

Friday, September 3, 1880

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 19

JAN. - DEC.

1880

P. L.

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.
1880.

WITH INDEX.

VOL. XIX.

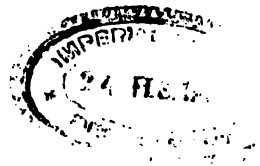
Number Fumigated.....187413



Published by the Authority of the Governor General.

Gazettes & Debates Section
Parliament Library Building
Room No. FB-025
Block 'G'

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
1881.



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 Friday, the 3rd September, 1880.

PRESENT :

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

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

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

The Hon'ble Sir J. Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

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

The Hon'ble C. U. Aitchison, LL.D., C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble C. Grant.

PRESIDENCY SMALL CAUSE COURTS BILL.

The Hon'ble MR. STOKES introduced the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, the Hon'ble Mahārājā Jotindra Mohan Tagore, the Hon'ble Messrs. Kennedy and Paul and the Mover. He said that the Bill, though it comprised certain subjects not provided for by the existing Acts, contained a much smaller number of sections than they did. The Bill contained only 75 sections, but the present law as to the Presidency Small Cause Courts consisted of 121 unrevoked sections of Acts and three clauses of the old Supreme Court Charters. This diminution in bulk was due chiefly to the omission of matters provided for by the sections of the Code of Civil Procedure which it was proposed to apply, or by the general law; but partly also to the omission of certain matters,—such as the security to be given by ministerial officers, and the mode of keeping the accounts of the Court—which, following the practice of recent years, were left to be dealt with by the Executive Government in accordance with the ordinary departmental rules.

This led him to remark that the Bill was the last of the series of measures of consolidation,—that is to say, measures the primary object, or one of the primary objects, of which was to condense and clarify the existing Acts and Regula-

tions of British India,—which he had announced to this Council on the 28th June 1877, shortly after he had had the honour of taking charge of the Legislative Department. The other measures then mentioned were the Arms Bill, the Sea-Customs Bill, the Railway Bill, the Stamp Bill, the Panjáb Courts Bill, the Merchant Shipping Bill, and, lastly, the Criminal Procedure Code Bill. Two other consolidation Bills subsequently brought forward were the Legal Practitioners Bill and the Opium Bill. With the exception of the Merchant Shipping Bill (a different measure from the recent Act VII of 1880) and the Criminal Procedure Code Bill, these measures had all become law, and replaced by seven Acts more than forty-one enactments scattered over the Indian Statute-book.

Simultaneously with the preparation of these measures there had been going on two other processes—that of expurgation of obsolete enactments, and that of separating from the laws applicable to the whole country the local laws of British India and arranging those laws according to their local application. For the former purpose the Legislative Department had prepared, and this Council had passed, six repealing enactments (VIII of 1868, XIV of 1870, XXIX of 1871, XII of 1873, XVI of 1874 and XII of 1876) which swept away a vast mass of the matter that had become obsolete during the last eighty-eight years. For the latter purpose he, with the assistance of Mr. Heysham, the zealous and efficient Registrar in the Legislative Department, had already prepared and passed through the Press three volumes of the general Acts, that is, unrepealed Acts of the Governor General in Council extending or extendible to the whole of British India, passed between November 1834 and June 1876, and nine volumes of the unrepealed local Regulations and Acts relating respectively to Madras, Bombay, the Lower Provinces, the North-Western Provinces, Oudh, the Panjáb, Ajmer and British Burma. The volumes for the Central Provinces and Coorg were in the Press; and when they had been published there would remain only the volume for Assam, a new edition of the general Acts bringing them down to date, and a volume of the unrepealed Acts of Parliament relating to India.

