

Friday, January 4, 1867

COUNCIL OF GOVERNOR GENERAL  
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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 pro-  
visions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 4th January 1867.

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. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble Colonel H. M. Durand, C. B.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of  
Burdwan.

The Hon'ble H. P. Riddell.

The Hon'ble J. E. L. Brandreth.

The Hon'ble M. J. M. Shaw Stewart.

The Hon'ble C. P. Hobhouse.

The Hon'ble J. Skinner.

The Hon'ble D. Cowie.

ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour THE LIEUTENANT GOVERNOR of Bengal, in moving for leave to introduce a Bill to make further provision for the administration of justice in the District of Darjiling, said that this was a very small matter, and it would not have been necessary to trouble the Council to legislate on it but for a technical difficulty. Up to the year 1862, the Sudder Court, or as it was now called the High Court, had no jurisdiction whatever in Darjiling. In that year it was thought advisable to place the Courts in Darjiling under the High Court, but under a certain modified jurisdiction. A Bill to effect this would have been brought before the Bengal Council, but that it affected the jurisdiction of the High Court, which, under the Indian Councils' Act, it was beyond the power of the Bengal Council to do. A Bill was accordingly brought into this Council, by the Hon'ble Mr. Maine to define the jurisdiction of the Courts in Darjiling and to place them under the High Court. That Bill was passed and became law as Act X of 1863.

The necessity for altering the law now arose from this circumstance. One of the provisions of the Act was that appeals from the Deputy Commissioner in Civil and Criminal matters lay and also commitments were made to the Judge of Dinájpúr. By a recent arrangement the district of Darjiling had been taken from the Bhágalpúr Division, and now formed part of a separate Division under the Commissioner of Kúch Béhár, with the powers of a Judicial Commissioner ; and it was now desirable that all appeals and commitments should be to the Commissioner of Kúch Béhár. But as the constitution of the Kúch Béhár Division was a temporary one, and it was not known when it might be necessary to alter it, it had been thought advisable to modify the existing law so as to provide that all appeals and commitments should lie and be made to the Judge of Dinájpúr or such officer as the Lieutenant Governor of Bengal should from time to time appoint in that behalf.

The Motion was put and agreed to.

#### PRESIDENCY JAILS BILL.

The Hon'ble Mr. MAINE introduced the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this Bill was essentially a local Bill, and only submitted to the Council on account of the same technical difficulty which had forced His Honour the Lieutenant Governor to bring in the Bill which he had just asked leave to introduce, namely, the incompetence of the local legislatures to affect the jurisdiction of the High Courts. The proposal was simply to extend to Madras and Bombay the law now regulating the Presidency jail in Calcutta, and it certainly was somewhat remarkable that in this Council they should be legislating for a jail in Madras. Two years ago it was thought expedient, partly on account of sanitary considerations, and partly on account of jail discipline, to remove the Presidency jail at Calcutta from the control of the Sheriff, and to place it under the control of a special officer, so that it might be brought into connection with the general system of jail-superintendence in Bengal. A Bill to that effect was prepared in the Bengal Legislative Office, but His Honour the Lieutenant Governor was very properly advised that his own Council had not the power of enacting it, and accordingly he introduced it himself into the Imperial Council. The Bill became law as Act XII of 1865. But the Council attempted to protect itself against having to legislate in so purely local a matter by adding a Section enabling the Governors in Council in Madras and Bombay to extend the Act *mutatis mutandis* to their own Presidency jails. The Advocate Ge-

neral at Madras, Mr. Norton, had, however, expressed an opinion that the Act could not be extended under that Section, inasmuch as there were at Madras two Presidency jails and not one; and MR. MAINE believed that the case was the same at Bombay. Whether that difficulty were well founded or not, the matter was one on which there ought to be no doubt, and accordingly it now became necessary, at the instance of the Madras Government, to extend the Act expressly to Madras and Bombay. The Bengal Act was repealed by the Bill, and its substance incorporated with it, merely for the purpose of having the whole law within one Statute.

The Motion was put and agreed to.

#### TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART introduced the Bill to facilitate the transshipment of goods imported into Bombay by steamers, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that the Bill itself was very simple, and the objects of and reasons for it were fully given in the printed statement before the Council. He would therefore not take up the time of the Council with any further remarks.

