

*Thursday,  
24th February, 1887*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXVI**

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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

VOLUME XXVI



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1888.

*Abstract of the Proceedings of the Council of the Governor General of India,  
assembled for the purpose of making Laws and Regulations under the pro-  
visions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Thursday, the 24th February, 1887.

PRESENT :

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

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

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., K.C.I.E., R.A.

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

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

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble J. B. Peile, M.A., C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir W. W. Hunter, K.C.S.I., C.I.E., LL.D.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Colonel Sir W. G. Davies, K.C.S.I.

The Hon'ble Syud Ameer Hossein.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton, C.S.I.

PROVINCIAL SMALL CAUSE COURTS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed. He said:—

"I think I need detain the Council only very shortly with reference to this Bill. The main object of the Select Committee in dealing with this Bill was to

bring the Provincial Small Cause Courts, which are undoubtedly rendering very effectual service to the administration of justice throughout the country, into line with the Civil Courts generally; and we have therefore provided that these Courts should be under the administrative control of the District Judges and subject to the superintendence of the High Courts. We have also established a system for the appointment, promotion and discipline of ministerial officers. With regard to the jurisdiction of the Small Cause Courts, the provisions of the original Act, XI of 1865, gave rise to a great deal of litigation in order to determine whether a suit was or was not of a nature cognizable by a Court of Small Causes. We have endeavoured for the future to avoid that difficulty by specifying in a schedule the suits over which these Provincial Small Cause Courts shall not have jurisdiction, thereby giving jurisdiction in all cases which are not thus excepted. The third point of importance to which I think it necessary to call the attention of the Council is this. A recent decision of the Privy Council has given a very restricted interpretation to section 622 of the Code of Civil Procedure, and has limited the revisional power of the High Courts only to cases in which an error in the exercise of jurisdiction has been committed; thereby leaving it competent to inferior Courts to commit manifest mistakes of law without the possibility of such mistakes being corrected by a higher tribunal. We have drawn section 25 of the Bill so as to restore to the High Courts the jurisdiction which for many years they were believed to possess and which it is very desirable they should continue to exercise, and we have enacted that the High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

"These are the principal features of the Bill to which I think it necessary to draw attention. The other sections are devoted to the provision of an efficient method of carrying out the duties which devolve upon these Courts. They are Courts which I believe are very much appreciated in the country, and their working has I believe been highly conducive to the good of the people, who have thereby been able to obtain speedy and substantial justice. And I think the best proof of the popularity and usefulness of these Courts is to be found in a return which I have obtained from the two Presidencies of Bengal and Madras, from which it appears that 30 per cent. of the civil suits dealt with by the Courts in 1885 in the Bengal Presidency were tried and disposed of by Small Cause Courts, and in the Madras Presidency 32 per cent. of the cases were similarly disposed of."

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[*Sir William W. Hunter.*]

The Hon'ble SIR WILLIAM W. HUNTER said:—

“My Lord, I have closely watched the passage of this Bill through its various stages. For it belongs to a class of measures which, with the best intentions on the part of their framers, sometimes produce unexpected results. I confess that I never see a consolidating or codifying Act launched from this central legislature, without grave anxiety as to its practical operation in the varied Provinces, and among the diverse populations, whom it will, for good or for evil, affect. The details of the measure have already been fully explained, together with the changes which have found a place in it. I shall, therefore, detain the Council with only a few remarks on certain of its more general aspects.

“This measure marks the end of what may be termed the experimental stage of Small Cause Court legislation in India. I well remember the apprehension which was felt when those tribunals began to be generally introduced into the rural districts of Bengal. To most judicial officers, and to a large section of the public, it seemed a perilous experiment to dot the districts with Courts from whose decision there was, in the majority of cases, no appeal. The system might work well enough in large towns, it was said, under the safeguard of a vigilant public opinion, but it was a dangerous one for remote country places. How completely these apprehensions have been falsified it is not needful for me to relate. I believe that no class of officers have done so much, during the past quarter of a century, to render legal redress easy, speedy and cheap in the ordinary transactions between man and man, as the Judges of the Small Cause Courts. They found the system an experiment. They have made it a success. The present Bill takes up the system at this latter stage. It extends and simplifies the powers of the Small Cause Courts, it incorporates them more closely into the regular judicial organisation of the country, and it brings their ministerial officers into line with the ministerial officers of the general administration. In no particular section will any large or violent change be discovered. But it will be found, I think, in practical working, that the Bill as a whole has the effect which I describe.

