

Wednesday, October 17, 1877

**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 under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Simla on Wednesday, the 17th October 1877.

PRESENT :

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

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

His Excellency the Commander-in-Chief, K.C.B.

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

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

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

Major-General the Hon'ble Sir E. B. Johnson, K.C.B.

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

The Hon'ble F. R. Cockerell.

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

PANJÁB COURTS BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts in the Panjáb be taken into consideration. He said that the Bill as introduced had been subjected to careful examination by the learned Judges of the Panjáb Chief Court. *Plus vident oculi quam oculus* was an old and true proverb; and here, as always happened when three additional pairs of intelligent eyes were brought to bear on a complicated draft, some errors and omissions had been detected. Of these, however, only two were important enough to require mention. The Committee had added, at Mr. Justice Plowden's suggestion, a section declaring the Chief Court to be a High Court within the meaning of sections 633 and 637 of the new Code of Civil Procedure. The result would be that the Judges of the Chief Court would take evidence and record judgments and orders in such manner as the Court might by rule direct, and that any non-judicial act which the Code required to be done by a

Judge might be done by the Registrar, to the great saving of valuable time. The second amendment was in section 46, which declared that Judges should not try suits in which they were personally interested. This might obviously sometimes cause great and useless inconvenience, for example, when the Judge happened to hold a share or two in the Bank of Bengal and the Bank was suing a tradesman on a bill of exchange for Rs. 100. We had accordingly provided that the parties might waive objection to the jurisdiction of a Judge having interest in the subject-matter. The only other change which he would mention was that the Bill would come into force on receiving His Excellency's signature, instead of on such day as the Local Government should appoint.

It was right to add that the Chief Court had asked that jurisdiction to hear summary suits on negotiable instruments might be conferred upon it. But the Chief Court, like the High Court at Allahabad, had no ordinary original civil jurisdiction; on such Courts the framers of the new Code of Civil Procedure did not intend to confer jurisdiction to hear this class of suits; and the request of the Chief Court was therefore refused. This would cause no inconvenience to the public; for His Honour the Lieutenant-Governor could, and doubtless would, by notification under the new Code, section 538, clause (e), apply sections 532—537 of the Code to the Courts of all or some of the Deputy Commissioners. The Chief Court could then, if it liked, withdraw and itself try all such summary suits instituted in these Courts and remit the decrees for execution to the Courts from which the suits had been so withdrawn.

His Honour THE LIEUTENANT-GOVERNOR expressed his approval of the provisions of the Bill in its present form.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### PANJÁB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also asked leave to postpone the introduction of the Bill to amend the Panjáb Laws Act, 1872.

Leave was granted.

#### NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also introduced the Bill to amend the North-Western Provinces Land-Revenue Act, 1873, and moved that it be referred to

a Select Committee. He said that the primary object of this little Bill was to deprive persons whose estates were under the management of the local Court of Wards of power to charge or alienate those estates. But it would also remove a doubt as to the effect of section 29 of the Act, which provided that—

“ A rate may be imposed by order of the Collector of the District on the annual value, or on the cultivated area, of all the maháls composing the circle of each patwárá, or partly in the one way, and partly in the other, for defraying the salary of such patwárá, and any charges incurred on account of any additional establishment required for the proper supervision, maintenance and correction of the patwárá's records.”

Doubts existed, which he confessed he himself shared, as to whether this section authorized the application of any part of the fund so raised to defray the cost of the village-maps on which the correctness of patwárá's records mainly depended. But, in the opinion of their hon'ble colleague Sir John Strachey, Mr. Batten and other experienced North-West officials, it was expedient that the fund should be applicable for this object. The Bill would accordingly add an explanation to section 29 to the effect that charges incurred in the preparation of village-maps should be deemed charges within the meaning of this section.

The Motion was put and agreed to.

The Hon'ble Mr. STOKES also moved that the Bill be published in the *Gazette of India* in English, and in the *North-Western Provinces and Oudh Gazette* in English and in such other languages as the Local Government should direct.

The Motion was put and agreed to.

