

Tuesday, February 16, 1875

**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.

1875.

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1876.

*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.*

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The Council met at Government House on Tuesday, the 16th February 1875.

**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 B. H. Ellis.

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

The Hon'ble Arthur Hobhouse, Q.C.

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

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

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

The Hon'ble Sir Douglas Forsyth, K.C.S.I.

The Hon'ble Ashley Eden, C.S.I.

**CIVIL APPEALS BILL.**

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Reports of the Select Committee on the Bill to amend the law relating to Civil Appeals in the Lower Provinces of the Presidency of Fort William be taken into consideration. The reason for the postponement was this. The Council would recollect that, of the objections which were insisted upon by those who opposed to this measure, by far the most substantial was that the state of the Courts in the Mofussil was such that it was hopeless to expect the looked-for results. It was said that those Courts were too weak to bear the extra strain which it was said would be thrown upon them, and that it would be better not to attempt to alter any portion of the system of appeal until they were first strengthened. The answer to that was, that whatever amount of truth there might be in the assertion, it was no sufficient objection to this Bill that there was no speedy prospect of the improvement of the Mofussil Courts; that it was better to take the partial reform which could be got and which was aimed at by the Bill; and that the

principle upon which it was sought to classify appealable cases was a sounder one than the existing principle, and would work in better with any conceivable plan of reform.

Now the position of affairs was very much altered. The Lieutenant-Governor of Bengal had been giving his attention to this difficult subject of strengthening the Mofussil Courts, and he informed us that he was prepared to propound some definite plan upon the subject, and asked us to stay our hand in passing this measure lest we should do something which should mar or hinder his operations. MR. HOBHOUSE conceived that, under those circumstances, the Council had nothing to do but to accede to His Honour's wishes; to delay the consideration of the Reports of the Select Committee, and thereby to leave the matter yet awhile in the hands of the Committee. But MR. HOBHOUSE must ask his honourable friend if he would not join them on that Committee. His Honour thought that the Bill could be amended in such a manner as to introduce the alterations he deemed to be necessary and feasible. How that might prove to be, MR. HOBHOUSE could not yet be quite sure. Perhaps it might be so if all the Council were asked to do was to re-adjust some of the details of the Bengal Civil Courts' Act. But if there was any substantial increase to the judicial staff, or if there was to be any substantial addition of new officers, then he conceived that this Council could not discuss such matters with any advantage, perhaps not with propriety, until the necessary executive decision had been arrived at. They could best consider in Select Committee what were the exact kind and quantity of the alterations proposed; whether such alterations could be properly embodied in the measure now pending before the Council; and if it turned out that they could not be so embodied, whether it would not still be better to pass the Bill as being a step in the direction of improvement in which all wished to advance, and a step which would not interfere with, but would help and aid, further steps in the same direction. The presence of the Lieutenant-Governor would be of great assistance, indeed under the circumstances almost necessary, for the proper discussion of these proposals: therefore, if MR. HOBHOUSE were allowed to postpone the motion, he would ask His Excellency the President's permission to allow him to move that the Lieutenant-Governor be added to the Select Committee on the Bill.

His Honour the LIEUTENANT-GOVERNOR had only one word to say, which was to express his satisfaction at the announcement which his honourable friend had made, and to convey his thanks to him and His Lordship the President for the consideration shown to the opinions and wishes of the Local Government. HIS HONOUR should, of course, be most happy to attend the Select Committee at any time they might desire; but he hoped it would be understood that he did so on the