“In so doing the Bill only gives formal effect to the fact that the experimental stage of the Small Cause Court system in India is now a thing of the past. The Bill clears away as far as possible the growth of conflicting decisions which have gradually overlaid the old law, and the causes of the conflicts. But in so doing, and in its general tendency to consolidation, it has had to reject as well as to accept the views of local authorities, whose opinions are well entitled to respect. It may possibly be that some of those views have been unwisely re-

36 PROVINCIAL SMALL CAUSE COURTS; LOWER BURMA COURTS;  
NATIVE PASSENGER SHIPS.

[Sir William W. Hunter; Mr. Scoble; Sir A. Colvin.] [24TH FEBRUARY,

jected, and that local inconvenience may in consequence arise. That is a danger which besets every consolidating Act that emanates from this central chamber. But I wish to bear testimony to the patience and care with which all local opinions have in this case been weighed. The *précis* of those opinions alone forms a folio volume of 195 pages. Apart from the consideration given to these opinions by your Lordship's Executive Council, each member of the Select Committee has had his attention specifically directed to every opinion which has been received by Government under each section of the Bill; and each opinion has been discussed, section by section, by the Select Committee as a whole. Throughout the five years during which I have had the honour of sitting in this Council, I have never acted on a Select Committee in which so large a mass of evidence has been more thoroughly sifted, or in which more care has been taken to inform the non-official members (if I may so designate myself *ad hoc*) of the views of the local officers, or to satisfy them that the right course has, in each case of conflict, been selected. While, therefore, the Bill must be acknowledged to be subject to the chances of local inconvenience which attend all attempts at consolidation and codification, I think that those chances have in the present measure been reduced to a minimum. I believe that the changes which it effects are justified by the facts: that they will extend the usefulness of the Courts; and that they will improve the position and the prospects of the ministerial officers."

The Motion was put and agreed to.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to consolidate and amend the law relating to Courts in Lower Burma be referred to a Select Committee consisting of the Hon'ble Messrs. Peile and Whiteside and the Mover.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill, as amended, be passed. He said:—

"In moving that this Bill as amended be passed I have only to add that the Select Committee have so arranged the clauses of the Bill as to provide for

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[Sir A. Colvin; Mr. Scoble.]

the various objects for which, as explained at the time, it was introduced, and that the Report of the Select Committee briefly embodies all the information necessary. But I may draw more particular attention perhaps to two sections in which we have sought to provide for the greater convenience of the classes of passengers to whom this Bill applies. The first of these is section 30, sub-section (1), which provides that the Local Government may direct that no passenger shall be received on board any ship or any ship of a specified class carrying passengers from any port in British India to any port in the Red Sea unless and until the passenger has been inspected, at such time and place and in such manner as the Local Government may fix in this behalf, by a medical officer to be appointed by the Government for the purpose. The object of the introduction of this provision is with special reference to the convenience of Native ladies who may happen to be passengers, and to obviate the recurrence of cases which have at various times arisen, in which causes of complaint have been brought to the notice of the Government, which, in the absence of any such provision, was unable to take the measures necessary to guard against their recurrence. The other point is with reference to section 53, clause (2) (b), which gives the Local Government power to make rules to regulate the time within which the ship or any ship of the class is to depart or proceed on her voyage after commencing to take passengers on board; the object of this provision again being to meet the case of Native passengers arriving at and being detained in some outport of embarkation, during which time the provisions which they have brought with them for the journey are gradually consumed, and they themselves subjected to very serious inconvenience and discomfort. We have therefore given the Local Government power to provide for the departure of a ship within a given time, so that the passengers may not be put to needless inconvenience. I do not think it is necessary for me to say anything further in reference to the Bill, the Report of the Select Committee disposing of anything further to which it is necessary that attention should be called."

