

Wednesday, July 11, 1866

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 5

JAN. - DEC.

1866

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 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 11th July 1868.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding*.
 The Hon'ble H. Sumner Maine.
 The Hon'ble W. Grey.
 The Hon'ble G. Noble Taylor.
 The Right Hon'ble W. N. Massey.
 The Hon'ble Colonel H. M. Durand, C.B.
 The Hon'ble W. Muir.
 The Hon'ble H. P. A. B. Riddell.

HIGH COURT, NORTH-WESTERN PROVINCES,
 PROCEDURE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to amend the procedure of Her Majesty's High Court of Judicature of the North-Western Provinces of the Presidency of Fort William, said that the matter was urgent, as there was no available procedure for the trial of European British subjects by the new High Court of the North-Western Provinces. It was almost unnecessary to remark that one of the most important branches of jurisdiction of that Court, was its power to try, under Clause 15 of its Letters Patent, European British subjects. In fact, the desirability of creating a tribunal for the trial of such persons, less remote than the High Court at Calcutta, had been one of the principal reasons for the establishment of the High Court at Agra. The jurisdiction in question was intended to correspond with that exercised on the one side by the Chief Court in the Punjab, and on the other by the High Court of Bengal, whether holding its ordinary sittings at the Presidency Town, or carrying out a system of local trial by Judges under Commissioner, a system which had been already arranged between the Government of India, the High Court, and the Government of Bengal, and which would come into operation as soon as His Excellency in Council had been assured by the Government of Bengal that proper places of intermediate custody for Europeans had been provided. A difficulty, however, arose in con-

sequence of the manner in which Clause 29 of the Letters Patent was framed. Under that Clause the procedure in all criminal cases brought before the new Court in the exercise of its ordinary original criminal jurisdiction, was to be regulated by the procedure and practice which were in use in the High Court of Fort William immediately before the 11th June 1866, the date of the publication of the Charter, subject to any law which had been or might be made in relation thereto by competent legislative authority in India. It was doubtful whether the procedure thus referred to was that in force in the High Court at Calcutta at its usual place of sitting, or whether it was the modified procedure provided by Act No. XIII of 1865 for the Judges of the High Court acting under Commission in the Mofussil. It was probable that the latter system was intended, but both systems were inapplicable to the High Court of the North-Western Provinces; the first, because that High Court had not the elaborate official machinery, the growth of nearly a hundred years, which was necessary to work it; the second, because the provisions of Act No. XIII of 1865 which applied to the Mufussil, were designed for the case of single Judge going temporarily on circuit—a state of things obviously different from that of a Court generally exercising its jurisdiction at a permanent place of sitting.

He, therefore, proposed that the Council should exercise the legislative powers to which, under Clause 35, the provisions of the Letters Patent were subject. Sections 2 to 17 of the Bill provided a criminal procedure, which was neither that of the Presidency towns, nor that provided by Act No. XIII of 1865 for Judges action under Commission. They were transcribed with a few necessary modifications from the Punjab Chief Court Act (No. IV of 1866), Sections 21 to 36. The principal of these modifications were the following:—In Section 2 reference was made to a recent Act of Parliament (28 Vic, cap. 15, Section 3) empowering the Governor General by order to alter the local limits of the jurisdiction of the High Court as regarded European British subjects. Under Section 3, not only the High Court, but any Officer specially authorized by the High Court, would consider the charge and might amend, alter, or add to the same. Section 7 provided that the High Court should ordinarily hold its sittings at such place as the Lieutenant-Governor should direct; but that the High Court, or any Division of the High Court, might, from time to time, with his approval, hold sittings at such other places in the North-West Provinces as should seem convenient. The provision as to the Division of the High Court had been introduced at the suggestion of the Hon'ble the Judges of that Court, and was likely to be useful when the Court should be in course of removal from Agra to Allahabad. In Section 9 a Clause, modelled on Section 436 of the Code

of Criminal Procedure, empowered the High Court to direct that persons charged should be admitted to bail, or that the bail required should be reduced.