To use the words of Sir James Stephen, in a speech which he had made in this Council on the 25th February 1870, the advantages of such an operation were “so great and obvious that he did not think it necessary to dwell on them.” The real bulk of the law was shewn to be far less than was generally supposed: people were no longer at a loss where to look for the Act or Regulation which they needed; and (as all obsolete matter was repealed and omitted) when they found the enactment which they sought they might be sure that every part of it was operative. Besides this, money and space were saved, for, as a rule, all the written law that any official or lawyer, say in the Panjáb, Oudh or Burma, required, was the general Acts and the slender volume of local

laws in force in his own Province. And to the *penetralia* of all these Acts, Regulations and Statutes a guide would be found in the elaborate Index which had recently been prepared and published by Mr. Jacob of the Bengal Civil Service, who had been employed for that purpose for about a year by the Legislative Department.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette*, the *Fort St. George Gazette* and the *Bombay Government Gazette*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

CENSUS BILL.

The Hon'ble MR. GRANT moved for leave to introduce a Bill to provide for certain matters in connection with the taking of the Census. He said that the Council were aware that it had been decided to take a general Census of British India in February 1881, that date having been fixed in order to correspond as nearly as possible with the time appointed for the taking of a general Census in other parts of Her Majesty's Dominions. In former Census-operations it had not been generally thought necessary to resort to any legislation; but the Madras and Bombay Presidencies had Municipal Acts which contained certain statutory provisions for the enumeration of the populations of municipal towns, and in Bengal also, a short Act had been passed in 1871, under the authority of which the last Census was effected. He understood, however, that it had not been found necessary in Bengal to make use of the penalties which the Act authorized; but no doubt the existence of those penalties had been found very useful, and from the speech of the Hon'ble Member who introduced the Bengal Bill, he found that it was considered necessary at that time that some such authority should be taken by the Government.

The Registrar General of England, to whom this question was referred by the Secretary of State, and who was very well qualified to pronounce an opinion on such a point, having had charge of three Censuses in England and possessing also a personal acquaintance with India, wrote that he considered that the necessary legislation was indispensable.

His Excellency THE PRESIDENT presumed that Mr. Grant referred to Major Graham.

The Hon'ble MR. GRANT said that he did, and that Major Graham's experience had been, that the existence of legal powers strengthened his hands, though fines had in no instance to be inflicted. The same need, as he had already

remarked, had been anticipated in Bengal; but in other respects, so far as he could judge from reading the Census-reports, the absence of statutory powers had not been generally felt.

In Burma, however, certain difficulties had undoubtedly been experienced. He found that the Town Magistrate of Rangoon wrote:—

“ We then witnessed the great want of legal authority in the work, for in some of these barracks the people pretended to be asleep, and not to hear the order of the Police to open their doors and bring lights. All was darkness, and the Police dared not resort to force.”

And in some recent correspondence with the Chief Commissioner of British Burma, Major Evanson, the Town Magistrate of Rangoon, wrote:—

“ Some of the English residents and shipmasters not only sent in most incomplete forms, but also some with silly contents.

“ I will allude to one or two as samples. One shipmaster wrote across the form “ Too busy to fill up,” and acted up to what he wrote. Several entered only the master and officers, excluding the whole crew.

“ One resident entered the whole of his establishment under the heading “ Idiots.” Such matters had to be corrected as best we could, but the absence of any special law or rule to enforce correct entries and to arm the Magistrate was much felt.”

Thus, on the whole, there had seemed to be *prima facie* ground enough for the contemplated legislation, and the matter was specially referred to a Committee appointed to consider all matters connected with the Census. He would quote their opinion from their report:—

“ We think it would be advisable to pass a short general Act for the whole of India, which, in cases where opposition and apathy put difficulties in the way of the enumeration, would greatly strengthen the hands of the executive.”

And then they added that if such a general Act were passed,—

“ a clause should be inserted reserving it to the Local Governments to extend the Act to the territories they administer, as they think proper.”

