

Wednesday,  
4th June, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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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.*

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The Council met at Government House, Simla, on Wednesday, the 4th June, 1884.

PRESENT :

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

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

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

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

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

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin K.C.M.G., C.I.E.

The Hon'ble D. G. Barkley.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Burma Courts Act, 1875, be taken into consideration. He said :—

“ This Bill does not deal with the large question of reorganizing the Superior Courts of British Burma—a question which, as the Council is aware, has been for some time under the consideration of the Government of India and the Secretary of State. The present position of that question is this. In the year 1882, we sent to the Secretary of State a despatch in which we recommended the creation of a Chief Court for British Burma, and expressed our general approval of a draft Bill for that purpose which had been submitted to us by the Local Government. The Secretary of State, however, did not see his way to the approval of our scheme, and suggested that the objects which we had in view might be sufficiently met by means of a less fundamental alteration of the existing system. We invited the local authorities to consider the Secretary of State's suggestions, and the replies, which we have received, whilst disclosing much unanimity as to

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the existence of serious evils which require a remedy, disclose also a somewhat embarrassing difference of opinion as to the particular remedy which is most suitable and practicable. Under these circumstances, it is a task of some difficulty to devise a scheme which will meet the objections urged against our former proposals and at the same time satisfy the reasonable demands and legitimate grievances of the Province. That is the task on which we are at this moment engaged, and I believe that before long we shall send a despatch to the Secretary of State on the subject. In the meantime, however, there are one or two minor defects in the Act of 1875 which, if allowed to remain, will cause considerable difficulty and which it is possible and desirable to remove without waiting until the details of the larger scheme have been matured. It was for the purpose of removing these minor defects that the present Bill was introduced in December last. One of the difficulties arises from the inconsistency between the nomenclature of the different grades of inferior Courts under the Act, and the nomenclature which had been adopted in the recent reorganization of the inferior Executive and Judicial Services. We propose to remove that difficulty by assimilating the former nomenclature to the latter. The Judicial Commissioner has objected to the particular form of amendment which we propose, and has suggested that it would tend to prevent confusion and to dispense with the necessity of amending the Act on each change of designation of the officers of the civil staff if we were to adopt the plan adopted in the Code of Criminal Procedure, of giving to each Court a designation independent of the designation which the officers who usually are to preside in it may have in the Burma Civil Service; that, for example, instead of having Courts of 'Myo-òks' and 'Assistant Commissioners,' we should have Courts of different grades of Magistrates and Judges. I entirely agree with the Judicial Commissioner that this would be an improvement, and I fully share his objection to the barbarism of interlarding English Acts with vernacular terms. But on going through the sections of the Act I find that it would be impossible to adopt his suggestions without recasting the Act altogether; and, as we have at this moment under consideration a scheme for remodelling the Courts, it would be obviously undesirable to undertake any such extensive alteration of the Act as this would involve. We have, accordingly, made no material change in the form of the clauses as originally introduced, and such additions and alterations as have been made in Committee deal with unimportant or technical matters.

" I have given notice of amendments dealing with two additional points, as to one of which I was not quite satisfied that the clause submitted by the

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Committee with their Report would adequately meet the requirements of the case, and the other of which was brought to my notice after the Committee presented their Report. These amendments have, I believe, the full concurrence of my colleagues in Committee, and I propose to defer explanation of them until the time for moving them comes."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that for sections 11 and 12 of the Bill the following be substituted:—

"11. The following addition and insertion shall be deemed to have been made to, and in, sections 76 and 80, respectively, of the Amendments of sections 76 and 80. Burma Courts Act, 1875, immediately after the passing of that Act, namely:—

"(a) To section 76—

' Provided that, if in the opinion of both Courts the point as to which they differ ought to be referred to the High Court, it shall be so referred in manner provided by section eighty, clause (b), and thereupon sections eighty-one and eighty-two shall apply.'