The opportunity of the present Bill had been taken of making some amendments of the civil, testamentary and intestate procedure of the Court. Sections 18 to 21 corresponded with Sections 5, 6, 8, 9 of Act No. XX of 1862, which suspended the operation in the High Courts at Calcutta, Madras, and Bombay of certain Sections in the Code of Civil Procedure unadapted to Courts of such dignity, and made other useful provisions as to the time of preferring appeals, as to the issue of execution before the ascertainment of amount due for costs, and as to acts required by the Code to be done by a Pleader, but which might, under Act No. XX of 1862, be done by an Attorney. Lastly, Section 22 of the Bill provided that the procedure in all cases which should be brought before the High Court in the exercise of its original, testamentary and intestate jurisdiction, should be regulated, so far as the circumstances of the case would admit, by the rules of procedure laid down in the Indian Succession Act, 1865. This provision was not absolutely necessary, as Clause 28 of the Charter empowered the High Court to make rules and orders as to the proceedings in its testamentary and intestate jurisdiction. But the Section in question was almost identical with a rule which had recently been made by the High Court at Calcutta, and as it was desirable that uniformity in such matters should, so far as possible, prevail throughout India, the present Section had been introduced into the Bill with the concurrence of the Judges of the High Court of the North-West Provinces.

The Motion was put and agreed to.

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

The PRESIDENT declared the rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration. In doing so he observed that, as the matter was urgent, as the Bill was little but a transcript from former Acts, and as, moreover, it had been submitted to and approved by the Hon'ble the Judges of the new High Court, it was desirable that it should be passed at once.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

HIGH COURTS' DEPOSITS TRANSFER TO GOVERNMENT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay, and in the Supreme Court of the Straits' Settlement, and the proceeds of certain estates in the charge of the Administrator General of Bengal, and moved that it be taken into consideration. He observed that the Bill had been published three times in the *Gazette*, and that the Council were therefore doubtless acquainted with its provisions. The Statement of Objects and Reasons gave full information as to the circumstances under which the Bill had been prepared. Considerable sums, originally deposited in the course of suits, were now in the High Courts of the three Presidency Towns, and in the Supreme Courts of the Straits' Settlement. Some of these monies had been in deposit so long as sixty years, and all sums so in deposit, on which the Bill proposed to operate, had been unclaimed for more than twenty years. There were also the proceeds of certain estates administered by order of the Supreme Court of the Straits' Settlement which had been unclaimed for fifteen years. The Bill proposed to transfer all these sums to Government. It was not likely that any claims thereto would be preferred. But should any such claim be hereafter established to the satisfaction of the Court from which the transfer had been made, the Government would pay to the claimant the principal so transferred, or so much thereof as should appear to be due to him.

The present opportunity had been taken to remedy a defect in the law regarding unclaimed estates in the hands of the Administrator General of Bengal. Estates administered by the Administrators General of Madras and Bombay, which might be unclaimed for more than fifteen years, were, under Act No. VIII of 1855, Section 51, credited to the general revenues, subject to any claim thereto being afterwards established. But there was, owing doubtless to an oversight, no provision of the kind with regard to estates coming into the official charge of the Administrator General of Bengal, subsequent to the passing of that Act. The present Bill accordingly contained provisions similar to those of the Section just referred to, and would, if it became law, place the assets in the hands of the Administrator General of Bengal on the same footing as those in charge of the two other Administrators General.

These shortly were the provisions of the Bill, which would not, he might remark, injure in any respect the security of such persons as might hereafter establish their claim to any portion of the sums proposed to be transferred. On the contrary, these funds would be safer in the custody of the Government

of India, than they could possibly be even in that of a High Court or Administrator General. It was highly desirable, for financial considerations, that the Bill should pass at once, and he therefore 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. MASSEY then moved that the Bill be passed.

The Hon'ble MR. MAINS asked whether it had not been suggested that in Section 4 of the Bill, for the words "Accountant General to the Government of Bengal," the words "Comptroller General of Accounts" should be substituted.

The Right Hon'ble MR. MASSEY said that the suggestion had been made, but that he preferred to leave the Bill as it was. The corresponding words in Section 52 of Act No. VIII of 1855 were, "Accountant General to the Governments of Fort St. George and Bombay respectively," and uniformity was of course desirable. Moreover, if the change suggested were made, it might be taken as being impliedly a legislative sanction of the power which he understood, in some instances, the High Court at Calcutta had assumed of granting, and the Administrator General of Bengal of taking out, Letters of Administration in cases of British subjects whose assets were wholly outside the Presidency of Fort William.

The Motion was put and agreed to.

The Council then adjourned to the 18th July 1866.

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

SIMLA ;
The 11th July 1866. }