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**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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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.

1873.

WITH INDEX.

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1874.



*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 Tuesday, the 25th February 1873.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal.

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

The Hon'ble B. H. Ellis.

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

The Hon'ble A. Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble F. S. Chapman.

The Hon'ble R. Stewart.

The Hon'ble J. R. Bullen Smith.

The Hon'ble B. E. Egerton.

His Highness the Mahárájá of Vizianagram, K.C.S.I.

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

The Hon'ble R. A. Dalrymple.

The Hon'ble Rájá Ramánáth Thákur.

BURMA MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to provide for the appointment of Municipal Commissioners in Towns in the Province of British Burma, and to make better provision for the Police, conservancy and improvement thereof, and for the levying of rates and taxes therein. He said that we all knew that British Burma was a growing province. The rural parts of the country were in a backward state, but it had several important towns growing in commerce and general importance. There was no municipal law for the province, and it was desirable to have some municipal institutions for the government of such towns. It was not necessary nor desirable, then to mention the provisions proposed to be inserted in the Bill; that would be done when he introduced the Bill. But that it was desirable to legislate in this sense for Burma would be plain enough to hon'ble members.

The Motion was put and agreed to.

## PANJÁB APPEALS BILL.

The Hon'ble MR. HOBHOUSE also moved that the report of the Select Committee on the Bill to prolong the law relating to Appeals and Reviews of Judgment in the Panjáb be taken into consideration. He had explained, on a previous occasion, that this was a mere prolongation of the law already existing in the Panjáb. Two amendments had been made, both of a character relating to procedure and technicalities, and both in accordance with the express wish of the Chief Court of the Panjáb and the Local Government. And the Select Committee simply approved the Bill with those amendments. That was the whole of the report of the Committee, and he asked that it be now taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that, in Section 4, the following words be omitted :—

“ with the modifications subject to which it was extended to the Panjáb, by notification of Government, dated the twenty-sixth day of September 1866.”

Those were the concluding words of the clause. The case was simply this :—The Government had power to extend the Code of Civil Procedure to the Panjáb, with such modifications as it thought fit : and, in 1866, it had so extended the Code with several modifications, in the first instance. The effect of section four of this Bill, as drawn, would be to revive and perpetuate those modifications. They were all of a small character : all relating to procedure, and matters of technical detail. The Chief Court and the Local Government were of one mind that it was not desirable to revive them by this Bill. It was not necessary to explain what those modifications were, nor could he do so without reading out the notification. The Committee had satisfied themselves that all related to procedure and details, of which the Local Government and the Chief Court were the best judges whether they should find a place in this Bill or not. On that ground he asked the Council to accept the amendment which he now moved.

His Honour THE LIEUTENANT-GOVERNOR was inclined to think that this might be a very important amendment, for it removed some important modifications of the Code of Civil Procedure, in the imposition of which he had had some hand. He believed that notice of this motion had been duly given, and it might perhaps be his own fault that he did not understand its nature and character. At all events he should ask that the Bill should not be passed immediately with such an important amendment as this. •

The Hon'ble MR. HOBHOUSE thought His Honour the Lieutenant-Governor would find that the amendment was of no great importance. He really could not tell the Council what those modifications were, without reading out the notification, the modifications being of a minute character, and relating purely to technicalities. The Secretary reminded him that they had been repealed by the Panjáb Appeals Act of 1868. That was so. Still the Bill as it stood would revive them, and he admitted that the amendment was a substantial one, though not in an important matter. The Committee had satisfied themselves that they related merely to those matters of procedure and technicality on which the opinion of the Judges and the Local Government were entitled to be heard with respect. If the Council desired it, he would send for the notification and read it through: he could not explain the modifications in any other way. If the Council would take the opinion of the local authorities as conclusive on that point, well and good: if not, he must, with the help of the notification, explain to them every one of those modifications.

His Excellency THE PRESIDENT thought that perhaps the best course would be for the Council to make the amendment now, and that the passing of the Bill should stand over for a week to enable His Honour the Lieutenant-Governor and other hon'ble members to enquire into the matter and satisfy themselves. Perhaps, in the meantime, the hon'ble member in charge of the Legislative Department would cause the necessary papers to be circulated in order to let hon'ble members see the effect of the amendment.

