

Tuesday, June 28, 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 Simla on Tuesday, the 28th June 1870.

P R E S E N T :

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P.,
G.C.S.I., *Presiding*.

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

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 F. R. COCKERELL.

MADRAS DISTRICT MUNSIFS' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the laws relating to District Munsifs in the Madras Presidency and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill comprised the re-enactment, in a somewhat abridged and simpler form, of the principal portions of the existing law relating to District Munsifs in the Madras Presidency, together with some additional provisions taken from the Bombay Civil Courts' Act and the Bengal Subordinate Judges' Act. Contrasted with those enactments, the Bill presented the most notable points of distinction in its fourth and sixth sections. The powers, which by those sections were conferred on the High Court, were by the Acts just referred to reserved to the Local Government. The Bill in this matter adopted and proposed to legalize the existing practice. These powers were formerly vested in the provincial Courts of Appeal. On their abolition the direct control of the Zila Courts, as well as the other principal executive functions of the former courts, devolved on the superior court which was now represented by

the High Court. But so far as MR. COCKERELL had been able to ascertain the facts of the case, this result was not brought about, nor was it ever sanctioned by any express provision of the law: hence the subject-matter of the sections just mentioned seemed to present an open question demanding the particular attention of the Committee to which this Bill might be referred. Some of his Hon'ble Colleagues would remember that the question as to the authority on which the power of appointing Munsifs should be conferred underwent considerable discussion at the time of the settlement of the clauses of the Bengal Act; and that, although the power of making such appointments was nominally reserved to the Local Government, it was limited by conditions which in effect gave the High Court a complete control over the individual preferments for the office of Munsif. In the subsequently-passed Bombay Act the power of appointment of the corresponding class of judicial officers was unreservedly given to the Local Government. In both Acts there was this apparent inconsistency that, whilst the power of appointment of those officers was vested in the Local Government, their dismissal from office might be effected by the High Court without any reference to that Government. From these circumstances, MR. COCKERELL would venture to think that the principle of the vesting of these appointments had not yet been settled on any clearly-defined and satisfactory grounds, and that the whole subject demanded re-consideration. The only other provisions of the Bill to which it was necessary to make any special reference at present were contained in section seven. He had explained on a previous occasion the circumstances under which the extension of the pecuniary limits of the jurisdiction of the District Munsifs was proposed. That extension was in regard to suits relating to revenue-paying land scarcely more than nominal, for the effect of the further provision of this section, which substituted the mode of valuing suits of this class prescribed by the Court Fees' Act for that obtaining under the existing law, would probably be to enhance to about three times its present rate the valuation of such suits for the purpose of determining in what court they should be instituted. In other respects, moreover, he thought this provision was important. It supplied a rather marked omission in previous legislation. With the solitary exception of the existing law just referred to, which related exclusively to the courts of the District Munsifs in the Madras Presidency, and was there even only applicable to suits for land, he knew of no law which prescribed any rule as to the valuation of suits for the purpose of determining in what grade of court they should be instituted. The mode of valuation fixed by the former Stamp Laws, or the present Court Fees' Act, was intended for revenue-purposes only and was obligatory for no other purpose. It was possible that in the absence of any express legal provision on this subject, the rule of the

Stamp Act or Court Fees' Act had been generally followed, but it was more probable that enquiry would lead to the discovery that there was great diversity of practice in this matter. In this view of the subject, he considered the provision of the Bill as being of special importance. Of course, if ultimately adopted, it would only be applicable to the courts of the Madras Presidency. But though not binding on other courts, it would indicate the principle according to which the question of their jurisdiction in the case of suits, the subject-matter of which was other than a money claim, should be determined. The provision of the Bill, as it stood however, was not adapted to all cases, and would need some modification. There were several classes of suits for which the Court Fees' Act prescribed no mode of valuation, and for such some other rule should be provided.

In the suggestion which he had made when this Bill was last before the Council, as to the propriety of including in the proposed legislation the other civil courts of the Madras Presidency subordinate to the High Court, he referred to the present Zila Courts and Principal Sadr Amíns' Courts. He need only add that if this Bill was referred to a Select Committee, he proposed to prepare and lay before the Committee a revised Bill which would consolidate the existing law relating to these Courts, and deal with the points of difference as to jurisdiction and powers which they presented when contrasted with the corresponding classes of courts in the Presidencies of Bengal and Bombay. If the revised Bill was approved and adopted by the Committee, it could then be submitted for the consideration of the Local Government and High Court of Madras.

The Motion was put and agreed to.

CUSTOMS DUTIES EXEMPTION BILL.

The Hon'ble SIR R. TEMPLE introduced the Bill to enable the Government of India to exempt goods from customs duties. He had last week fully described the objects of this Bill. It need not be referred to a Select Committee, and he proposed at the next meeting to ask the Council to pass it.

BANK OF BENGAL DIRECTORS' BILL.

The Hon'ble SIR R. TEMPLE also introduced the Bill to enable the Directors of the Bank of Bengal to act by a quorum. He said that this Bill also was of so simple a character that he would not ask the Council to refer it to a Select Committee.

COURT FEES' ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL introduced the Bill to correct two clerical errors in the Court Fees' Act.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to consolidate and amend the law relating to the procedure of Courts of Criminal Judicature not established by Royal Charter. He said that from its title, the motion might appear somewhat formidable, but in point of fact the Bill was a measure of the smallest kind. It aimed at effecting a reform which might be termed typographical. The Code of Criminal Procedure had been extensively amended last year by Act VIII of 1869, which declared that the Code should be read as if certain new sections were inserted next after certain sections of the Code, and that certain other sections should be substituted for the corresponding sections of the Code which were repealed. The rules of Criminal Procedure were thus contained in two Acts instead of one, and the primary object of the present Bill, which was part of the scheme for the general consolidation of the Indian Statute Law, was to substitute one for two enactments. At the same time the opportunity would be taken to effect a few minor alterations, some of which, though not affecting the general principles of the Code, were of real practical importance. Chapter XIX, for instance, enabled the Magistrate to require security for the good behaviour of persons who would, in England, be termed rogues and vagabonds, and section 301 declared that in the event of any such person failing to furnish the security so required, he should be committed to prison until he furnished the same. The Code contained no provision as to the nature of this imprisonment and great discrepancy of practice accordingly prevailed. In Madras the High Court had left it to the Officer in charge of the Jail to exercise his discretion. But in the Lower Provinces of Bengal, in the North-Western Provinces and in Oudh, it had been ruled that the expression "shall be committed to the Jail" implied simple confinement. The result was that, throughout a great part of the country, many hundreds of persons were practically using the Jails as hotels, and leading lives of utter idleness at a serious cost to the Government. The change which MR. STEPHEN proposed to make would enable the Magistrate, whenever he thought fit, to inflict a sentence of rigorous imprisonment. There were some other small amendments which he would mention when the Bill was introduced.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to District Munsifs in the Madras Presidency :—The Hon'ble Messrs. Stephen and Ellis, and the Mover.

The Council then adjourned to the 5th July 1870.

SIMLA,	}	WHITLEY STOKES,
The 28th June 1870.		<i>Secy. to the Council of the Govr. Genl. for making Laws and Regulations.</i>