

Friday, December 2, 1870

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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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 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 2nd December 1870.

PRESENT :

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I.,
presiding.

The Hon'ble John Strachey.

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

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble MR. INGLIS and the Hon'ble MR. COWIE each took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

LIMITATION OF SUITS BILL.

The Hon'ble MR. STEPHEN introduced the Bill for the limitation of suits, and moved that it be referred to a Select Committee with instructions to report in two months. He would not occupy the time of the Council with any further remarks, as he had said what he thought necessary on a former occasion when he moved for leave to introduce the Bill. The Bill was of a very technical and professional nature, and would receive the careful attention of the Select Committee to which it would be referred. He would not, therefore, occupy the time of the Council by discussing any question of detail.

The Motion was put and agreed to.

CRIMINAL TRIBES BILL.

The Hon'ble MR. STEPHEN also introduced the Bill for the registration of Criminal Tribes and Eunuchs, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that, when he

moved for leave to introduce this Bill a short time ago, he had stated the general circumstances which were connected with the introduction of the measure, and he need not therefore refer again to the subject, more especially as some parts of it were of a very unpleasant nature. He would, however, say a few words about the provisions of the Bill as it had been prepared. It extended to the North-Western Provinces, the Panjáb and Oudh, and would not be passed without the receipt of an expression of opinion from those authorities on its provisions. One section of the Bill applied to the whole of British India : it authorized the arrest of registered persons found out of the district to which they belonged. That was necessary because it was the custom of these tribes to go far and wide in their marauding expeditions. It was, therefore, essential that they should be arrested when discovered in districts other than those to which they belonged. He was informed indeed that some tribes had been known to wander from the northern parts of the Panjáb to the Deccan, to Bombay and to various other parts of India. He might further observe that this Bill provided no means by which the executive officers of the Provinces in which it was to be enforced should communicate with other officers in other parts of India regarding registered persons who had wandered away from the districts to which they belonged. That required no law, for nothing would be easier, especially in these days of Post Offices, Telegraphs, and Photographs, than to get information from any part of India necessary to ensure the arrest of any gang of marauders.

The second Part of the Bill referred to the registration of criminal tribes, and adopted, with a few modifications which he thought would be approved of by the Panjáb Government, the regulations which lately existed on the subject, and which had been supposed to have the force of law until they were declared by the Chief Court to be illegal. The most important part of the work, the registration of the tribes, was to be done under the direction of the Magistrate, and the Local Government was to have the power of making rules prescribing the limits within which persons so registered should reside, the conditions under which they were to be permitted to leave those limits, and the conditions as to answering roll-calls, to satisfy the Magistrate that such persons were present at any given time within the prescribed limits.

The third Part of the Bill, which related to the question of the registration of eunuchs, was one to which he would refer as shortly as possible. He stated at length on a previous occasion the general nature of the evils to be dealt with : no doubt it was a difficult matter to suppress evils of that kind ; but there were

one or two circumstances in this particular case which rendered it comparatively easy to suppress the evil with a minimum amount of risk of oppression. The cardinal provision in this portion of the Bill was that the Local Governments could frame registers of all eunuchs who were suspected of kidnapping or castrating children, or of committing the crime specified in section 377 of the Penal Code. They could also frame a register of the property of such persons. Eunuchs were to be punished for appearing in public in female clothes, or for dancing or playing music in the public streets or in private houses for hire. He believed that, if these provisions were rigorously carried out, they would put an end to a most horrible system. Of course, it was to a certain extent a strong measure to authorize the registry of private persons, but in this instance we started with the fact that a man belonged to a special class which it was impossible to mistake. Therefore, where there was suspicion that particular members of that small class were addicted to these horrible practices, they would be suspected not without good grounds. That was a subject on which he had nothing to add to what he had already observed on a previous occasion.

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS' GENERAL FUNDS BILL.

The Hon'ble SIE RICHARD TEMPLE introduced the Bill to repeal the law relating to the General Funds of the Courts of Small Causes at the Presidency Towns. He said that it would be in the recollection of the Council that, at the last meeting held at Simla, when he obtained leave to introduce this Bill, he stated all that was necessary regarding the reasons and the object of the measure; so he need not occupy the time of the Council on this occasion. As the Bill was one of the simplest character, it did not seem necessary for him to do more than to introduce the Bill in order that it might be published in the *Gazette*.