His Honour THE LIEUTENANT-GOVERNOR was not aware when he made the observation that the hon'ble member himself had not studied those modifications of the law as he now rather gathered to be the case. He was quite willing to assume that the local authorities were probably right, but he thought the Council would stultify itself if they passed this amendment without having heard what those modifications were. His impression was that those modifications were of an important character. When the Code was introduced into Oudh and other provinces, we made some important modifications under the authority reserved to the Government. Without having those modifications before them, it was impossible to say whether the alterations were of importance or not. If the hon'ble member had satisfied himself that those modifications were of no importance, HIS HONOUR would withdraw his objection to the amendment before the Council; but if Mr. Hobhouse had not done so, then HIS HONOUR thought it would not be desirable that the Council should pass this Act at the present sitting, and it

would be better that the amendment itself should be postponed to another day.

The Hon'ble MR. BAYLEY, if he understood rightly, thought that this clause merely referred to the question of appeals, and not to the general modifications made in the Code by the order of extension, which were, no doubt, of considerable importance. The modification made by that order, however, in the case of appeals, was peculiar to the Panjáb, and he thought he might say, having had considerable experience of it in his official capacity as Secretary, that it had failed in its working in the Panjáb.

The Hon'ble MR. EGERTON said the notification alluded to in the Bill was passed in 1866, when Act VIII of 1859 was extended to the Panjáb. At that time it was considered that the system of appeals prescribed by Acts VIII of 1859 and XXIII of 1861 was not well adapted to the Panjáb, and it was desired to modify it when the Act was extended. The notification dealt with other matters besides appeals. It dealt with the definition of "authorized agent," and with the mode of execution of decrees against landed property, as well as with the question of appeals. After Act VIII of 1859 had worked for some time with the modifications of the notification regarding appeals, it was considered desirable to make a special law of appeals for the Panjáb, by which the procedure was made to differ from Act VIII of 1859 rather less than before. That Act was passed in 1868. When Act VII of 1868 was passed, the portion of the notification, so far as it related to appeals, was virtually repealed; and the law of appeals became Act VIII of 1859 taken together with Act VII of 1868. When the present Bill came up to be considered, the Chief Court recommended that two alterations should be made—one in section 3, to omit certain words and to add certain others, and the other in section 4, to insert the words which it was now proposed to omit, and by which the notification, virtually repealed in 1868, was revived so far as it related to appeals. It was overlooked, apparently, that this would create a very complex procedure, and that appeals, instead of being regulated by Act VII of 1868 and the Code of Civil Procedure only, would be governed also by the provisions of the notification of 1866, which had been repealed for the last five years. The Chief Court, therefore, on reconsideration, withdrew the amendment which it originally proposed. It was by desire of the Chief Court that the old notification was revived. Now, the Chief Court had reconsidered their amendment, and proposed that the words reviving the notification should be omitted, leaving the Code to work as it had worked ever since Act VII of 1868 had been passed. The provisions relating to

appeals in the Panjáb Appeals Act had been substituted ever since 1868 for the procedure laid down by the notification, and that system was now proposed to be continued. That was the whole scope of the amendment. It appeared to MR. EGERTON that there was no great importance in the amendment, except this, that it removed what would otherwise be a complication in procedure.

The Hon'ble MR. HOBHOUSE feared he had been misunderstood. What he said was, that the Committee had studied the modifications in question up to the point of satisfying themselves that they related to matters of technicality and procedure, eminently within the judgment of the local authorities. Having thus satisfied themselves, they did not go on to discuss the bearing of each detail. They acted on the opinion of those who said it was desirable to keep this law of procedure as it stood. This opinion was not challenged before them. He was told now that it was his duty to explain each point to the Council. He protested against that. He thought it was not necessary to explain every detail of a measure. It was necessary for those who objected to show to what they objected. If His Honour the Lieutenant-Governor wished to move any amendment, it was for him to explain to what he objected. But he would put it to the Council whether it was the duty of their members to explain all minute details until they were challenged.

His Excellency THE PRESIDENT thought the best course would be to adjourn the debate on the amendment. To him, the explanation given by the Hon'ble Mr. Egerton appeared perfectly satisfactory, and showed very clearly that the effect of the amendment was to continue the practice which existed under the Act of 1868. At the same time, as His Honour the Lieutenant-Governor had not had time to consider the question, it appeared to HIS EXCELLENCY that there was not the slightest objection to adjourn the debate.

The debate was adjourned.

OBSELETE ENACTMENTS BILL.

The Hon'ble MR. HOBHOUSE also presented the preliminary report of the Select Committee on the Bill for the repeal of certain obsolete enactments.

The Council then adjourned to Tuesday, the 4th March 1873.

CALCUTTA,  
The 25th February 1873. }

WHITLEY STOKES,  
Secretary to the Government of India,  
Legislative Department.