

Friday, January 6, 1871

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

**Jan to Mar**

**1871**

**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 2A & 25 Vic., cap. 67.*

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The Council met at Government House on Friday, the 6th January 1871.

P R E S E N T :

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

Colonel the Hon'ble R. Strachey.

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 W. Robinson, C. S. I.

PLEADERS, MUKHTARS AND REVENUE AGENTS BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to consolidate and amend the law relating to Pleaders, Mukhtárs and Revenue Agents. He said that the Bill was intended to consolidate and amend the law on the subject to which it referred; and it would, if enacted, replace the eight different Acts and Regulations in which that law was now contained. It was in fact one of the consolidation Bills of which so many had recently been prepared in execution of the scheme of consolidating the existing laws, and this Bill, he was happy to say, was one of the last.

The opportunity had been taken to introduce certain changes in the law relating to the remuneration of pleaders, mukhtárs and revenue agents. He was authorized to state that the sections dealing with this subject were framed on the recommendation and had the approval of the Hon'ble Sir Walter Morgan, the Chief Justice of the High Court of the North-Western Provinces, who probably had as great experience on the subject in question as any other

authority in India. The provisions which it was proposed to adopt were substantially the same as those which were contained in the Act of Parliament passed in the course of last summer for amending the law relating to the remuneration of Attorneys and Solicitors, 33 & 34 Vic., cap. 28. Some adaptations had been made both in the arrangement and language of the clauses taken from that Statute, as well as in the substance of the provisions themselves. He need not enter into the details of what was proposed, but the general object of the sections in question was to secure to pleaders and others an easy remedy for the recovery of their fees, and on the other hand to secure to clients a remedy against anything in the nature of oppression or extortion. The course which had been taken to secure these objects was as follows. Under the terms of the existing law, pleaders were able to make any contracts they pleased with their clients, and such contracts could not only be made, but might be enforced by a regular suit. However, when a regular suit was brought, it had been held that it was not open to the Court to look into the character of the bargain itself: it was treated like any other bargain; and if the pleader chose to take advantage of his knowledge of the law and legal experience and the need of his services by his client, to compel him to enter into an extortionate arrangement, he could do so. He need hardly say that the difficulty of permitting lawyers in general, and pleaders and attorneys in particular, to enter into any contracts they pleased with persons who were necessarily ignorant of the particular subject-matter of the contract, had been felt so strongly in England, that it was not, until very lately, competent to an attorney to make a bargain with his client for anything beyond just professional allowances, which were subject to taxation by an officer of the Court. For reasons which were obvious in themselves, and to which MR. STEPHEN need not particularly refer, as they were all summed up in famous judgments of the English Courts of Justice, in *Swinfen v. Lord Chelmsford* and *Kennedy v. Brown*, it was the law of England that a barrister could not make any bargain at all for his fees for advocacy in litigation, and whether he was paid or not he had no legal remedy against his client. That state of the law could hardly be introduced into this country: it implied a state of things that did not exist in British India. But while the law of India allowed attorneys and pleaders to make any bargains that they thought fit, it in point of fact caused to clients very great hardship, and he was inclined to believe, from such information as he had received, that a large proportion of the litigation of this country was due to the cause that pleaders and mukhtars, some of whom were most unscrupulous, gave themselves an interest in the matter in dispute, made extortionate bargains with their clients, and forced them on by false hopes of ultimate success to appeal from Court to Court. Now that was a state of things which certainly seemed to be open to

great objection, and the measure proposed in the present Bill, which rested on the high authority he had mentioned, was that, although pleaders and mukhtárs should be allowed to contract as heretofore, their contracts should be subject entirely to the supervision of the Court, and that they should not be enforced in the ordinary way by regular suit, but that they should be enforced by order of the Court, the Court having power, if it thought proper in the interests of justice, to quash or modify the original contract in any manner it thought fit.

Another clause of the Bill provided that pleaders should not be permitted to stipulate for payment only in the event of success.

With regard to the last provision MR. STEPHEN confessed that he entertained some doubts, and should be glad to hear what could be said on the point by persons of local experience. On the one hand, if you permitted a pleader to enter into a contract on the terms of no cure no pay, you gave him such a strong interest in the suit that, if he was a man capable of such practices, it was by no means impossible that he might suggest every kind of improper defence and iniquitous plea, and might even go so far as to suborn witnesses for the purpose of carrying out these defences, in the same manner as if he were himself the litigant. That was a strong argument on one side. On the other hand, MR. STEPHEN had heard it said that the people in some parts of the country did not dislike this arrangement. That was foreign to English experience. The reason why such an arrangement was not disliked in India was that the pleaders were described as using all manner of means to obtain clients; and when they obtained them the suitor said—"I know very little about you, and I may never see you again, and moreover, I do not in the least believe that you will take any particular care about my suit unless you have an interest in it." That was the other side of the question. He (MR. STEPHEN) did not himself know how the matter stood; it was one on which he could only form an opinion from what he had heard. The Bill would of course be submitted to the Local Governments for the expression of their opinions, and he hoped they would express them upon this as well as other points. But as to the main principle, that a bargain between lawyer and client ought not to be left to the ordinary principle of free trade, but that it ought to be made subject to the strictest supervision by competent authority, which would see that superior knowledge was not abused, he felt no doubt.

