

**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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**1868**

*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 1st July 1868.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

The Hon'ble Major General Sir H. M. Durand, C B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

INOCULATION (KUMAON AND GARHWAL) BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to prohibit the practice of inoculation in Kumaon and Garhwal, said that the Bill had been prepared at the request of the Local Government, and that his reasons for asking for leave to introduce it might be stated in a very few words. About fifteen years ago,—he could speak from personal knowledge, as he then held appointments in Kumaon and Garhwal—he believed that no part of India suffered more severely from small-pox. In fact he had never heard of epidemics of cholera or plague more fatal. There were, however, on account of the coolness of the climate, great facilities for introducing vaccination, and the Government was fortunate enough to secure the services of an able and zealous officer, Dr. F. Pearson. The result was that, for some time, small-pox had almost ceased to exist in those territories. The means of vaccination were ample for all and easily available, and the majority of the people were beginning to be sensible of its power. For some years past inoculation had been prohibited in Kumaon and Garhwal, and it was supposed that such prohibition was not inconsistent with the law. The local authorities, however, had lately come to the conclusion that, to continue this prohibition, or at all events to enforce the sanction necessary to compel its observance, was distinctly illegal, and hence the correspondence which had resulted in the preparation of the Bill which he now asked leave to introduce. The Local Government wrote that “since the issue of

orders directing officers in the Division of Kumaon and Garhwal to refrain from prosecuting criminally persons infringing the proclamation by which the practice of inoculation was prohibited, some evil-disposed, ignorant or interested persons, now made aware that inoculation is not penal, have attempted to re-introduce it." Another reason urged by the Superintendent General of Vaccination for the adoption of some legislative measure was, that Kumaon and Garhwal were the seed-beds from which the North-Western Provinces and other parts of India were supplied with vaccine virus, and that it was therefore urgently necessary to keep the field untainted, and exclude the possibility of the virus being injured by the admixture of small-pox.

The Motion was put and agreed to.

#### NON-REGISTRATION OF SETTLEMENT RECORDS BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to exempt from the Indian Registration Act, 1866, certain instruments executed by or in favour of Government, said that the Bill had reference chiefly to documents connected with the settlement of the land revenue. It was generally held to be a doubtful question whether the settlement records were or were not liable to be registered under the provisions of the Indian Registration Act. Whilst, on the one hand, it was argued that these papers constituted simply the record of pre-existing rights, that they were not framed with the intention of *creating* interests in land, and could in no sense be regarded as documents of title; on the other, it was to be observed that the conditions of compulsory registration, as set forth in the Act, were very comprehensive, including not merely instruments which purported to create or transfer, but also those which tended in any way to limit or assign, any interest in land; and it was difficult to avoid the conclusion that the settlement records which treated of the rights of occupancy possessed by the tenant, the specification of his holding, and the adjustment of questions of disputed boundary, must be held to have the effect of limiting and defining, to some extent at least, interests in the land to which they related.

The subject had been brought under consideration in a reference from the Government of the North-Western Provinces, where extensive revisions of settlement were now being made. It had been urged that it was highly inexpedient that settlement records should be subjected to the obligations imposed by the Indian Registration Act; that, looking to the nature of the settlement record, the way in which it was prepared, and the manner in which it was kept and made accessible for inspection by all parties interested in its contents,

all the purposes of registration, as regarded the interests in land affected by it, must be held to be sufficiently attained; whilst the hardship and expense to individuals, of the fulfilment of the conditions of the Act by the further registration of such documents as therein required, was necessarily very great.

Upon this representation of the Government of the North-Western Provinces, a general reference was made to all Local Governments and Administrations—1st, as to whether such documents did come under the liabilities imposed by the Registration Act: 2nd, whether their registration under that Act was necessary or desirable.

On the first point, the replies received indicated the existence of some diversity of opinion and interpretation of the requirements of the Act; whilst as to the inexpediency of the registration of such documents being made compulsory, there might be said to be a general agreement. In these circumstances, it seemed necessary to have recourse to legislation, in order that the existing doubts as to the liability of this important and extensive class of documents to registration might be removed; and having regard to the weight of opinion against the subjection of such documents to the provisions of the Registration Act, it was clearly expedient to secure their exemption from its operation.

