

Thursday, September 16, 1875

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWs AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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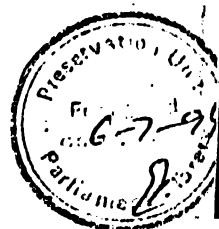
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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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.*

The Council met at Simla on Thursday, the 16th September 1875.

P R E S E N T .

His Excellency the Viceroy and Governor General of India, G.M.S.I., presid-ing.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.

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

The Hon'ble Arthur Hobhouse, Q.C.

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

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

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.O.M.O., C.B.

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

The Hon'ble T. C. Hope.

BURMA COURTS BILL.

The Hon'ble Mr. HOBHOUSE, in moving that the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to the Courts in British Burma be taken into consideration, said that he ought rather to move that both reports of the Committee, the final and preliminary reports, be taken into consideration, because though the preliminary report had been before the Council several months, it had not been brought up formally for consideration. The fact was that this Bill had been for a considerable time before the Council, having been introduced as long ago as the month of April 1874. This was the second time, since he had been in India, that he had to introduce a Bill to amend the Burma Courts Act. There was considerable difficulty always in making complete arrangements for a system of Courts, because there were a great many small points to attend to, and many things were not found out until the Courts had begun to work. But in British Burma there was a peculiar source of complication, for whereas in other Provinces—Bengal for instance—there was only one Supreme

Court of Judicature, in British Burma there were no less than four, having different areas of jurisdiction, either geographical or legal, or mixed geographical and legal. There were the Judicial Commissioner, the Recorder of Rangoon, the Special Court which consisted of the Judicial Commissioner and the Recorder of Rangoon sitting together, and the High Court at Calcutta. All those tribunals were in their several ways Supreme Courts of Judicature; and that circumstance made the arrangements for British Burma peculiarly complex and difficult. Therefore it was no wonder that every now and then we had applications from the judicial authorities of British Burma saying that something was wanted which they had previously not observed, or that something which had been put into the Act did not work with perfect smoothness.

When he introduced this Bill, there were three objects for which legislation was wanted. One was that certain jurisdiction had been given to Deputy Commissioners, and it was found that the provision for that jurisdiction did not quite answer the wants of the Province, for in some districts it was not desirable to have an officer as high as a Deputy Commissioner; but there was an officer below the rank of Deputy Commissioner, and it was desirable that that officer should exercise the jurisdiction that the Act attributed only to Deputy Commissioners. Secondly, it was desired to relieve the Recorder of Rangoon from certain duties, of a somewhat mechanical nature, in the way of recording evidence, writing judgments, and so forth, which were imposed upon the Judges by the Code of Civil Procedure, and with which it was very undesirable to occupy the time of such a Judge as the Recorder. The third object was to revive certain Acts which were repealed by the first Burma Courts Act passed in 1872, but which we found, in process of time, to be wanted for the purposes of British Burma.

When the Bill went into Committee, they had a considerable number of suggestions from the authorities in British Burma, who also desired that as so much alteration had been made by the amending Act of 1873, and would be made by the new amending Act, the original Act should be redrawn with the incorporation of all the alterations. To that desire the Committee acceded, and they made a preliminary report in February last showing that the Act had been redrawn, and exhibiting in detail all the substantial alterations that had been introduced. The draft was then republished. It had since undergone further criticism in British Burma, and had also had the advantage of the presence of the Hon'ble Mr. Eden here. The Committee had now made a further report, and the time was come for the final consideration of the Bill..

The alterations that had been made in the existing Acts were very numerous, but mostly of a very small kind. He hoped that they would be useful, and that they would prove sufficient for a time at all events. It would not, however, be very edifying to the Council if he were to attempt to carry them through the detailed alterations that had been made. The only changes which, as it seemed to him, could be at all called alterations of principle were as follows. The Bill gave to the Recorder of Rangoon an enlarged jurisdiction which it was found desirable that he should have. It gave him an increased area of jurisdiction, which the growth of the large towns in British Burma rendered it expedient that he should have. Rangoon was now a considerable centre of commerce; a large amount of shipping came into the harbour, and that rendered it necessary to have a Judge who should decide upon two classes of cases. One class was that of admiralty cases; and it was proposed to give to the Recorder admiralty jurisdiction throughout the territorial waters of British Burma. But inasmuch as the jurisdiction was entirely new and in many respects rather of a special and important kind, it was also proposed to give an appeal to the High Court at Calcutta. The other class was that of insolvency cases. Of course, as commerce increased, there would be a greater number of defalcations amongst commercial men, and therefore it was thought desirable to set up an insolvency jurisdiction for the four principal towns of British Burma, namely, Rangoon, Maulmain, Akyab and Bassein.