condition that it should not prejudice the submission of such executive proposals as he might have to make to the Government of India. He certainly apprehended that the improvements it was desired to introduce into the Bill might so materially alter it as virtually to make it a new Bill, and that there would be involved in the proposition a variety of details and matters which could hardly be considered with advantage in the Legislative Council until some decision had been arrived at by the Government of India in the Executive Department. And His Honour must say that he could not share his honourable and learned friend's opinion that this Bill, if passed as it was, would at all help the progress of the improvements which the Bengal authorities desired to see carried out. On the contrary, he believed that, if the Council should upon this occasion pass this Bill, and thereby fail to adopt the proposals which the Local Government were so anxious to press upon the consideration of the Council—if sanction should not be obtained now to these proposals, he believed that their progress must be indefinitely postponed. He could not too earnestly impress upon the Council that now was the time to take up the whole question of the improvement of the Appellate Law in Bengal. That work should be done deliberately and considerately, with ample time for the Local Government and its officers to submit all they had to say, and after full deliberation, a reform complete, radical and comprehensive should be made—such a reform as would be approved of by the judicial authorities, and, above all, give satisfaction to the Natives of Bengal, whose interests were so deeply concerned in the matter. And His Honour earnestly submitted that, unless a reform of that kind could be undertaken, it might be better to leave the law alone for the present and not to attempt a measure of this kind which might do good in some respects, but could not be satisfactory as a whole. Therefore, although he was most willing to attend the Select Committee, and he thought that by that means some advantage would be obtained, that was to say, would be better acquainted with his hon'ble friend's views, and his hon'ble friend would know the exact propositions which were made by the Bengal Government and its officers, he could hardly hope that such a course would really solve the very grave questions involved in the consideration of the present Bill.

His Excellency the PRESIDENT said :—“ I am sure Members of Council will feel with me that it will be a great advantage that my hon'ble friend, the Lieutenant-Governor, shall join the Committee. The subject of the alteration of the Law of Civil Appeals is of great importance. It has already been long considered, but it is one of those questions upon which, I fear, we can hardly hope to find any great unanimity of opinion. In fact, the interests involved are so different and conflicting that even when the subject has been thoroughly threshed out—and we shall be very glad, either in the Legislative or the Executive Council

to take into consideration any views which my hon'ble friend, the Lieutenant-Governor, may, after mature deliberation, express, or any changes which he may advocate in the constitution of the Lower Courts—if any reform is to be made—we shall in the end be compelled, after due consideration of all the arguments that have been adduced, to come to a conclusion as to what should be done, and to carry that conclusion into effect, even though we may find opposition to it in some quarters. I cannot think it would be right for the Government to allow the present unsatisfactory state of the law, which has long existed and which my hon'ble friend, the Lieutenant-Governor, fully admits, to prevail much longer without applying a remedy, simply because the remedy which it is proposed to apply may not be in accordance with the views entertained by some among those who will be affected, in one way or another, by a change in the law.

“ It would be premature now to remark upon any of the proposals which my hon'ble friend may bring forward, because they have not as yet I believe come officially to the knowledge of the Executive Government in a mature form. I can, however, assure my hon'ble friend that we shall treat his suggestions with all the respect to which they are entitled, both from his own position as Lieutenant-Governor of Bengal, and from the importance of the subject itself.”

Leave was granted.

The Hon'ble Mr. HOBHOUSE then moved that His Honour the Lieutenant-Governor be added to the Select Committee on the Bill.

The motion was put and agreed to.

#### PRESIDENCY POLICE MAGISTRATES' BILL.

The Hon'ble Mr. HOBHOUSE also presented the Report of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns and to increase the jurisdiction of such Courts.

#### PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble Mr. HOBHOUSE also presented a further Report of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration.

#### BURMA FISHERIES BILL.

The Hon'ble Mr. EDEN presented the Report of the Select Committee on the Bill to regulate Fisheries in British Burma. On the introduction of this Bill it was explained by the Hon'ble Mr. Hobhouse that its object was to give legal

effect to the system long in force in British Burma of raising a revenue from fisheries, which was regulated by rules which had not the force of law, and which it was necessary to revise from time to time. As a thorough revision of the rules had recently taken place, it was considered advisable to pass a Bill to give them legal effect. The changes made three years ago in the mode of working the fisheries were chiefly in consequence of reports by Dr. Day, Inspector-General of Fisheries, to the Government of India, after careful investigation on the spot. He pointed out the great evils and abuses which existed under the old system. The terms which had hitherto regulated the leasing of fisheries had been practically made by private contract between the Native officers of Government on the one part, and the persons who desired to work the fisheries on the other. The fisheries were until recently let by annual leases, and very frequently different persons were selected each year. The selection of the lessees was unfortunately, and perhaps unavoidably, left very much in the hands of the subordinate Native officials, and consequently a system of bribery and corruption had sprung up which had led to a most unsatisfactory state of things. But recently, after consultation with the district officials, a new system was introduced, by which the fisheries were let for periods of five years, and the leases were put up to public competition, the bidders being only persons holding certificates of qualification from the district officer. This qualification was based on the residence of the bidder within a certain distance of the village in the vicinity of which the fishery was situated, the object being to ensure the interests of the villagers in the working of the fishery, and to exclude men from distant parts of the country, who might work it to the detriment of the villagers as a matter of speculation. This system had worked remarkably well, not a single complaint having been made and the revenue having considerably increased. As the people themselves explained, they were now able to pay larger sums for their leases, the money which formerly went in litigation and in bribing the petty officials and intriguing to upset leases being now paid for their leases at the auction-sales. It might be said that if the rules were working so well, why was it necessary to pass a law to give them legal effect? The reason for passing a law was that there were certain matters—such as the recovery of arrears from defaulters, the enforcement of the responsibility of sureties, the protection of the public rights as to the use of water, the construction of weirs and breaches of fishery rules—which required to be regulated by law.