Section forty-five of the Bill remedied an existing defect. This section provided that if any advocate, attorney, or mukhtár had been removed or suspended by the High Court, and if he practised after such removal or during such suspension, he would be liable to a fine. The object of that was as follows. The High Courts were necessarily invested with power to remove or suspend advocates

and pleaders in this country; it must and ought to be so. But if a man chose to disregard the authority of that Court, and chose to plead and act in other Courts contrary to such order, he ought to be punished. Of course the High Court would not hear him; but if he went to the Courts all over the large provinces under the supervision of the High Court, the probability was that it might escape notice for some time that he was under suspension, and the effect of that would be that he might practise notwithstanding the order of the Court.

MR. STEPHEN thought any one who had anything to do with the administration of justice would be aware that there was hardly any kind of person who could do more good than the really honest and conscientious advocate: on the other hand, no one who could do greater harm, and defeat the ends of justice more effectually, than the dishonest and unscrupulous advocate. He spoke as a barrister having strong professional feelings, and he would just as much stand up to the utmost for the advantages and privileges of the respectable portion of the profession, as he would advocate the punishment of those guilty of professional misconduct. That was the reason why this clause was introduced.

There was nothing more in the Bill requiring notice, except that, at the recommendation of the Government of Bengal, it proposed to restore to all mukhtárs the privilege of appearing, pleading and acting in Criminal Courts, which they formerly enjoyed under Act XX of 1865, and to empower mukhtárs heretofore admitted and enrolled in Lower Bengal as Revenue Agents (section seven) to appear, plead and act in suits in Munsifs' Courts under Bengal Act VIII of 1869 (*to amend the procedure in suits between landlord and tenant*).

The Motion was put and agreed to.

#### LOCAL PUBLIC WORKS BILL.

Colonel the Hon'ble R. STRACHEY introduced the Bill to facilitate the construction of works of public utility from Local and Municipal Funds, and moved that it be referred to a Select Committee with instructions to report in a month. He had explained, when he had asked for leave to introduce the Bill in March last, what were the reasons which led to its introduction. But as some time had elapsed since, he thought it would be better if he re-stated shortly what the general causes were. The intention of the Bill was sufficiently explained by the title. The particular object of the Bill was to facilitate the making of advances by the Government for the purpose of carrying out works of public utility. Of course there was no difficulty in the Government making such advances as far as it desired to do so. But there was a difficulty in getting sufficient security for the recovery of such advances

when they were made. The Government were informed that none of the existing minor municipal bodies nor the administrators of the other Local Funds were capable of making a legal assignment on the future revenues of the Municipal or Local Funds, and therefore the Government, in making advances, could obtain no security from such bodies for the repayment of such advances. He excluded those municipalities that were empowered by legislative enactments to incur such debts, but he believed the only bodies of the sort were to be found in the presidency towns. Possibly there might be some others in Madras, but in the other parts of India, so far as he was informed, they did not exist. That being the case, in order to make advances given by the Government for such purposes thoroughly safe, it became necessary to authorize the persons who administered these Funds to enter into agreements with the Government, binding themselves to repay the advances with interest in subsequent years. The first object of the Bill, therefore, was to authorize the repayment of such advances from the incomes of the Funds. At the same time that this was done, it became also desirable to limit the power of the persons who administered these Funds to borrow money within a certain amount. Those were the two essential things with which this Bill purported to deal.

The particular form which was given to the Bill might be shortly stated. The Bill commenced by stating that the persons who administered Municipal Funds and who desired advances should make application for such advances. Thus, the initiative was entirely thrown on the persons who administered the Funds, and the Government had no power of interfering unless on the motion of those persons: therefore there could be no possible undue interference on the part of the Government in these matters in consequence of anything contained in this Bill.

Next, it was provided that it should rest entirely with the Local Governments to determine what advances were to be made in particular cases, subject to certain rules of a general nature to be framed by the Government of India. It had been considered that the Government of India should frame these rules, because this Government was the supreme financial authority in the country, and it would eventually fall on the Government of India to make good any loss which might arise on any transaction in which the advances with interest were not repaid. The chief points to which these rules would refer were, the declaration of the Municipal or Local Funds on account of which such advances might be made, the nature of the works which might be undertaken, and the provisions under which advances were to be made and repaid.