The opinions of the Committee were referred to the different Local Governments, who generally concurred in the necessity of legislation. He found that Madras, Mysore, the Central Provinces, Assam, Burma, Bombay, the Panjáb and Bengal either advocated or did not object to some kind of enactment. Legislation was said to be unnecessary for Haidarábád, and the North-Western Provinces objected to it; but, as had been seen, the great majority of the Local Governments were either in favour of, or at least not opposed to, legislation in the form suggested by the Committee.

A short Bill had therefore been drafted, embodying most of the recommendations of the Committee, the details of which might more suitably be described on a subsequent occasion if the Council gave leave to introduce it.

The Motion was put and agreed to.

PEGU AND SITTANG CANAL BILL.

The Hon'ble Mr. AITCHISON moved for leave to introduce a Bill to regulate the navigation of the Pegu and Sittang Canal, and to provide for the execution of works necessary to its maintenance. He said that the canal, which was thirty-nine miles in length, connected the Pegu and Sittang rivers. It had been constructed by Government with the object, first, of shortening the journey between Rangoon and Toungoo, which it did by nearly two days, and secondly, and chiefly, to enable the river-traffic to avoid the extremely dangerous bore on the Sittang river. The canal was some thirty-nine miles in length, of which fourteen miles had been constructed partly by utilising the natural water-bed of the Ka-ya-zoo creek, and partly by digging an artificial channel. The artificial portion was constructed entirely through waste-lands in which there were no private rights; such private rights as existed in respect to the other portion of the canal had been acquired by the Government under the Land Improvement Act and by other legal means, so that through the whole length of the canal the Government was now proprietor. In constructing the canal, however, it was found necessary to close a portion of the creek as well as certain other channels which formed the public highway. For those reasons, and also because it was desirable, for the proper regulation of traffic, the collection of tolls and dues and the maintenance of the canal, that the Government should have something more than the authority conferred by its position as proprietor to rely upon, it was proposed to resort to legislation.

The present Bill was founded on portions of the Northern India Canal and Drainage Act of 1873. Sections 4 to 9 provided for the levy of tolls on vessels and rafts, and for the regulation of the navigation, and sections 10 to 13 gave the Canal-officers certain powers over private lands adjacent to the canal which would enable them to do all that was necessary for its maintenance. Lastly, sections 14 to 17 gave power, after the manner of the Northern India Canal and Drainage Act, 1873, Chapter VII, to obtain forced labour where the immediate execution of work was necessary to prevent such serious damage as would cause sudden and extensive public injury. It was at one time also proposed to compel persons to assist in clearing the canal, but that could be provided for by rules. The other provisions of the Bill were merely subsidiary, and did not call for remark.

The Motion was put and agreed to.

MADRAS PORT-DUES BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill for increasing the Port-dues leviable at Madras. He said that the Council would be aware that a large artificial harbour had been under construction for Madras at a cost of £628,000. This money had been raised on loan, and it was necessary to provide for the four per cent. interest payable upon it. There had been a great deal of correspondence between the Government of India and the Madras Government as to the manner in which this interest should be raised, and it had been finally decided, in communication with the Madras Chamber of Commerce, to increase the Port-dues at Madras to a certain extent so as to cover a portion of the interest, and to raise the remainder by a tax on goods landed on and shipped from the wharfs. The object of the proposed Bill, therefore, was to increase the Port-dues of Madras. At present the maximum rates of those dues were three annas per ton in the case of shipping entering the port, and $1\frac{1}{2}$ annas per ton for coasting vessels. What was now proposed was, that those fees should be raised, in the case of ordinary vessels, including steamers, to 8 annas per ton, and in that of vessels employed in the coasting trade to four annas per ton. It was estimated that under this proposal about Rs. 1,60,000 per annum would be raised; the balance, as he had explained, would be raised by a tax on goods landed and shipped. With those objects the Bill had been framed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 10th September, 1880.

SIMLA;	}	D. FITZPATRICK,
The 3rd September, 1880.		Secretary to the Government of India, Legislative Department.