The Motion was put and agreed to.

#### CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE introduced the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this also was a local Bill, which had been introduced in this Council, because the North-West Provinces had no legislature of their own, and even if they had, that legislature would be incompetent to modify the jurisdiction of any of the High Courts. The measure had been prepared at the instance of the Local Government, and had the approval both of the High Court at Agra and the Board of Revenue. Its effect was to transfer suits for land from the jurisdiction of the Revenue to that of the Civil Courts in Jhánsí, and to place those Courts wholly under the appellate jurisdiction and control of the High Court of the North-Western Provinces. The territory of Jhánsí lapsed to the British Government about twenty years ago, and after temporarily forming part of the Saugor and Nerbudda territory, was ultimately attached to the North-Western Provinces, though it was not brought under the General Regulations. As the Council were aware, there was once a theory that in Non-Regulation Districts the Executive Government was also the legislature.

But the controversy which arose on the point had finally been set at rest by the Indian Councils' Act, which, on the one hand, established as law by a sweeping provision all legislative rules made before 1861 by Lieutenant Governors or by the Governor General in Council for Non-Regulation territory, and, on the other, impliedly reserved all legislation after that date to the legislatures created by the Indian Councils' Act itself. The jurisdiction of the Courts in Jhánsí had been regulated by rules made under the influence of the theory he had described. But it so happened that these rules were made by the Lieutenant Governor slightly subsequently to the passing of the Indian Councils' Act, and hence an Act of this Council, Act XXIV of 1864, was passed at the instance of Sir Henry Harington to give them legal validity. Since that Act became law, two things had occurred. The High Court for the North-West Provinces had been established, and the settlement of the land revenue at Jhánsí had been concluded. The Local Government now asked for the present measure, and MR. MAINE could not help saying that the case for it, appeared to be overwhelming. The first person who seemed to have moved in the matter was Major McNeile, the Officiating Commissioner of the Jhánsí Division, who stated that "the Civil Procedure Code had been in force for some time there, the Courts were on the Criminal side subordinate to the High Court, and on the Revenue side subordinate to the Board of Revenue, and there appeared no good reason why, on the Civil side, the Commissioner's decisions should be any longer final, or only appealable exceptionally to Government, which was practically the same thing." Major McNeile therefore submitted whether the time had not arrived for placing the Civil Courts of the Jhánsí Division under the jurisdiction of the High Court of the North-West Provinces. Therefore the North-West Government referred this to the Board of Revenue and the High Court. The Board of Revenue answered, recommending the change in very strong language.

" In reply I am desired to state that, before receiving the letter under reply, the Board had already placed on record their opinion that the recent formation of a High Court in these provinces afforded a fitting opportunity for relieving them of their anomalous position as regards the Civil Courts of the Jhánsí Division and of the family domains of the Mahárájá of Benares ; and the Board would strongly urge that the duties which they are now called upon to perform as the ultimate Court of appeal from the decisions of Civil Courts may be transferred to the High Court.

" The Board would record their opinion that the vesting of an executive authority like the Board of Revenue, with the powers of a Court of final appeal, in matters relating to the Civil Courts, is open to every sort of objection, personal, departmental and general. The Board, as a body, have no knowledge on such subjects, being unassisted by any skilled advocates, and un-

supplied with a store of precedents and decisions covering analogous cases. Their decisions, therefore, carry no weight, and may possibly run counter to decisions of the High Court in precisely similar cases. The arguments in favour of introducing such a state of things can only be dimly apprehended, and can only belong to a period when the Chief Court of Judicature of this province did not enjoy, and possibly did not merit, the same respect from the executive which is readily paid to the High Court as now constituted."

The High Court answered in language naturally somewhat less emphatic—the Registrar saying—

"In reply I am desired to express the concurrence of the Court in the propriety of the proposed measure, and to suggest a legislative enactment as the mode by which legal effect may be given to the proposal."