The Hon'ble MR. CHAPMAN thought it would be satisfactory if the Hon'ble Member would give the public, and especially that section of the public engaged in trade at the presidency towns, some kind of general assurance that the reasonable demands of the Small Cause Courts for suitable building-accommodation would receive preferential consideration.

The Hon'ble MR. ELLIS said that he had taken occasion, at an earlier stage, to express his dissent from some of the provisions of this Bill. He desired to guard against the supposition that he was opposed to the main object of the Bill, for it was based on a proper principle. Small Cause Courts were now no longer experimental and special establishments, but formed part of

the general judicial system of the country, and he hoped that by their extension, considerable improvement, both in the way of economy and efficiency, might be effected in the judicial administration. There was therefore no longer any reason for maintaining a special fund. But he had said on a former occasion that it would be better if retrospective action had not been given to this measure. He thought that, in giving legal effect to a principle admittedly sound, it would have been better had care been taken to guard against even the suspicion of there being any sordid motive in doing so. It would have been preferable had there been no possibility of anyone supposing that Government desired to obtain a pecuniary benefit in carrying out this measure. He trusted, therefore, that in the course of the proceedings, some such assurance as that which the Hon'ble Mr. Chapman had asked for might be given by the Hon'ble Member in charge of the Bill, that the public might rest satisfied that there was not any desire to obtain surplus funds and profits for the Financial Department, that next year, or whenever a reasonable demand for buildings for Small Cause Courts was made, it would be promptly attended to, and that advantage would not be taken of this measure to refuse to the Small Cause Courts and those interested in them such conveniences as they might need.

The Hon'ble Mr. STEPHEN said that, as his hon'ble friend (Mr. Ellis) had brought up this subject, he thought it would be desirable to explain the nature of the case somewhat more fully. In the meantime he would say again that it was impossible for any one to suppose that any sordid or improper motive had influenced the Government in adopting this measure. When Small Cause Courts were originally established in the presidency towns, it was provided by the Act that there should be a Fund composed of the fees paid by the suitors, which should be expended as the Government might direct, and should be called the Small Cause Court Fund. Of course, it was one object of the establishment of that Fund to provide for the expenses of the Courts, which were then looked upon as an experiment. But the Fund never was kept as a separate Fund: offices and establishments and buildings were provided, and the fees of the Small Cause Courts were carried to the general revenues of the country. It was stated that this involved a sort of breach of faith. But if the matter were carefully considered, he would ask with whom faith had in any way been broken, or what person was the worse for the transaction? It might be said that the suitors of the Court had suffered, because a part only, and not the whole, of the fees they paid for their litigation was appropriated to the accommodation of their successors in litigation, and to the building of Courts in which subsequent litigants might be heard. It was not asserted that the fees

were excessive or that the money had not been expended for the public advantage. Where then was the grievance? Consider what would have had to be done if this Bill had had no retrospective effect. It was his (MR. STEPHEN'S) opinion, looking at the original Act, that if the Government of India, who had the power by that Act to order the Fund to be disposed of as they thought proper, had ordered a portion to be expended for the benefit of the suitors, and the rest to be carried to the credit of the Government of India, they would have been justified in so doing. They did not make that order, consequently there was a sort of a ghost of a Fund existing, which, if it were now embodied, might be applied to-morrow to the very purpose to which in fact it had been applied. Suppose that were done in compliance with the views of the Hon'ble Mr. Ellis, what would be the result? We should have to take an account of all the fees which had been received from the Small Cause Courts ever since their establishment. When we had got the gross amount of fees so received, we should have next to take an account of all the expenses connected with Small Cause Courts, such as the payment of the salaries of the Judges and their establishments, the rent of the buildings in which the Courts were held and the like. Then we should set-off one against the other; we should arrive at a balance, and the Government would then be able under the Act to do whatever it liked with that balance. The effect of the Act was simply this. The Government having done what they might have done with perfect regularity if they had previously gone through a perfectly useless form, the Act dispensed with the necessity for that form. How could there be any "sordid motive" for that?

