

Thursday, April 13, 1865

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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 Thursday, the 13th April 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. Harington.

The Hon'ble W. Grey.

The Right Hon'ble W. N. Massey.

The Hon'ble J. N. Bullen.

The Hon'ble R. N. Cust.

The Hon'ble D. Cowie.

MUNICIPAL ACT (LUCKNOW) AMENDMENT BILL.

The Hon'ble Mr. Cust introduced the Bill to amend Act No. XVIII of 1864 (to provide for the appointment of a Municipal Committee for the City of Lucknow). He said that last week he had stated the object of the Bill, which was a very simple and brief one. It was merely to enable the Governor-General in Council, at the time he extended the Act to other places, to state the number of which the Committee should consist. That was the only object of the Bill. As this was the last occasion on which the Council would sit for some months, he begged to ask His Excellency to suspend the Rules for the Conduct of Business to enable him (Mr. Cust) to move that the Bill be taken into consideration.

The President declared the Rules suspended.

The Hon'ble Mr. Cust then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Cust also moved that the Bill be passed.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble Mr. Cust moved that the Report of the Select Committee on the Bill to amend the constitution of the Chief Court of Judicature in the Punjab

and its Dependencies be taken into consideration. He said that the Bill had been carefully considered in Committee, and since the Committee had made their report, the opinion of the Lieutenant-Governor of the Punjab and the Judicial Commissioner had been received.

There were some important changes introduced in the practice of the Punjab Courts: the anomalous jurisdiction of the Revenue Courts in suits regarding land was curtailed; and it was only in those Districts in which settlement operations were in progress that the action of the Civil Courts was barred. Even when the case was heard in the Revenue Courts, the rules of procedure were to be attended to, and no interference of the Executive authorities would be legal. Although the Financial Commissioner was invested with the powers of a Court of final appeal, no other powers of supervision or transfer were extended to him, and he could only act in such cases as those in which the Chief Court would have acted.

Another change had been made regarding special appeals, and he regretted to find that the Judicial Commissioner of the Punjab did not agree with the conclusions of the Committee, which were, however, arrived at unanimously after careful consideration. The object of a special or second appeal was, not so much to do justice in the particular case, as to secure a uniformity of judicial decisions, and this could only be secured when such appeals lay to the highest Court only, and not to the ten Commissioners, each of whom might rule differently. These appeals would be greatly reduced in number when the rule with regard to their admission was strictly followed.

He (Mr. Cust) regretted to find that the local authorities did not agree with the Committee in the provisions made in the event of a difference of opinion between the two Judges on a point of law, in which case a reference could be made at the request of one of the Judges to the High Court of Calcutta. The local authorities would prefer that such references should be made to the Financial Commissioner; but it was clear that points on which a Barrister Judge would differ from the Civilian Judge were not likely to be such as could be satisfactorily disposed of by an Officer whose experience was in a totally different direction.

With regard to the original Criminal jurisdiction of the Chief Court, the Bill followed closely the provisions of the recent Act to amend the procedure of the High Courts: the subject having been so fully discussed on several occasions need not be alluded to further.

One or two additions had been made to the Bill since it passed through Committee, the object being to make the Bill complete in itself, and harmonize

with the Punjab Courts' Act and the Pleaders' Act. Provision had also been made for offences committed by European British subjects in the independent territories adjacent to the Punjab.

The Hon'ble Mr. BULLEN said that, in respect to the jurisdiction which it was proposed by this Bill to confer on the Chief Court of the Punjab to try British-born subjects accused of criminal offences, it had his cordial support. He had long considered it a scandal to our administration that a prisoner and the witnesses for the prosecution and defence should be dragged from one end of the empire to the other before he could be put upon his trial.