### DISTRESSED SEAMEN'S EXPENSES RECOVERY BILL.

The Hon'ble Mr. STOKES also moved for leave to introduce a Bill to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices. He said that the Merchant Shipping Acts of 1854 and 1855 provided, in all necessitous cases occurring out of the United Kingdom, for subsisting and relieving distressed seamen who were British subjects, and for sending them home, or burying any who died in such circumstances, at the public expense, with a right of recovery over against any master or owner liable to pay such wages or such expenses. This right of recovery was given only to the Board of Trade. But the distressed seamen in question were in many cases Natives of India, and belonged to ships which were either registered in or traded

to India, and which were seldom, if ever, found within the ports of the United Kingdom. In such cases the Board of Trade had considerable difficulty in recovering the sums expended. When the distressed seamen were Natives of this country, these expenses were charged to the Indian revenue. It was therefore desirable that the Government of India should be enabled to empower some person here to sue, in case the ships or persons chargeable were found in this country. The Bill would effect this object by providing that such suits might be brought in the name of the Secretary of State in Council by such persons as the Governor General in Council might, by notification in the *Gazette of India*, generally or specially authorize in that behalf.

The Motion was put and agreed to.

### INDIAN FOREST BILL.

The Hon'ble Mr. HOPE moved that His Honour the Lieutenant-Governor of the Panjáb be added to the Select Committee on the Bill to amend the law relating to the management and preservation of Government forests, to the transit of forest-produce and to the duty leviable on timber. He said that he ought perhaps to explain that this motion was necessary for technical reasons. The Hon'ble Mr. Egerton had, on February 14th, when an Additional Member of the Council, been appointed a member of the Select Committee on the Forest Bill and had actually served in that capacity up to the present time. But, as he had sent in his resignation of the post of Additional Member when he assumed the office of Lieutenant-Governor, it was held that a re-appointment to the Select Committee was necessary in order to validate his signature of the Report which was about to be presented.

The Motion was put and agreed to.

The Hon'ble Mr. HOPE also presented the Report of the Select Committee on the Bill to amend the law relating to the management and preservation of Government forests, to the transit of forest-produce and to the duty leviable on timber. He said that in doing so he must first explain why the direction of the Council given on the 31st of January last, that the Report should be presented in two months, had not been complied with. Those two months corresponded with the time that the Council had remained in Calcutta, and the late Law Member, Sir A. Hobhouse, together with the Secretary, had been so occupied with the Civil Procedure Code and other urgent legislation that they had been quite unable to give any time to the Forest Bill. The two months had not, however, been lost, as an informal committee, consisting of the Hon'ble

Mr. Egerton, Mr. Batten, the Secretary to the Government of India in the Department of Revenue, Agriculture and Commerce, Dr. Schlich and Mr. Baden Powell, the Conservators of Bengal and the Panjáb, together with MR. HOPE himself, had, with the approval of Sir A. Hobhouse, considered the Bill and revised it thoroughly. On coming to Simla MR. HOPE had, he said, been unable to find any leisure for the Bill until recently when he had been relieved of his Famine duties.

As to the Bill itself, he was glad to say that the original draft of it had been most favourably received by all the Local Governments except that of Madras. The Chief Commissioner of British Burma, a province which was perhaps more interested in the matter than any other, had expressed his opinion that the Bill would meet all the necessities of the case, and that it would render superfluous the prosecution of the separate Bill for British Burma which had been introduced into the Council. The Chief Commissioner of the Central Provinces had written thus:—"Of the scope of the Bill and its general arrangement the Chief Commissioner is glad to be able to express his hearty approval, and it appears to him to provide for all matters connected with Forest conservancy that can be fairly attempted in India for some time to come." The Commissioner of Coorg said that the provisions of the Bill seemed to him "suitable for adoption." The Chief Commissioner of Assam had only one suggestion for improvement to make. The Commissioner in Sindh reported that he "considers its provisions applicable to Sindh, and that he has no alterations or additions to suggest." The Conservator of the Northern Division, Bombay, said: "the Bill seems to me to be complete and fully to meet the circumstances and wants of the Northern Division," and the Bombay Government consider that the Bill "will serve its purpose." As to Bengal, the report was that "the present draft appears to the Lieutenant-Governor sufficiently to meet the requirements of Bengal." The Conservator of the North-West Provinces said: "I think the Bill provides for every thing that is required," while the Panjáb, as represented on the Select Committee by His Honour the Lieutenant-Governor, was understood to be satisfied. MR. HOPE did not mean to imply that the whole of the expressions of approval he had quoted were unqualified. In some cases they were, but in others they were accompanied by objections or suggestions regarding particular points. All these had been carefully considered, and many had led to material improvements.