The Registration Act had for its chief objects the prevention of fraudulent dealings in regard to the conveyance of immoveable property, and the provision of a complete record of all titles and interests in land: the only substantial objection, therefore, that could be taken to the proposed exclusion of settlement records from the obligation which it imposed on the executants of deeds treating of such interests, was that, by their exemption, the registration record quoad the land which formed the subject of settlement would, to a certain extent, be incomplete.

The answer to this objection was, that what the registration records failed to supply would be found in the settlement records; that the latter afforded as good security for the authenticity of the facts which they represented as the former, and were no less accessible to the person interested in the investigation of their contents. The only disadvantage that such person was placed under through the non-liability to registration of these documents was, that he must search the records of two offices, instead of one, to obtain the complete information which he required. It had been suggested, however, that this difficulty might be overcome by providing for the deposit of copies of the exempted documents in the Registration Office. This was a question of detail which, if he

(MR. COCKERELL) obtained leave to introduce the Bill, could be more fully considered after the Bill had been referred to a Select Committee.

The Motion was put and agreed to.

### NEILGHERRY COMMISSIONER'S SMALL CAUSE JURISDICTION BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill for investing the Commissioner and the Assistant Commissioner of the Neilgherry Hills with the powers of a Judge of a Small Cause Court, said that this was almost a formal matter. The Bill was necessitated by a defect of legislative power in the Council of the Governor of Fort St. George. It appeared that the Madras Government had been for some time engaged in framing a scheme for the administration of civil and criminal justice, and for the collection and superintendence of the revenues on the Neilgherry Hills. It had been found that, under the system now in force, the work devolving on the Civil and Sessions Judge of Ootacamund was sufficient to occupy only a portion of his time, and that, on the other hand, the Collector of Coimbatore had more business connected with the Neilgherries than he could efficiently discharge without withdrawing his attention from the rest of his district. The plan proposed by the Madras Government, which was somewhat of a Non-Regulation arrangement, had been sanctioned by the Governor General in Council; but part of the scheme consisted in investing the Commissioner and his Assistant with Small Cause jurisdiction. The Bill to attain this object could only be passed by the Council of the Governor General, as it would modify their Act No. XI of 1865, in so far as that Act contemplated that a Judge invested with Small Cause jurisdiction should be a Small Cause Judge and nothing else. This Council had to some extent departed from the principle which he had mentioned, by authorizing, under Act No. XVI of 1868, the Local Governments of Lower Bengal and the North-Western Provinces to invest subordinate Judges and Munsifs with the powers of a Small Cause Judge. This, of course, it was competent for the Council of the Governor General to do, but under the Indian Councils' Act, the local Councils had no power to amend any Act of the Governor General in Council made after the year 1861. Hence it had become necessary to supplement the Madras legislation.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also 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. MAINE then introduced the Bill and moved that it be referred to a Select Committee, with instructions to report in a week. The matter was urgent, as the proposed measure formed an essential part of the larger scheme to which he had adverted, and many pressing telegrams on the subject had been received from Madras by his Hon'ble friend, Mr. Taylor. The Bill first provided for the investment of both the Commissioner and Assistant Commissioner of the Neilgherry Hills with Small Cause jurisdiction. The Local Government intended that one or other of these officers should be invariably present at Ootacamund for the trial of Small Causes, which formed the principal part of the judicial work on those Hills. The Bill also provided for the Commissioner and the Assistant Commissioner exercising the powers of a Court of Small Causes jointly as well as singly, and that, in the exercise of these powers, they should be subject to such rules as the Local Government should prescribe. The Commissioner would have a casting voice in cases where he differed from the Assistant Commissioner.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Judge of a Small Cause Court—The Hon'ble Messrs. Taylor and Cockerell and the Mover.

The Council adjourned till the 8th July 1868.

SIMLA, }  
The 1st July 1868.

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