On the last occasion on which this Bill was before the Council, doubts were expressed by two hon'ble members as to the right of the Government, as defined by the recitals in the preamble, to the fisheries in British Burma. Mr. EDEN thought that those doubts arose under some mistaken idea that the Government were now for the first time about to raise a revenue from fisheries in Burma. Ho

could assure the Council that such was not the case : so far from resuming fisheries which had not hitherto been under assessment, the tendency was to release a large number of fisheries to provide water for agricultural and other purposes. All, or nearly all, the fisheries upon which revenue was now raised had been liable to the payment of revenue from the first occupation of the country by the British, and scarcely any fisheries had been brought under assessment within the last ten or fifteen years. On the annexation of Pegu it was found that the Native Government were raising a revenue in this way, and we simply took up their practice. Mr. EDEN had, however, with reference to the question which had been raised in the Council, called for a report as to whether any objections had been made as to the right of the Government to raise this revenue, and the result was that not one single individual consulted could call to mind any occasion on which any objection or claim adverse to the right of Government had been made. He had in addition taken the opinion of the old ex-officials of the Native Government, and they stated that the Government had from time immemorial raised a revenue from fisheries, although they said many years ago some rights had accrued to certain hereditary officials—local governors and so forth—but at the time of the Emperor Alomprah, the whole of the fisheries were resumed. The Bill moreover had been published more than a year ago, and every invitation had been publicly made without a single objection having been raised. Therefore, he thought we might assume that the recital contained in the preamble of the Bill was incontestible, and that there was no objection to the Bill.

#### BURMA COURTS BILL.

The Hon'ble Mr. EDEN also presented the report of the Select Committee on the Bill for the further amendment of the Burma Courts Act, 1872. The Bill had been very considerably altered in Select Committee, but mainly in this respect, that in consequence of a number of small verbal alterations made in the existing Acts on the subject, it had been determined to consolidate the law and to re-enact the whole in one Bill. Such amendments in detail as were made in the Bill he proposed to notice when the Report of the Select Committee came under the consideration of the Council.

#### BURMA LAND REVENUE BILL.

The Hon'ble Mr. EDEN also moved for leave to introduce a Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma. The system under which the revenue in British Burma had hitherto been raised had been regulated by certain rules which originally had the force of law, but of which many had become obsolete, and which had been altered and amended from time

to time as the altered condition of the Province required : the alterations and amendments made had not, however, the same force of law as the original rules had. Consequently, four years ago the Government directed the preparation of a draft Bill to regulate the assessment and collection of the land-revenue, the salt-tax and other taxes. The whole subject had been under consideration with the most experienced revenue officers since that period, and lately the Government of India had definitely declared the general principles upon which the Bill should proceed.