MR. HOPE thought that he might safely say that the Bill now presented was very superior in scope, precision, adaptability and care of all popular

rights to the draft as introduced. Wherever rights could not be allowed to continue (and he believed such cases would prove comparatively few), provision had been made for compensation or commutation; wherever mere regulation was sufficient, care had been taken to leave the people all which in practice they could reasonably require. The objections of Madras had not been forgotten. The Bill had been so materially altered to meet them that he had now every hope that the Madras Government, considering also the scope which the power of making rules gave for meeting local peculiarities, would find themselves able to accept it. If, however, the event should be otherwise, then this Bill offered no obstacle, as Sir A. Hobhouse had explained to the Council, to separate local legislation.

As to the character of the Bill generally, Mr. HORN trusted that any persons who were still disposed to think any part of it arbitrary, would remember that, without effective regulation and conservation of forests, not merely the public revenue, but the public themselves, would suffer, and even risks of famine might be infinitely increased. On this subject he thought the Council would be interested to hear the views regarding the condition of Southern India recently expressed by a distinguished administrator, which were as follows:—

“The southern peninsula of India has been or is being denuded, not only of its forests but also of its jungles, its brushwood, its groves, its trees. The denudation has been, as I understand, going on near the sources and the upper courses of the many rivers which water the country. This, perhaps, is being in some degree checked. But with the progress of coffee planting, and with the assertion of communal rights on behalf of the people, the utmost vigilance will be needed to keep it within bounds. If it were to proceed unchecked, there would be imminent danger of the rivers running dry by reason of the catchment basins and the drainage areas near their sources being rainless. And as these rivers supply the great canal systems, this danger has only to be mentioned in order to be felt. The same argument applies in a lesser degree to the tanks or lakes which are second only to the canals in usefulness for irrigation. It has already been seen how precarious is the position of these reservoirs, even with one year's drought. The progress of the country causes the price of timber and of firewood to rise. The introduction of Railways has, in the absence of any local coal-mines, greatly augmented the demand for fuel. Strong temptations are thus inevitably offered to the people at large to fell, cut and lop recklessly; to bring every log, stump and stick to market; to dig out the very roots of the jungle, so stopping any chance of reproduction, without thought for the future. There are stories to be heard everywhere of groves and hedgerows and scattered trees being cut for sale. In the midst of cultivated tracts there are to be seen bare, sterile hillsides, said to have been forest-clad within living memory. In such localities the climate is supposed to have changed for the worse. Beyond the Ghât mountains, in Bellary and Kurnool, the treeless, shrubless aspect of the country is as wonderful as it is melancholy. These are the

very districts where famine has been occasionally epidemic, and where scarcity is almost endemic. Any thoughtful spectator must perceive that, according to all meteorological experience, and to the almost certain teachings of proved fact, these fine districts were not destined by nature to be the prey and sport of famine or scarcity, but have been rendered subject to these calamities by the thoughtless action of man. Even the numerous groves planted in the last generation by the great Collector Mr. Robertson, whose name is still a household word, were made over many years ago to the villagers, and have been mostly cut down. Trees, jungle and forests must, indeed, be thinned and cut for the use of man; but they need never be exhausted, and something might always be left for reproduction."

Nothing could be more true and worthy of attention than these graphic and practical remarks. Regarding the necessity for regulation of the use of forests in the interests of the public, Mr. HORE would conclude by quoting the opinion of the Secretary of State, not very long ago communicated to the Government of India:—

"Her Majesty's Government are, as you are aware, fully impressed with the importance of the adoption of efficient measures for preserving the forests of India, whilst they admit also the necessity of those measures being so framed as to interfere as little as possible with private rights, which may have grown up on behalf of villages or individuals. On the other hand, it must be remembered that as civilisation advances these rights become less and less necessary to the cultivators, and are found frequently incompatible with the superior rights of the whole community, among whom the cultivators themselves obtain advantage in other ways from the restriction of their ancient privileges. The change to this state of things must be gradual, and so timed as to make the transition as little onerous as may be to those who have held such privileges. In the instances before us, it must be remembered that the absolute concession of these privileges would, as a rule, render the effective preservation of the forests impossible, and, moreover, that this is not an object of private import, but is undertaken by Government for the benefit of the whole community.

"It may be added that all the measures already adopted for several years past must have tended to prepare the minds of the inhabitants of the villages for a change of the nature indicated."

The following Select Committee was named:—

On the Bill to amend the North-Western Provinces Land-Revenue Act, 1873—The Hon'ble Sir Alexander Arbuthnot, the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 24th October 1877.

SIMLA ;  
The 17th October 1877. }

A. PHILLIPS,  
Secy. to the Govt. of India,  
Legislative Department.