As for the general notion that any Department in the country (whether it were a Small Cause Court or a Registration Office, or any thing else) was a sort of corporation which could have a surplus or a deficit, which could have a claim on the Government, or suffer a grievance of its own, if the surplus was not expended in extending its establishments, such a notion was to him absolutely unintelligible. He could conceive of no interests connected with any such institution except two. One was the interest of the man who had to pay taxes; the other was the interest of the public in the money raised by taxation. So long as the person who paid the taxes got value for the taxes which he paid (which he did in the case of Small Cause Court fees), and so long as that money was expended according to the best judgment of the Government for the advantage of the public generally, it seemed to him as absurd to say that a body called the Small Cause Court, or the Small Cause Court Fund, had any sort of grievance to complain of, as it would be in MR. STEPHEN'S waistcoat pocket to say that it had a grievance, if he chose to carry his money in his trowser pocket. This illustration might be unsuited

to the dignity of this assembly, but it described literally the state of affairs. Any attempt to do justice between one public Department and another on any grounds except the ground of general public convenience, and to consider what part of the revenue ought to be applied to a particular purpose, was exactly like an attempt to decide in which pocket particular articles ought to be carried, on any other principle than that of the convenience of the man who wore the clothes.

The Hon'ble Mr. CHAPMAN did not mean to say that any one was in a position to make a specific claim on the Government to these surplus funds; but he did think the principle ought to be admitted, that a separate branch of the administration, which was in the position of a milch-cow, ought and was entitled to receive more liberal treatment than a sterile one.

The Hon'ble Mr. BULLEN SMITH did not suppose that anyone would dispute what had fallen from the Hon'ble Mr. Stephen, or attempt to deny that the Government had the right to do what it was proposed to do; and it would be, perhaps, impossible to lay a finger on any section of the community that could specially complain of it as a grievance. There were, however, many things which, although not absolutely and immediately binding on Government to perform, were yet highly expedient, and the concession now asked of the Hon'ble Gentleman was, he thought, one of them, as there could be no question that the public did consider that the appropriation of the funds in question by the Government was a grievance. The public considered that establishments which contributed considerable surplus revenue to Government, were entitled to receive more attention at its hands in the matter of accommodation. He would instance the Small Cause Court of Calcutta, a Court which, for years had yielded a large margin, and ask the Hon'ble Member, who lived in its immediate vicinity, to visit that Court in the months of April, May or June, and then report whether he considered it a fit place for the Judges to work during the long days of the hot weather, and whether the public were not entitled to expect better accommodation.

There was building a palace for the High Court; but he (MR. BULLEN SMITH) had it on the authority of the Advocate General that, as far as comfort was concerned in reference to this climate, he would never wish to plead in a better place than the Town Hall. The Judges on the appellate side of the Court did not, he believed, complain of their building, and he thought the claim of the Small Cause Court was much stronger. Whilst admitting the technical correctness of all that fell from the Hon'ble Mr. Stephen, he still would desire to support the Hon'ble Members who had previously spoken.

The Hon'ble SIR RICHARD TEMPLE, in reply, said that he could give no assurance whatever to the effect that a preferential claim would be conceded to Small Cause Courts in respect to the construction of buildings for their accommodation. That matter pertained to the Public Works Department, and was not at all embraced by the present Bill. Nor could he give any assurance, either way, as to whether a pecuniary profit would or would not be made by the State from the establishment of Small Cause Courts. He did not regard the matter in that light. The proceeds of the stamps or fees in these Courts were like all other stamp-revenue. It had never been the practice to calculate whether the administration of justice yielded a profit to the State in the shape of surplus stamp-revenue; in other words, whether the stamp-revenue exceeded the expenditure on Law and Justice, or the reverse. No such balance was ever attempted to be struck. The stamps were regulated without reference to the cost of the Courts: the expenditure on the Courts was allowed without reference to the amount of the stamp-revenue.

It might be (as remarked by the Hon'ble Mr. Bullen Smith), that the Calcutta Small Cause Court was badly accommodated at present. This was a matter for the consideration of the Public Works Department, or of the Local Government, but it did not concern the legislature or the exchequer. He (SIR RICHARD TEMPLE) hoped it might be possible to improve the accommodation, but whether this would be possible, he could not say. It might be desirable to give the Court a better building, but no special claim could be admitted.

His hon'ble friend Mr. Ellis had said that, if this measure took effect prospectively, it need not take effect retrospectively. But the arguments were really as good for retrospective as for prospective effect. If retrospective effect were not given, the result would be that the sums now in hand in the treasury would have to be paid to the credit of the Small Cause Courts, and would have to be included in the payments of the year. In that case, *to whom and to what account* would they be payable? Apparently to the several Courts, each according to its share. But to determine such share, an elaborate account, difficult of preparation, would be necessary, which, after all, might turn out to be unsatisfactory. As he (SIR RICHARD TEMPLE) had explained at Simla, it was contrary to financial rule and principle for any portion of imperial revenues to be set aside for any special purpose whatever. The exchequer received all the income of the State, and defrayed all the expenditure. It was impossible to allow the Small Cause Courts, as regards their stamp-proceeds, to form an exception to so important a rule.