"(b) In section 80, after the words 'without a Commissioner' the words 'and not being cases provided for by section 76.' "

He said:—"Under the Burma Courts Act an appeal lies in certain cases from the Judicial Commissioner and the Recorder sitting separately, to a Court called a Special Court, which consists of the Judicial Commissioner and the Recorder sitting together. Each of these judicial officers has also the power of referring questions to the Special Court. The constitution and procedure of this Court have given rise to great difficulties, and it is generally agreed that no satisfactory system of appeal can be devised for the Province, unless the local Court of Appeal can be strengthened by the addition of another Judge. That is indeed the most important object of the scheme which, as I have already said, is now under the consideration of the Government of India, and part of the problem which we have to solve is where we are to get this third Judge, what position we are to give him, and what duties we are to assign to him. A Court of appeal consisting of two Judges, one of whom is the Judge from whom the appeal lies, is not a satisfactory instrument of justice, and I should be very glad to see something better established in its place; but until that desirable consummation is attained, we must content ourselves with removing some of the most obvious defects of the existing instrument. Amongst the various sections of the Act of 1875 under which an appeal or reference may be made to the Special

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Court are sections 76 and 80, which it is now proposed to amend. Section 76 provides that—

‘ If in any civil suit or appeal, or in any criminal case or appeal pending in the Court of the Judicial Commissioner or in the Court of the Recorder of Rangoon, the one Court wishes to obtain the opinion of the other on any question of fact or law, or usage having the force of law, or the construction of a document, or wishes to obtain the assistance of the other for the determination of the case pending before it, such Court shall record a memorandum to that effect; and, after the receipt of a copy of such memorandum by the other Court, the said Judicial Commissioner and Recorder shall sit together as soon as may be convenient, and shall form a Special Court for the disposal of the said question or for the determination of the case so pending.

‘ In case of difference of opinion, that of the Court which sought the opinion of the other shall prevail.’

“ Then section 80 runs as follows :—

‘ Whenever, in cases tried by the Judicial Commissioner and Recorder of Rangoon sitting together as a Special Court without a Commissioner, a difference of opinion arises, the following rules shall be observed :—

- ‘(a) In cases coming before the Special Court by way of appeal, and not being criminal cases, if the Judicial Commissioner and Recorder do not concur in a judgment varying the decision appealed from, such decision shall be upheld. Provided that, if the difference of opinion arise as to some point of law, or custom having the force of law, or the admissibility of evidence or construction of a document affecting the merits of the case, and if either the Judicial Commissioner or the Recorder be of opinion that the point should be referred to the High Court, they shall state the point as to which they differ, and forward such statement, with their respective opinions thereon, to the High Court.
- ‘(b) In criminal cases and in cases not coming before the Special Court by way of appeal, the Judicial Commissioner and the Recorder shall state the point as to which they differ, and forward such statement, with their respective opinions thereon, to the High Court.’

“ I ought to explain that the High Court referred to in this section is defined under the Act to mean the High Court of Judicature at Calcutta.

“ You will observe that under section 76 the opinion of the referring Judge *must* prevail in case of difference, and that there is no possibility of any further appeal or reference. But, under section 80, the differing Judges may, in certain cases, and must in others, refer the point in difference to the High Court of Calcutta. Now, it so happened that a short time ago a difficult question under the Gambling Act came before the Judicial Com-

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missioner of British Burma. The question was whether a particular form of gambling which appears to be very popular in British Burma and which is known as the *Ti*, or 36 animal game, was or was not an offence under the Gambling Act, VII of 1867, or under the provisions of the Penal Code applicable to lotteries. The Judicial Commissioner was of opinion that it was not such an offence, but, as the question was important, he referred it under section 76 to the consideration of the Special Court consisting of himself and the Recorder.

