

Friday, March 3, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

Jan to Mar

1871

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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 3rd March 1871.

P R E S E N T :

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

His Honour the Lieutenant Governor of Bengal.

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.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárajá-
dhiráj Siváe Rám Sing Bahádur, of Jaypúr, G. C. S. I.

The Hon'ble F. R. Cockerell.

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

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

PENSIONS' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the law relating to Pensions, and moved that it be referred to a Select Committee with instructions to report in two months. He said that when this subject was last before the Council he explained how far the Bill was, as regards its local application, in extension of the present law.

A reference to the schedule would show that the Bill purported to effect at the same time a very considerable curtailment of enacting matter by the substitution of twelve sections for about an equal number of entire Regulations and Acts.

The Bengal Regulations, which constituted the bulk of the schedule, contained a large number of detailed provisions in regard to such matters as the grant of certificates, the identification of pensioners, periodical payments, audit

of payments, and the keeping of records, the specific enactment of which, inasmuch as it excluded change of practice without recourse to fresh legislation, must always be inconvenient for administrative purposes, even where the enactment applied only to a particular locality.

But the inconvenience would be greatly increased if we were to attempt to re-enact the Bengal rules on these matters for application to the whole of India. On this consideration, the details of the Bengal Regulations, to which there were no corresponding provisions in the law in force in Madras and Bombay, had been omitted, and section 12 of the Bill, which gave a general power to the local authorities to make rules on such matters, had been substituted therefor.

The Hon'ble Mr. ROBINSON wished to make a few remarks with respect to the proposal to repeal the Madras Act relating to pensions. He thought the Bill should not be allowed to affect the Madras Presidency. He quite admitted that Bombay evidently required legislation in this direction, and the only surprise was that some such legislation had not already been resorted to. Possibly the Bill consolidated the Bengal law on the subject; but it did not usefully do the same as regards the Madras Act. He had carefully examined its provisions, and it certainly omitted several things which were useful and proper in the Madras Act; for, in fact, the circumstances under which these gratuities had arisen, the terms and the manner in which they were inherited and participated in, were so very different, that he thought that such legislation could be far better done by the Local Governments, and that Bombay and Madras could best legislate for themselves in this matter. At all events, he thought it very undesirable to alter a law which was satisfactory and complete, and wherever we had local legislation of that kind he would not disturb it. The Madras law was complete and exceedingly simple, and was contained in three sections of one Act (two of which consisted of only a few lines), and did not require any consolidation or alteration as a whole. At the same time, he should not be prepared to say that, in legislating for Bombay, we ought to carry out all the provisions of the law as regards Madras. That would be a very sweeping change; and if the law of Bengal was in the state which this measure indicated, he would leave it alone.

In Madras no Civil Court could, he observed, take cognizance of any case which affected, either as regards the Government or a private individual, the right to continuance or inheritance of any pension, or the right to participate therein. Civil Courts could only take cognizance of such claims if the Chief Secretary, by certificate under the orders of the Government, referred the parties

to the Civil Courts. That certificate was in fact very seldom given, and generally only to get rid of some litigious persons ; so that, practically, claims to pensions were entirely adjudicated upon by the Madras Government. Section 4 of the Bill would very materially alter a procedure which he thought suited the Madras Presidency very well.

Under these circumstances he thought the Council ought to exempt the Madras Presidency from the operation of this Bill, and in consolidating the law omit that Presidency from the schedule.

The Hon'ble MR. CHAPMAN desired to make a few remarks on the provisions of this Bill, so far as it would materially affect the existing law in certain parts of the Bombay Presidency. In Bengal, Madras, and a large portion of Bombay, a law already existed, expressly excluding the Courts from all jurisdiction in the matter of assignments on the revenue. But in Gujarát and the Konkan, which constituted our earliest possessions, for some reason that he was not acquainted with, no exemption of the kind had been specifically made. The consequence was that claimants had exercised the right of taking Government into Court with a view to enforcing the disbursement of these payments. Section 3 would have the effect of barring this right, which, as he had already said, existed in no other part of India, and which had been admitted in these two provinces simply in the absence of an express provision to the contrary.