The case was really quite clear. Certain sums had been ordered to be held in suspense by legislative authority, which sums really belonged to the State as stamp-revenue. Without the rescinding of that authority, the due appropriation of this money could not be made. The original granting of that authority was a mistake : if such a proposal were now to be made, it would surely be rejected by the Legislative Council. When, however, it was made and became law, no effect had been given to it, and the sums had not actually been held in suspense. There was, therefore, room for rectification, which the Bill now to be introduced was intended to supply.

His Excellency THE PRESIDENT wished to say one or two words with regard to that part of the question which seemed to excite the greatest interest, namely, as to proper provision being made for the accommodation of the public in the Small Cause Court in Calcutta. This involved the general question of the construction of public buildings in this city. The Council were aware that very large reductions had been made in the grants for last year and for this year for public works. This necessitated a proportionate reduction in that portion of the grant set aside for the construction of public buildings in Calcutta. That being so, the Government of India thought it desirable to suggest to the Local Government that it would be right to finish the buildings in hand before the construction of any new buildings was undertaken. His EXCELLENCY thought that any gentleman who walked about Calcutta, and saw the incomplete state of many of the large buildings—an incompleteness which was to a certain extent discreditable to the State—could not doubt that a wise conclusion had been come to. It was to be hoped that the period was not far off when these buildings would be finished. When that had been done, His EXCELLENCY was certain that provision for the accommodation of the public in the Presidency Small Cause Courts would be considered along with other claims. In such a matter, the opinion of the Local Governments would have great weight, and if it seemed to them that the suitors in the Small Cause Courts had a claim to accommodation prior to that of other classes of the community, it would of course be attended to, and the necessary buildings would be provided. His EXCELLENCY accepted the general expression of opinion that the present accommodation was insufficient. In this respect, as in others, the general wishes and desires of the public would be attended to. Looking to the limited grants at the disposal of the Government, and the great loss arising from leaving half-completed buildings in the state in which they were in Calcutta, His EXCELLENCY certainly thought that they should not depart from the decision already come to, that the buildings in hand ought to be finished before others were commenced.

PRISONS' ACT EXTENSION (COORG) BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to extend the Prisons' Act, 1870, to Coorg. He said that this Bill was of an entirely formal nature, and he, therefore, did not propose to move to refer it to a Select Committee.

COMMITMENTS FROM ANDAMANS BILL.

The Hon'ble MR. CHAPMAN also introduced the Bill to authorize the committal of European British subjects by Courts in the Andamans to the High Court at Fort William. This Bill also was of an entirely formal nature, and he would not ask the Council to refer it to a Select Committee.

CHAUKIDARI ACT EXTENSION BILL.

The Hon'ble MR. CHAPMAN then introduced the Bill to authorize the extension of the Chaukidari Act to places where there is no Jamadar of Police, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that, since he had come to the Council, he was informed that there were some points of principle involved in the Bill, and he would, therefore, propose to refer it to a Select Committee.

The Motion was put and agreed to.

EVIDENCE AND INSOLVENCY BILLS.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills :—

To define and amend the law of Evidence :

To amend the law of Insolvency.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills :—

To consolidate and amend the law relating to the local extent of the General Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities :

To consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal :

SUNDRY BILLS.

For repealing certain enactments of the Bengal Code:

To consolidate the law relating to Cattle Trespass:

For the Registration of Assurances:

The Motion was put and agreed to:

The following select Committees were named:

On the Bill for the limitation of suits—The Hon'ble Messrs. Chapman, Bullen Smith, Cockerell and Inglis and the Mover.

On the Bill for the registration of Criminal Tribes and Eunuchs—The Hon'ble Messrs. Chapman, Cockerell and Inglis and the Mover.

On the Bill to authorize the extension of the Chankidari Act to places where there is no Jamadar of Police—The Hon'ble Messrs. Stephen, Cockerell and Inglis and the Mover.

The Council adjourned to Friday, the 9th December 1870.

CALCUTTA,

The 2nd December 1870. }

WHITLEY STOKES,

Secy. to the Govt. of India.