He thought that those were the only two matters of principle involved in the alterations. Among the larger details of the alterations, besides the three original objects he had referred to, he might mention that the area of the Recorder's jurisdiction had been enlarged in some other respects—he meant the legal, and not the geographical area. For instance, the Bill gave him power to try certain cases which clearly ought to be tried at Rangoon, but which, under the existing Acts, did not fall within his jurisdiction for the reason that the cause of action had arisen elsewhere. In these cases however the parties or their agents were resident at Rangoon, evidence was procurable at Rangoon, and all circumstances pointed to the convenience of trying cases at Rangoon. The Bill also gave to the Recorder the powers of a High Court over Magistrates within the legal area of his jurisdiction and over the Small Cause Courts within the same area.

Then the Bill altered the mode of procedure in the Special Court. When the Act of 1872 and the amending Act of 1873 were passed, no staff of officers

was provided for that Court. The consequence was that although the Court could sit and hear appeals, it could not do many things which a Court had to do by its ministerial officers ; and the Acts at present on the Statute-book provided for those things being done either by the Judicial Commissioner or the Recorder of Rangoon. Now the Chief Commissioner had seen his way to provide a proper staff of officers ; the Bill, therefore, altered the procedure by giving the Special Court power to do those things which the two other Judges were ordered to do before.

Then, again, some more extensive powers had been given both to the Judicial Commissioner and the Recorder of Rangoon with respect to the matters of costs in their Courts and of the legal practitioners who practised before them ; and the Bill went on to relieve both the Judicial Commissioner and the Special Court from the same class of mechanical duties from which he (MR. HOBHOUSE) had already said it had been found expedient to relieve the Recorder.

Those were the larger details of the Bill now before the Council, and when he had called those the larger details, the Council might imagine what the smaller details were. They were in fact of a purely professional and technical kind ; they were all mentioned in the reports, and it would, he thought, be no use to draw the attention of the Council further to them. The whole of the Bill had been prepared in very close communication with the authorities in British Burma, both judicial and executive, and, as he had said, the matter had derived great advantage from the presence of Mr. Eden at Simla during this season. MR. HOBHOUSE could only hope that it would be the last amending Act that he should have to introduce into the Council for British Burma. He could not believe that it would be the last that the Council would have to consider ; because, as he had remarked, the present arrangements were very complicated, and he had no doubt that, as time went on, the authorities of British Burma would see their way to simplifying them. However, that was a matter for the future ; he hoped that, for the present, the proposed Bill would be the means of making things work smoothly in British Burma.

The motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The motion was put and agreed to.

PANJAB CHIEF COURT APPEALS BILL.

The Hon'ble Mr. HOBHOUSE also moved for leave to introduce a Bill to provide an appeal from certain decrees of the Chief Court of the Panjab. He said that this was a matter of great simplicity. The Chief Court of the Panjab, as we all knew, consisted of three Judges. They were principally an Appeal Court, but they had coming before them a certain amount of original business. The amount was not very large in quantity; but of course in quality it consisted of cases of the greatest difficulty and magnitude that arose in the Panjab. Well, those cases, according to the distribution of business, were frequently heard before a single Judge; but the Panjab Chief Court Act provided no appeal from that single Judge to the Chief Court itself. The consequence was that cases, which were heard in the first instance before a single Judge, were subject to no appeal whatever within the limits of India, and those cases had to go up to the Privy Council if the parties desired to appeal them at all. He need hardly enlarge upon the inconvenience of that practice. Of course it might be said that cases should be heard before two or before the three Judges of the Chief Court, and so a greater amount of legal power should be brought to bear upon them. But, in the first place, every Court was the best judge of its own method of transacting business, and the Chief Court considered that the business ought to be transacted in many cases by a single Judge; and in the second place, arguing from his own experience of legal business, he thought it right that the bulk of business of the first instance should be transacted by a single Judge, and he believed that such business was much better done by a single Judge than by a plurality of Judges. He therefore thought that it was quite right that the Panjab Chief Court should go on transacting business of the first instance by a single Judge, and the Judges themselves were extremely desirous that there should always be an appeal from the judgment of that Judge, and that the judgment should be checked by his colleagues. It was therefore proposed to introduce a Bill for the purpose of providing an appeal from the judgment of a single Judge or even two Judges of the Panjab Chief Court to the full Court.

The motion was put and agreed to.

The Council then adjourned to Thursday, the 30th September 1875.

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

SIMLA;
The 16th September 1875.