

Wednesday, January 7, 1863

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

VOL . 2

JAN. - DEC.

1863

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Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

THE Council met at Government House, on Wednesday, the 7th January, 1868.

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 C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Sing 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.

CIVIL PROCEDURE (BRITISH BURMAH).

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to define the jurisdiction, and to regulate the Procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.

APPEALS TO THE PRIVY COUNCIL (NON-REGULATION PROVINCES).

Also the Report of the Select Committee on the Bill to regulate the admission of Appeals to Her Majesty in Council from certain judgments and orders in Provinces not subject to the general Regulations.

STRAITS' SETTLEMENT POLICE BILL.

Also the Report of the Select Committee on the Bill to amend the law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca.

TREATY WITH THE KING OF BURMAH.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to give effect to certain provisions of a Treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and his Majesty the King of Burmah. He said that the Council were aware that a Treaty had been negotiated with the King of Burmah after considerable effort, and the exhibition of considerable diplomatic skill, by Colonel Phayre. The Treaty promised great advantages, not only in the improvement of the commercial relations between the British and Burmese territories, but also in affording facilities of communication through Burmah with the Chinese Provinces. The principle on which the Treaty was based was that of equivalent concession on each side. Some of the provisions would require legislative action, and the Bill was intended to give effect to them. The first of these was Article 4, which was as follows :—

“When Goods are imported into Rangoon from any British or Foreign Territory, and declared to be for export by the Irrawaddy river to the Burmese Territory, the English Ruler shall, provided bulk is not broken, and he believes the manifest to be true, charge one per cent. on their value, and if he so desires shall allow them to be conveyed under the charge of an Officer until arrival at Maloon and Menhla. The Tariff value of goods shall be forwarded yearly to the Burmese Ruler. If such goods are declared for export to other Territories, and not for sale in the Burmese Territories, the Burmese Ruler shall, if he believes the manifest to be true, not cause bulk to be broken, and such goods shall be free of duty.” The Bill would recite this Article and enact its provisions in more full and somewhat more technical language. The other was Article 8 :—“Should the British Ruler within one year after the conclusion of this Treaty abolish the duties now taken at Thayet Myo and Tounghoo, the Burmese Ruler, with a regard to the benefit of the people of his country will, if so inclined, after one, two, three, or four years abolish the duties now taken at Maloon and Tounghoo (in the Burmese Territory).” In this Article there was not the appearance of perfect reciprocity. But the ideas of the King of Burmah as to the advantages of the remission of taxes were probably not the same as ours. Colonel Phayre, however, considered that the most effectual method of inducing the Burmese Ruler to remit his frontier duties was to exhibit on our part a readiness to remit ours. And the Bill, therefore, would authorize the Governor-General to remit the duties now levied at Thayet Myo and Tounghoo.

The Motion was put and agreed to.

ADMINISTRATION ON CIVIL JUSTICE (DARJEELING) BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to improve the administration of Civil Justice in the Settlement of Darjeeling. He said that the

Bill was introduced at the instance of the Bengal Government, who represented to the Governor-General in Council, that no appeal was allowed from the decisions of the Superintendent of Darjeeling, and that it was desirable to place the Judicial administration of that Settlement under the Sudder Court. In considering the question the Government of India sought to determine the best mode of giving effect to the main object of the Bengal Government without adding unnecessarily to the business of the highest Court of appeal. It was the opinion of that Government, that the jurisdiction of the Sudder Court, on its Civil side, should be confined as much as possible to the settlement of disputed points of law and practice, or usage having the force of law; and that, as a rule, its appellate jurisdiction should be exercised in respect of questions of fact, only in cases in which the amount or value of property in dispute was comparatively large. The Government of India also suggested, at the same time, that the administration of Civil Justice in Darjeeling might be placed on a satisfactory footing by vesting the Superintendent with a final jurisdiction on points of both law and fact in all cases of the nature of those described in Section III of Act XLII of 1860 (the Small Cause Court Act), with power to grant a new trial subject to the provisions contained in Section XIII of that Act, and of stating a case to the Sudder Court under Sections XIV to XIX. Also by allowing, in all other suits not exceeding Rupees 5,000 in amount or value, a regular appeal from the decision of the Superintendent to the Judge of Dinapore, who, on the Criminal side of his Court, tries commitments of the Superintendent, and hears appeals from his orders as Magistrate; and, lastly, by allowing, in the regular appeals so decided by the Judge, a special appeal from his decisions to the Sudder Court at Calcutta, under the rules for the admission and decision of special appeals contained in the Code of Civil Procedure. In suits exceeding Rupees 5,000 in amount or value (it was observed by the Government of India), the rule obtaining in Regulation districts might be followed, which would allow a regular appeal from the decisions of the Superintendent to the Calcutta Sudder Court. It was intimated at the same time that, in the opinion of His Excellency the Governor-General, the Code of Civil Procedure, with necessary modifications might, simultaneously with the introduction of the measures above-mentioned, be extended to Darjeeling. The views above stated met with the concurrence of the Secretary of State for India, who stated, however, that legislation to extend the jurisdiction of the High Court, which would doubtless have been established meanwhile, should be undertaken by the Council of the Governor-General. A draft Bill had previously been prepared by the Bengal Government in conformity with the views of the Government of India, and it was proposed to adopt the same, with some few modifications. It was intended that the Code of Civil Procedure should be extended to Darjeeling so as to come into operation when this Bill became law.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE introduced the Bill to authorize the extension of the term of office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore and Malacca, and moved that it be referred to a Select Committee, with instructions to report in three weeks.

The Motion was put and agreed to.

EMIGRATION TO SAINT CROIX.

The Hon'ble Mr. MAINE introduced the Bill relating to Emigration to the Danish Colony of St. Croix, and moved that it be referred to a Select Committee with instructions to report in three weeks.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to authorize the extension of the term of office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore and Malacca : The Hon'ble Messrs. Harington, Erskine, and Roberts.

On the Bill relating to Emigration to the Danish Colony of St. Croix : The Hon'ble Messrs. Erskine Fitzwilliam and Ellis.

The Council adjourned.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA, }
The 7th January, 1863. }