Having received these opinions, the North-West Government strongly recommended a legislative enactment to the effect proposed in the following language—

"Hitherto suits relating to landed property have been heard by the Revenue Courts in this Division, the ultimate appeal from the decisions of which lay to the Board of Revenue, and in suits relating to other kinds of property, which were heard by the Civil Courts, the order of the Commissioner of the Division was final, it being, however, provided that in any case in which the decisions of the Courts of first instance and of appeal differed, the Government might refer the proceedings to the Sadr Court for their report and opinion, and thereafter pass such orders as appeared proper.

"The time has now, in His Honour's opinion, come when the jurisdiction in suits relating to land may with safety be transferred to the Civil Courts, and the latter subordinated to the High Court. As the revision of the settlement at Jhánsí is nearly completed, and the rights in land have been defined and recorded, it appears to the Lieutenant Governor that no reason exists for any longer maintaining a different system in Jhánsí from that in force throughout the rest of the North-Western Provinces. It is also desirable that the Board should be relieved from the anomalous position in which, under existing arrangements, they are placed by having to discharge a duty which is foreign to their office, and for the due performance of which they have not the aid of an efficient Bar.

"The Agra High Court, who have been consulted on the subject, approve of the proposal of the Commissioner of Jhánsí; but the Lieutenant-Governor concurs with the Court in thinking that a legislative enactment is necessary to give legal effect to it. The present system of Courts and jurisdictions at Jhánsí is legalized and fixed by Section 2 of Act XXIV of 1864, and it is only by a new Act that the jurisdiction of the High Court can be extended to them.

"It appears to the Lieutenant Governor that the object aimed at will be best attained by the enactment of a law similar to Act XIV of 1863 (the Central Provinces Courts' Act), defining the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, and the extension

thereto of the Acts prescribing the Civil Courts' procedure, *viz.*, Act VIII of 1859, and the other Acts modifying and amending it.

" A draft of the Act, which it is proposed to introduce, is herewith forwarded for the consideration of His Excellency the Viceroy and Governor General in Council."

The draft Act sent up by the North-West Government was in point of fact a transcript of the Central Provinces Courts' Act ; and there was some fitness in this, since, as Mr. MAINE had stated, the Jhánsi Division had been originally attached to the Ságár and Narbadda Territory, which now formed part of the Central Provinces, and was under the same judicial system. It possibly might be convenient to add in Committee a Section enabling the Lieutenant Governor to bring other Non-Regulation Districts under his government successively under this Act, and consequently under the supervision of the High Court.

The Motion was put and agreed to.

#### MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble Mr. BRANDRETH introduced the Bill for the suppression of murderous outrages in certain districts of the Panjáb, and moved that it be referred to a Select Committee, with instructions to report in a month. He said that he had just received from the Secretary to the Panjáb Government a list of sixteen outrages committed in that province against Europeans, Eurasians and others, since its annexation. The list, it was stated, was not so complete as might be wished, but the Secretary had sent what he could. That list contained all the cases of murder within the last five years.

In regard to the Bill itself, besides the explanation which he had before given, Mr. BRANDRETH would not ask the attention of the Council to more than one or two other matters. He was desirous of not deviating from the Criminal Procedure Code to any greater extent than was necessary in order to provide for a more speedy mode of trial. But in Section 6 of this Bill, he had made for another reason an alteration in regard to the mode of appointing assessors. Instead of their being taken by lot, he had required that they should be appointed by the Commissioner, and should, if practicable, be Magistrates or officers in command of Native Regiments. In all other respects the provisions of the Code in regard to assessors would be followed. A distinguished officer, the late Major James, Commissioner of the Peshawur Division, (he MR. BRANDRETH) remembered, when holding a trial of subjects of the British

Government, refused (although MR. BRANDRETH did not think that the refusal was strictly legal) to appoint any assessors. Major James considered that since it was well known that the whole population were sympathizing with the rebels, it would be absurd to choose from among them assessors in the manner prescribed by the Criminal Procedure Code. MR. BRANDRETH had no reason for supposing that any general sympathy would be felt for criminals of the class for whose trial this bill provided; still it contained one or two provisions of such a nature as to render it desirable that the assessors who sat at the trial of these criminals should not be persons of the same caste as the offenders, and this they might be if they were taken by lot in the manner directed in the Criminal Procedure Code. Besides, the commanding officers of our frontier Regiments were most of them men of such knowledge of the country and people, and so eminently qualified in many respects as members of the Court in these trials, that he (MR. BRANDRETH) thought that their assistance should certainly be secured. It would be seen that no reference was made to the religion of any class of persons. All servants of the Queen would be entitled to the protection which it was hoped would be afforded by this Act, as well as all other persons whose religion differed from that of the offenders, and who were consequently liable to be the victims of these fanatical attacks.