The Bill further provided for the recovery of the advances in case of default being made by the persons who administered the Funds on account of which the advance was made. As the Bill stood, a preference was to be given to Government, in obtaining repayment of advances, over all other claims. To this some objection had been made. This, however, was rather a question of detail, and it might be considered in Committee whether any limitation to such a preference might properly be made.

Another point which was dealt with in the Bill, as he had mentioned before, was the limitation of the total amount which any municipal or other local body should be able to borrow under the provisions of the Bill. It was quite certain that some such limitation was necessary, and whether the particular amount proposed in the Bill was correct or not, it would probably be admitted that the sum which should be allowed to be borrowed in the contemplated way should bear some proportion to the total income which was at the disposal of the borrowing power.

It was also provided that, after the passing of the Act, no loans should be incurred by any such body as those referred to in the Act except under the provisions of the Act. Facts had come to his notice in the course of last year which satisfied him that such a condition was absolutely necessary. He had become aware of some of the loan-transactions of the municipal bodies in Upper India, which satisfied him that bodies of that kind should not be allowed to go into the market to borrow as they pleased. He need not mention the particular places to which he referred, but the transaction was of a very singular description.

That was all that he desired to say as to the Bill as it had been placed before the Council; but the further consideration which he had given to the subject, after he had seen the opinions given by the local authorities, induced him to propose one or two modifications. The first of these had been suggested by one or two of the communications received from the Local Governments on the Bill, and had also been mentioned to him as desirable by the Hon'ble Mr. Robinson. It was that the Local Governments should have power to authorize loans for these objects from other persons, similar to that which they possessed in giving advances of Government money. It might readily happen that the sum of money the Government had at its disposal for the purpose of making such advances might be exhausted, and if the Government purse was the only source from which advances could be got, some useful works might not be carried out. It might also happen that private persons might be ready to lend money for works in which they were interested even on better terms than the

Government itself. At all events, if the same restrictions were put on the authorizing of loans from private parties which were put on advances from Government, it seemed to him that there could be no possible objection to the Local Governments authorizing loans from other sources than from the Government purse. This addition to the Bill he should be prepared to propose to the Committee if the Bill was referred.

The other point was rather a change of form. The eleventh head of the rules which the Governor General in Council was empowered to make under section five, referred to the amount which should from time to time be applied from the public revenues for the purpose of making these advances. On further consideration, COLONEL STRACHEY thought it would be better to put this in a more direct way into the Bill, and to introduce a separate section to declare distinctly that the Governor General in Council should from time to time determine the sum of money which should be placed at the disposal of the Local Governments, and should in like manner regulate the total amount which might be outstanding at any one time on account of these advances. Practically, the way in which the measure would work financially would be, that the Government of India would place at the disposal of the Local Governments a certain fixed sum of money which they might apply to these objects, and when that sum became exhausted no further advances could be made until by the repayment of former advances fresh money was obtained. This was the manner in which the loan-operations for public works were conducted in England, and it was the intention of the Government that the transactions which took place under this Bill should in a general way, and as far as the circumstances of the country would permit, be conducted in a similar manner to that under which they were carried on under the English law.

The Hon'ble SIR RICHARD TEMPLE said that, although he cordially approved of the general principle of the Bill, it was obviously in some respects a financial Bill, and he thought that in its present form it certainly ought to be referred to the Financial Department of the Government of India, so that no clause should be introduced in it which would in any respect be objectionable financially. He hoped, too, that he would be placed on the Select Committee. These two things being done, he dared say that the Bill would be ultimately framed in such a form that he would have no objection to offer when it came finally to be passed in the Council.

Colonel the Hon'ble R. STRACHEY remarked that when leave was given to introduce the Bill, it was placed in the Hon'ble Sir Richard Temple's hands, and therefore, virtually, the Bill was brought to the knowledge of the Financial



Department. Further, the Bill had not been brought in till it was approved by the Government of India, and if Sir Richard Temple was put on the Committee, he (COLONEL STRACHEY) did not see what advantage would be got by referring the Bill to the Financial Department.

The Motion was put and agreed to.

#### CATTLE TRESPASS BILL.

The Hon'ble MR. COCKERELL presented the report of the Select Committee on the Bill to consolidate the law relating to Cattle Trespass.

#### CIVIL COURTS (BENGAL) BILL.

The Hon'ble MR. COCKERELL presented the report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal.

The following Select Committee was named :—

On the Bill to facilitate the construction of works of public utility from Local and Municipal Funds—The Hon'ble Mr. Strachey, the Hon'ble Sir R. Temple, the Hon'ble Messrs. Stephen, Chapman, Cockerell, Inglis and Robinson and the Mover.

The Council adjourned to Friday, the 13th January 1871.

CALCUTTA,  
The 6th January 1871.

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