allahabad Division, which, including Humeerpore, as originally formed, was administered under the Regulations. No necessity, therefore, any longer existed for special legislation in reference to the subject. The Committee might consequently be discharged, and the Bill withdrawn.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England : His Honour the Lieutenant-Governor of Bengal, the Hon'ble Mr. Harington, the Hon'ble Sir Charles Trevelyan, and the Hon'ble Mr. Erskine.

The Council adjourned.

M. WYLIE,

*Depy. Secy. to the Govt. of India,
Home Department.*

CALCUTTA;
The 21st January, 1863. }