He had entered in a separate piece of paper two other Sections not included in the Bill. He had done this because he was not sure whether they should be included in the Bill, and also because he thought they would be better considered separately by the Committee to which the Bill would be referred. They related to fines on persons suspected of concealing offenders under the proposed Act, or not giving up their names. The Committee would decide whether they should be included in the Bill or not.

The Hon'ble MR. MAINE said that he entirely approved of the Bill. He believed that the recital in the preamble was certainly true; that in certain districts of the Panjab, fanatics had frequently murdered and attempted to murder servants of the Queen and other persons whose religion differed from that of the offender, and further that the general law of the country was not adequate to suppress such offences. As regarded the second category—persons other than servants of the Queen—he might vouch His Excellency the Viceroy as authority for the statement that, not only European Christians, but the Hindú traders who resorted to these frontier regions for purposes of business were occasionally the victims of these fanatical assassinations. It was true that the list of victims, even as extended by the letter which Mr. Brandreth had read,

was not very large, but still the very reason of its smallness was that the Panjáb authorities on the frontier had found it practically impossible to act on the general law of the country. Whenever one of these assassinations was reported, the administrative officer invariably stated that he had been obliged summarily to execute the culprit, and when the facts were reported, they invariably constituted so strong a case, that the person who had thus gone beyond the law received the approval not only of this Government, but of the Secretary of State. The Bill therefore was not so much a Bill permitting officers on the trans-Indus frontier to order summary execution, as a Bill recognizing the fact that summary trial and execution were occasionally unavoidable in the trans-Indus territory, but placing the practice under regulation and restraint. MR. MAINE was glad that his Hon'ble friend had adhered to the ordinary procedure as much as was consistent with the object of the measure, because it could not be denied that the danger of the Bill arose from the probability of its being applied somewhat under the influence of panic, and therefore it was desirable that the utmost reasonable time for reflection and enquiry should be secured. MR. MAINE would only remark on Section 13, that the jurisdiction conferred by the Bill was intended to be exercised by the Commissioner in as many cases as possible, and that it was not meant that, unless where there were exceptional circumstances through the absence of the Commissioner, or even through his assassination, these large powers should be put in force by any inferior officer. He thought that the Section should be so framed that, subsequently to the murderous attempt, and not previously, the authority of the Commissioner, if he survived, should be obtained by the delegated officer,—power being given to hold the summary trial only if that authority could not be obtained within a limited time.

His Excellency THE PRESIDENT said that he was very much in favour of this Bill. He considered that its introduction was urgently required in the Panjáb. He thought that it was a very great evil in itself that officers should act above and beyond the law. On the other hand it was fraught with evil and danger that outrages of this description should take place, and yet that there should be no law permitting summary trial and execution in such cases. He thought that the passing of a law by which such cases could be heard and disposed of at once would have a good effect on the population generally, and would as completely provide for the safety of Government servants as the circumstances of the country required. He could fully bear out what his Hon'ble friend Mr. Maine had said, that in former days, when His Excellency was Chief Commissioner of the Panjáb, assaults were continually made on

Hindú traders. Some of them were carried away into captivity, from which they were not liberated without payment of heavy ransoms, and in some cases where ransom was refused, they were tortured and put to death. No doubt the love of plunder was often, to a considerable extent, the actuating motive of the criminals in these cases. But fanaticism also operated, and in proof of this he might mention that it was only Hindú traders, and never Muhammadans, that were thus maltreated.

As regarded Section 6 of the Bill, His EXCELLENCE thought it would be well to leave out the word "full" in that part of the Section which provided that the assessors should "be persons exercising the *full* powers of a Magistrate." He thought that, if the appointment of assessors was limited to officers exercising the full powers of a Magistrate, in many cases there would be difficulty in finding persons available for the duty; whereas almost every official (whether English or Native) in the Panjab, from the rank of Tahsildár upwards, would have some of the powers of a Magistrate. His EXCELLENCE thought that such officers would make very proper assessors. He would therefore suggest that the word "full" be left out, and as regarded the subsequent part of the Section "or officers in command of Native Regiments," he thought that some alteration might be made so as to include Native officers of such Regiments. As the Section now stood, it might often happen that there might not be a full complement of Europeans on the spot, and Native officials and Native officers might be available as assessors.