As the revenue-system of British Burma was different from the systems in force in other parts of India, he should briefly explain the principles upon which that system was based. Perhaps the land-revenue system of Burma more nearly resembled the system in the Bombay Presidency than in any other part of India. It was a ryotwari system pure and simple, there being no intermediate holders between the State and the cultivator : all contracts for the cultivation of the land were adjusted between the Government and the cultivators of the soil. The land was held to be the property of the State, subject to such interests as were allowed to accrue thereon from time to time. When we first occupied the country we found that the Native system of land-revenue took the form of a tax on ploughs and bullocks, the theory of which was that each plough and pair of bullocks cultivated a certain quantity of land. For convenience we at first adopted that system, but it was soon found that that rough assessment affected different classes of cultivation very differently, according to the nature of the soil. When, therefore, Mr. John Colvin was Commissioner of Tenasserim, he, with the assistance of Lieut. Phayre, first attempted to introduce the system of a rate upon land, and the scheme then introduced remained in force until the annexation of Pegu. When Pegu was annexed, the same system was adopted by Sir Arthur Phayre, and the rules he drew up then were the Code which existed up to the present time, subject to certain alterations and amendments. The country was divided into Divisions, each Division being under a Revenue Commissioner ; the Division was divided into Districts analogous to the Districts under the administration of Collectors ; the District was divided into townships, which might be compared to the tahsildarships in the North-Western Provinces, and each township was sub-divided into revenue-circles, each of which was in charge of a Thoogyee or collector of taxes, who was responsible for the details of the revenue-assessment and the collection of the revenue in the circle. He again was assisted by an officer who was a volunteer worker, who was the head of ten houses, and who attended to the details of collection. The Thoogyee's duty was to prepare a rent-roll showing the rental of each cultivator, and the quantity of land cultivated by him ; this rent-roll was filed in the Court of the Deputy Commissioner, who prepared a receipt or ticket

for the rent for which each cultivator was liable ; the Thoogyee then went to the tenants, collected the money, and paid it into Court, giving to the cultivator by whom the money was paid his ticket duly endorsed. Where there was default in payment, the Thoogyee presented a petition to the Deputy Collector, who proceeded against the defaulter in the manner prescribed for the recovery of arrears of revenue. But MR. EDEN was happy to say that cases of default very seldom occurred. The measurement and assessment of lands had hitherto been made annually, and although great inconvenience was caused thereby, the cultivators had for a long time preferred that practice to the system of leases ; but now that the Settlement Department had been established, the people were taking gradually to a settlement for five or ten years, and preferred it to the annual measurement which formerly prevailed.

The only right in the land possessed by the people was the right of occupancy which accrued by twelve years' continuous occupation of the same land : this gave a complete transferable and heritable right, subject to the payment of the rates and revenue assessed from time to time on the land. In point of fact, the cultivators were perfectly protected by the fixity of the tenure they enjoyed, and this with the very low assessment placed upon the land had caused a great increase of cultivation within the last twenty years ; no doubt the extraordinary prosperity of the cultivating classes was owing to the fact that, except the small proportion which went to the Government, the profits went entirely to the cultivators, and none to any description of middlemen.

Though some alterations were proposed in the details of the revenue-system just described, the general principles of that system would continue as heretofore. The only considerable change which was proposed was with regard to a cultivator having a right of occupancy who abandoned his land and returned to it after the lapse of several years. This it was proposed to provide against in consequence of the mischief done by a person who went away, and after several years returned and claimed the land with all the improvements which were made during his absence by some unsuspecting person who settled upon the land believing it to be waste-land. The right to recover was proposed to be limited to twelve years after the abandonment of the land, and to be subject to the payment of compensation for improvements made by the new comer.

The Bill provided for the levy of a cess of five per cent. in addition to the ordinary assessment of the land-revenue. This was no new assessment ; it had been levied for many years in addition to the ordinary assessment, for local purposes ; the proceeds of this cess were devoted to particular purposes, such as the

maintenance of the Post, the establishment of Schools and for Police. The Bill also regulated the collection of the capitation-tax, which was a very old tax in force for many years, and which it was not proposed to alter in any way. The salt-tax would be continued to be collected as now. In consequence of the capitation-tax, a very low duty was levied upon salt, and it was collected by a system of excise on the outturn of each boiling apparatus, the local excise-duty being kept as nearly as possible at the minimum rate of the customs-duty : they were both liable to be varied from time to time. The only other tax provided for by the Bill was a miscellaneous tax, or license for the preparation of particular sorts of forest-produce, such as catch, bees-wax, honey, and the like—all of which were now in force. In no part of the Bill was there any proposal for new taxation.

The motion was put and agreed to.

The Council adjourned to Tuesday, the 23rd February 1875.

CALCUTTA ;  
The 16th February 1875. }

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