“The Recorder differed from his colleague, but did not succeed in convincing him; and thereupon, under section 76, the opinion of the Judicial Commissioner prevailed. Shortly afterwards the self-same question came before the Recorder. He stuck to his former opinion, but referred the question to the Special Court, when the two learned Judges pronounced judgment each in favour of his own previous opinion. On this occasion, however, the referring Judge was the Recorder, who was in favour of sustaining the conviction, and therefore it was sustained, although the Judicial Commissioner was in favour of quashing it. There is no further appeals, and the result is that, until the legislature steps in, that which is lawful outside Rangoon under the Judicial Commissioner is unlawful inside Rangoon where the Recorder's law is in force. This is not a satisfactory condition of affairs, and I shall probably have before long to submit to you proposals for cutting by legislation the tangle which has occurred in this particular case, when I daresay I shall have an opportunity of expounding the mysteries of the 36 animal game.

“In the meantime, it is desirable to prevent the recurrence of a similar deadlock; and therefore we propose that, when a Judge refers a question under section 76 to the Special Court and does not succeed in convincing or in being convinced by his colleague, the Court consisting of the two Judges shall have the power to refer the question to the High Court of Calcutta.

“That is one of the difficulties which has occurred in connection with section 76. Another is this. From the way in which sections 76 and 80 are drawn, it is sometimes not at all easy to say under which of the two sections a particular reference has been made to a Special Court, and I am informed that cases have occurred in which a point has been stated for the opinion of the Calcutta High Court under section 80 although it was doubtful whether the original reference was not made under section 76, which does not admit of such proceedings being taken. In order to remove any doubt as to the validity

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of decisions which have been already given on such references, I propose to make the amending clause retrospective, so as to confirm past proceedings."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following section be added to the Bill:—

*New section to follow section 94.*

"12. After section 94 the following section shall be inserted, namely:—

'94A. Notwithstanding anything contained in the Code of Civil Procedure, all or any proceedings, written or oral, before any person appointed under section 94 of this Act and section 15 of Act XI of 1865 to exercise the powers of a Judge of a Court of Small Causes in the Small Cause Court at Rangoon, shall be in such language as the Chief Commissioner may, from time to time, prescribe.'

He said:—"The object of this amendment is to meet what may perhaps be described as a metaphysical difficulty. Under section 645 of the Civil Procedure Code, the Local Government has power to declare what is to be the language of a Small Cause Court. At Rangoon there is a Small Cause Court with two Judges, one of whom attends principally to English cases and the other principally to Native cases. It would be obviously convenient that the language used in proceedings before one Judge should be English, and that the language used in proceedings before the other should be Burmese; but, as the Court is one and indivisible, a direction to that effect cannot be given under the Civil Procedure Code. In order, therefore, to meet that difficulty, and to allow of the language being different before the two Judges, I propose to make this amendment."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

### RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to confer powers and impose duties on the Municipal Committee for the Town of



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Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town. He said :—

“The object of the Bill is to provide the necessary legal powers for carrying out a scheme which is now in progress for supplying the town of Rangoon with water from the neighbouring Victoria Lake. The measure is of purely local interest, and the provisions of the Bill are fully explained in the Statement of Objects and Reasons.”

The Motion was put and agreed to.

#### VALIDATION OF MARRIAGE LICENSES BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864. He said :—

“The object of this Bill is simply to remove certain doubts which have been caused by the omission to insert in the Marriage Acts of 1865 and 1872 words continuing in force licenses to solemnize marriages which had been granted under the previous Act of 1864.”

The Motion was put and agreed to.

#### SINDH INCUMBERED ESTATES BILL.

The Hon'ble SIR STEUART BAYLEY presented the Report of the Select Committee on the Bill to amend the Sindh Encumbered Estates Act, 1881. He said that he had to apologise for not having the notice entered on the List of Business. The fact was that the Report of the Select Committee was ready some time ago, and he was only waiting for a demi-official communication from the Bombay Government on the subject, which had not arrived in time to allow of his having the notice entered on to-day's list.

The Council adjourned to Wednesday, the 18th June, 1884.

D. FITZPATRICK,

*Secretary to the Government of India,*

*Legislative Department.*

SIMLA;

*The 6th June, 1884.*