Practically, such a system conferred an almost entire immunity from punishment for the lesser crimes, even when the evidence was so clear that a conviction was morally certain, still more so when any doubt existed as to the legal sufficiency of the evidence. Still, until the passing of the Penal Code, and until the constitution of the Mofussil Courts had undergone a modification, there were grave objections, as Mr. Maine and the Hon'ble gentleman opposite (Mr. Harrington) had on previous occasions frankly admitted, to British-born subjects being arraigned before them. These objections would now no longer exist. This Bill provided that one of the Judges before whom the prisoner would be tried should be a Barrister Judge, and it gave the prisoner the same privilege which was conferred on British-born subjects by the Bill recently passed to amend the procedure of the High Courts, of claiming that at least half the Jurors empanelled to try him should be Europeans or Americans. He (Mr. Bullen) would himself have preferred that unanimity of the Jury should have been necessary for conviction; but, as the principle of a majority of nine had been affirmed by the Council in the High Courts' Bill recently passed, the same principle must necessarily be adopted in this Bill. Practically, he had no doubt that every prisoner would have a fair trial, and nothing more could reasonably be claimed for him.

The Motion was put and agreed to.

The Hon'ble Mr. HARRINGTON said he had two amendments to propose :—

First,—that at the end of the second Clause of Section 46 the following words be added :—“The Chief Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made until the receipt of the order of the High Court.”

Second,—that the following Section be substituted for Section 51 :—

“ Whenever the Lieutenant-Governor of the Punjab shall, under the authority vested in him by Section 47 of the Pleaders, Mookhtars and Revenue Agents' Act, 1865, extend the provisions of the said Act to the territories under his Government, nothing in the said Act shall affect the provisions of Sections 10, 11 and 12 of this Act.”

The Motion was put and agreed to.

The Hon'ble Mr. Cust also moved that the Bill as amended be passed.

The Motion was put and agreed to.

REVISED CIVIL PROCEDURE BILL.

The Hon'ble Mr. HARINGTON presented the Report of the Select Committee on the Bill for consolidating and amending the laws relating to the Procedure of the Courts of Civil Judicature in British India, and moved that the Report and the Bill as amended in Committee be published in the *Gazette of India*. He said, as it was not intended to ask the Council to take into consideration the report of the Select Committee, which he had just presented, during the present sittings of the Council, he would not occupy the time of Hon'ble Members to-day by noticing in detail the alterations which the Select Committee had recommended should be made in the Bill before it was passed into law. These alterations, though numerous, were, for the most part, as noticed in the Report of the Select Committee, merely verbal, and he might say that none of them materially affected the fundamental principles of the Bill. He believed he might also say that all the alterations proposed by the Select Committee were entitled to rank as improvements. In performing the task assigned to them, the Select Committee had had the assistance of a large body of valuable reports on the Bill, received from all parts of India. These reports were the result of the publication and circulation of the Bill, accompanied by an invitation to all Judicial Officers and others freely to express their opinions on its provisions. Probably no invitation of this nature had ever been more fully and heartily responded to. As regarded some of the reports, he regretted to say that they had been received too late to admit of the Select Committee benefiting by them ; but he hoped that the reports to which this remark applied would undergo a careful examination during the time that the Council remained adjourned, and that the Bill, before it became law, would be still further improved by the introduction of any of the amendments proposed therein which might appear deserving of adoption. The reports of the local authorities generally were so good, and most of them contained so

much that was useful, whether in the way of information or suggestion, that the selection of any for special notice might seem invidious and unjust to the others; but the Government of Madras, and Mr. Collett, one of the Zillah Judges in the Madras Presidency, had shown, in the reports received from them, such a careful study of the Bill, and their reports were so full of practical suggestions, that he (Mr. Harrington) hoped he might be permitted particularly to mention these authorities, in addition to the Officers named by him on the introduction of the Bill, as those from whom he had derived much valuable assistance in its preparation. In introducing the Bill, he stated that it left absolutely untouched all the fundamental principles and the essential features of the Code now in force as prepared by the Royal Commissioners in England; and he was glad to have it in his power to assure the Council that the objects chiefly aimed at by the Royal Commissioners in preparing the Code, viz., to secure certainty, expedition and economy in the disposal of cases, and to avoid every thing in the way of technicalities not required in the interests of Justice, had been steadily kept in view by the Select Committee, and that they had introduced nothing into the Bill which could render the procedure prescribed by it less certain, less expeditious or more expensive than the Code as prepared by Her Majesty's Commissioners. In these respects he believed the Bill, as amended by the Select Committee, would fairly bear comparison, not only with the Bill as introduced, but also with the Code of the Royal Commissioners as passed in this country. He thought it would be satisfactory to the Royal Commissioners, the Council, the Civil Courts throughout the country, and the general public, to receive this assurance from him.