The Hon'ble MR. BRANDRETH explained, with reference to the remarks of His Excellency, that the words "if practicable" would probably meet all that was required. It was intended that officers exercising the full powers of a Magistrate (whether Europeans or Natives), or officers in command of Native Regiments, should be primarily selected. If they should not be available, he thought that the terms of the Section would allow of any others being made available as assessors.

His Excellency THE PRESIDENT said that, as the Section stood, it would look as if it were the object of Government to limit the appointment of assessors to Europeans, whether Civil or Military men. But he thought it would be desirable to show, by the words of this Section, that Native officials and Native officers, men of high character, should also be eligible as assessors. He believed that some such provision would commend itself to public opinion amongst Natives.

The Hon'ble MR. MAINE said that he fully understood His Excellency's observation, and he could assure him that it would be attended to in Committee.

The Viceroy meant that the Section should be framed so as not to appear to show any distrust of those who no doubt would constitute the intelligent class of Native gentlemen in those districts, namely, the Native officials.

The Hon'ble COLONEL DURAND intimated a doubt as to whether Section 13 as it stood would not meet Mr. Maine's difficulty, as regarded delegation of power from the Commissioner.

The Hon'ble MR. MAINE said that what he wished was that the Section should distinctly intimate that the authority of the Commissioner should, if possible, be obtained subsequently to the outrage, and that the powers given by the Bill should not be exercised by any subordinate in virtue of a previous delegation, general or special.

The Motion was put and agreed to.

#### **ALTERATION OF DISTRICTS (PANJÁB) BILL.**

The Hon'ble MR. MAINE introduced the Bill to empower the Lieutenant Governor of the Panjáb to create new and to alter the limits of existing Districts in the Territories under his government, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that this was another local Bill, and resembled one passed by the Lieutenant Governor of Bengal in his own Council. Since the Bill had been published, it had been represented to MR. MAINE that it went too far, and that by enabling the Lieutenant Governor to create new districts it enabled him indirectly to create the necessity for an addition to his judicial and administrative staff, and thus to impose a burden on the revenues of India. He would therefore propose in Committee that, while the Lieutenant Governor might alter the boundaries of districts at his option, he should only create new districts with the previous consent of the Governor General in Council.

The Motion was put and agreed to.

#### **PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.**

The Hon'ble COLONEL DURAND, in moving for leave to introduce a Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes and other articles, said that the statement which accompanied the Bill gave clearly the reasons for a measure, which proposed to make some minor alterations in one of the Sections of the Mutiny Act. The fact was that the maximum pecuniary penalty imposed by that Act on persons purchasing arms, necessaries, &c., from Soldiers was, with respect to the circumstances of the Natives of this country, much heavier than it should be ; and consequently

it was considered advisable to reduce it, so as to make it more moderate and suitable to that class of people. He might state that the Bill proposed to make no difference as to the alternative period of imprisonment provided in the Mutiny Act.

The Motion was put and agreed to.

**INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.**

The Hon'ble Mr. MAINE asked leave to postpone the presentation of the report of the Select Committee on the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement.

Leave was granted.

The following Select Committees were named :—

On the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns—The Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to facilitate the transhipment of goods imported into Bombay by steamers—The Hon'ble Mr. Maine, the Right Hon'ble Mr. Masséy, the Hon'ble Messrs. Skinner and Cowie and the Mover.

On the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division—The Hon'ble Messrs. Riddell and Hobhouse and the Mover.

On the Bill for the suppression of murderous outrages in certain districts of the Panjáb—The Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to empower the Lieutenant Governor of the Panjáb to create new and to alter the limits of existing Districts in the Territories under his government—The Hon'ble Messrs. Brandreth and Hobhouse and the Mover.

The Council adjourned till the 11th January 1867.

CALCUTTA,  
The 4th January 1867. }

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