MR. CHAPMAN considered the opportunity afforded by this Bill had been rightly taken advantage of for assimilating the law. It did seem to him most unreasonable that Government should be liable to be taken into their own Courts, and compelled against their judgment to continue payments which had their origin under the Native Government, and which were granted from motives of religious and charitable sentiments and State policy. Many of these assignments were of a totally unauthorized character. The Government would have been perfectly justified in summarily disallowing all that were not supported by good and clear titles. In the interest of the public the utmost that could fairly be expected was that these claims should be dealt with in an equitable and reasonable manner, and this the Government had done under the rules which had been framed for the purpose. In point of fact, the large majority of these claims had already been disposed of throughout the Presidency, and as he had said, except in two provinces, the Courts had no jurisdiction to interfere with what had been done.

In these two provinces, owing to the absence of an express prohibition, the Courts had interfered, and a recent decision of the High Court shewed, he thought, the necessity for protecting Government against such inter-

ference. The case he alluded to was that of one *Harishankar Tikam v. The Collector of Kheda*, in which the High Court ruled, in special appeal, that where a charitable grant in connection with a temple had been proved to have been enjoyed by the incumbent and those under him for more than thirty years, the Government were bound to continue payment in perpetuity. If this was really the law, then, he believed, the Council would agree with him, that the sooner it was altered the better. It seemed to him to amount to this. If any one had subscribed to a charitable institution or to a Missionary Society for thirty years, he and his heirs and successors were bound to do so for ever and ever.

Of course it was not intended by this Bill to put Government in a better position than the ordinary public in respect to obligations they themselves had voluntarily incurred for consideration received. But he thought it his duty to explain, in the most explicit manner he could, what the effect of the Bill would be on a considerable class of claimants in Bombay. He had done so at the earliest opportunity in order that those who might consider themselves aggrieved by the proposed measure might have time to represent their objections to his Lordship and the Council.

The Hon'ble MR. STEPHEN had only one word to say in answer to a remark which fell from the Hon'ble Mr. Robinson, that this was a matter to be dealt with by the local legislatures. MR. STEPHEN wished to observe upon that, that no local legislature would be legally competent to deal with the matter, because it affected the jurisdiction of the High Court; consequently the subject must be dealt with by this Council or not at all.

The Hon'ble MR. COCKERELL thought that the objection taken by his hon'ble friend (Mr. Robinson) might be conveniently dealt with by the Select Committee to which he hoped the Bill would be referred. There was no intention of curtailing, by the proposed legislation, any power heretofore reserved to the Madras Government by local statutes in regard to claims relating to pensions.

Section 3 of the Bill embodied the important principle which underlay the entire law on this subject, and which was to the effect that no adjudication by the Civil Courts could affect the liability of the State as to the payment of pensions and similar allowances. This might be said impliedly to let in litigation regarding pensions, the issue of which would not affect such liability.

But as no decree or order of a Civil Court directing the payment of a pension to any particular person could be enforced against the Government, the practical result of the present state of the law in Bengal, which was maintained in the Bill, would seem to be not materially different from that of the

law in force in the Madras Presidency, namely, that suits regarding the payment of pensions could only be effectually prosecuted with the consent, whether expressed or implied, of the Government.

If, however, in the judgment of the Committee, it was necessary to retain the precise terms of the Madras local statutes to guard against any change of the practice so long in force in that Presidency, there would be no objection to making such alterations of the Bill as would secure that object.

The Motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. COCKERELL also presented the report of the Select Committee on the Bill for the Registration of Assurances.

EMIGRATION BILL.

The Hon'ble MR. CHAPMAN presented the report of the Select Committee on the Bill to consolidate the law relating to the emigration of Native labourers.

SESSION COURTS BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to amend the law relating to Courts of Session. He said this was a matter rendered necessary by circumstances which had come to the notice of the Government in consequence of an application from the North-West as to the alteration of the Districts of the Sessions Judges of Benares and Mirzapúr in consequence of the abolition of the Judgeship of Jaunpúr. Certain technical irregularities had been discovered which he thought it would be well to preclude. He did not propose to enter into the matter more fully at present ; it would require a very short Act, which could be speedily dealt with. He therefore now only moved for leave to introduce the Bill.

The Motion was put and agreed to.

The following Select Committee was named :

On the Bill to consolidate and amend the law relating to Pensions—The Hon'ble Messrs. Stephen, Chapman, Inglis and Robinson and the Mover.

The Council adjourned to Thursday, the 9th March 1871.

CALCUTTA,
The 3rd March 1871. }

WHITLEY STOKES,
Secy. to the Govt. of India.