He hoped he would not be considered very presumptuous in claiming for the Bill, as introduced, that it was a great improvement on the existing Code of Civil Procedure. It proposed to supply many omissions and to cure many defects which the experience of the working of the Code during the time that it had been in operation had brought to light. It also met a number of wants which had arisen in this interval from the creation of new classes of Courts, changes of law and other causes. He had said that the alterations recommended to be made in the Bill by the Select Committee might all be regarded as improvements. Such, then, being the character of the Bill, altered as proposed by the Select Committee, he felt that he might with confidence have asked the Council to pass the Bill at once, and that the Council might with perfect safety have given their assent to a motion to that effect; but it had been suggested by those whose opinions were entitled to the utmost respect, that as it was very desirable that any revision of the Code, now made, should be so comprehensive and complete as to obviate the necessity of any further revision for

many years, it would be better not to hurry the Bill into law, but to allow it to remain, as now framed, for some time before the public. No doubt there was wisdom in this suggestion, and accordingly it had been proposed that the Bill, as amended by the Select Committee, instead of being passed at once, should, with the Report of the Select Committee, be published in the Official Gazette.

It remained for him to say that the Select Committee generally, and himself in particular as the Member in charge of the Bill, had, in revising the Bill and settling its provisions, derived the greatest assistance from the learned Assistant Secretary of the Council (Mr. Stokes). From the first he had taken the deepest interest in the work, and had thrown himself heartily into it. His services had really been most valuable, and he considered that both the learned Assistant Secretary and Mr. Thompson of the Civil Service, who had been employed under him, were entitled to the acknowledgments of the Government for their labours in connection with the Bill. The work which led to Mr. Thompson's appointment being now completed, his services would be replaced at the disposal of the Government of Bengal, to which division of the Bengal Presidency he belonged. He could not allow Mr. Thompson to quit his present post without saying that the able manner in which he had discharged the duties entrusted to him held out good promise of future usefulness and distinction in the Service. He should be glad if Mr. Thompson's labours in connection with the present Bill, and the knowledge which he must thereby have acquired of our system of Civil Procedure, contributed in some measure to his success in the public career which was before him.

The Hon'ble Mr. Cust said that, with His Excellency's permission, he would make a few brief remarks. He joined in the regrets which he was sure the Hon'ble Mr. Harington must feel, that the Bill for amending the Code of Civil Procedure, after all the pains that had been taken in Committee, had not passed into law. The Punjab suffered more particularly as it had fallen betwixt two stools to the ground. Act VIII of 1859 was not introduced by Sir Robert Montgomery, because he understood that an amended Code was expected; and now the Punjab was in this respect in the rear of the rest of India, the only Province without a Code having the force of law by Act of the Council of India.

But he had to express his regret on another subject also. He feared that this was the last time that the Hon'ble Mr. Harington would take his seat in this Council, and that he would not have the satisfaction of seeing this Bill pass into law. During the last seven years, the whole of the Judicial system had been taken to pieces, recast and remoulded, in the form of Codes and organic laws; and in all this work the Hon'ble Member had taken so

active a part that he felt that, without him, much would not have been done at all, and much would not have been done so well. If the Judicial servants of Government were able, with satisfaction to themselves and to the people, to master all the details of the laws which they administered, they would have great reason to thank the untiring industry and unrivalled knowledge which Mr. Harington had brought to bear on the subject.

His Excellency the PRESIDENT said that he fully concurred in all that had fallen from his Hon'ble friend Mr. Cust as to the merits and qualifications of their Hon'ble friend Mr. Harington. That gentleman, after an honourable and useful career of nearly forty years, was about to retire from this country, he was happy to add, in health and strength. What to us was a great and serious loss, was to him a benefit and happiness. His Excellency did not know any Officer who had done more essential service to India than their friend Mr. Harington. His knowledge of the Acts and Regulations, his intimate acquaintance with Native usages and customs, had rendered him a most useful Councillor; and His Excellency was sure that he did not exaggerate when he said that they would have very great difficulty in supplying his (Mr. Harington's) place.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

WHITLEY STOKES,.

Offg. Asst. Secy. to the Govt. of India,

Home Dept. (Legislative).

CALCUTTA,

The 13th April 1865.

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