The Motion was put and agreed to.

#### PUNJAB TENANCY BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Quinton be added to the Select Committee on the Bill to amend the law relating to the Tenancy of Land in the Punjab.

The Motion was put and agreed to.

38. *PUNJAB LAND-REVENUE ; GUARDIANS AND WARDS ; SINDH-PISHIN RAILWAY.*

[*Mr. Scoble ; Sir Theodore Hope.*] [24TH FEBRUARY,

*PUNJAB LAND-REVENUE BILL.*

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Quinton be added to the Select Committee on the Bill to declare and amend the Land-revenue Law of the Punjab.

The Motion was put and agreed to.

*GUARDIANS AND WARDS BILL.*

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Quinton be added to the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward.

The Motion was put and agreed to.

*SINDH-PISHIN RAILWAY BILL.*

The Hon'ble SIR THEODORE HOPE moved for leave to introduce a Bill to provide for the regulation of traffic on the Sindh-Pishin Section of the North-Western Railway. He said :—" I may commence by explaining that the North-Western Railway is the name which we now give to the entire system of railways on our North-Western frontier, which up to two years ago was composed of several totally disconnected and partially incomplete parts. The Sindh, Punjab and Delhi Railway Company held a very large section, that is to say, from Delhi down to Multan, and again from Kotri down to Karachi ; the Government holding the line from Lahore up to Peshawar, and again from Multan down to Kotri, and also the very large loop line called the Sindh-Saugor Railway, together with a very important work, partly completed and partly under construction, designed to connect the Province of Sindh with the plateau of Pishin and Biluchistan. It was considered necessary for administrative purposes that the whole should be consolidated into one administration, in order that, if complications should at any time arise, then the entire regulation of the traffic might be in the hands of the Government without question ; and this has now been effected, the Sindh, Punjab and Delhi Company's Railway having been acquired, and the whole brought under one responsible head. This railway comprises several sections, and one of these is the subject of the Bill which I have now the honour to lay before the Council. The Sindh-Pishin section starts from the province of Sindh, and it reaches the elevated plateau of Pishin by two distinct routes : one portion may be called the Harnai, as it goes up the Harnai Valley, and reaches the plateau by that way ; but besides that there is another line which is called colloquially the Bolan Railway. Both are in reality a section of the North-



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[*Sir Theodore Hope.*]

Western line. This entire North-Western line is naturally liable to be placed under requisition for military purposes, but it is not considered necessary at present to reserve any special power over the traffic on that account, except on the comparatively small portion which leads to the most important part of the southern frontier. It is obvious that, should complications take place, the small necks of line passing up there must necessarily be entirely taken up by the movement of large bodies of troops and stores, and could not afford any accommodation to the public at all. But, besides this, the Sindh-Pishin section has another special feature with perhaps a more direct bearing on the object of this Bill than the other; that is to say, that both these two routes which I have mentioned—the Har-nai and the Bolan routes—pass through very stupendous mountain gorges, first of all at the bottom and secondly near the top. Now, in fact, each of these is what is termed in Europe a regular mountain line, displaying the very highest engineering skill, and most difficult works, which I venture to say have been constructed in the most admirable manner. However well such lines may be constructed, they are obviously very difficult to complete satisfactorily, and are liable to interruptions, specially at the outset, and until the works have become thoroughly settled and the capricious action of the mountain streams has been thoroughly understood and mastered. Those who are in the habit of going to Darjiling must be aware that landslips occur both from above on to the line, and in portions below the line, and that not unfrequently stoppages of the traffic take place, and it has taken considerable expenditure for years to place the line in the satisfactory condition that it now is. Those of us who can look back further to the construction of the great Bhor and Thul Ghât lines will recollect that interruptions of this class were extremely frequent in the earlier times, and even led to accidents. On this account, if we were to pay very strict regard to the protection of the public, we might possibly hesitate to throw open these passes to the Pishin plateau, which have been lately completed, until they have been tried and had worked for a very considerable period. But, on the other hand, if we were thus to postpone their opening, we should impose upon the public of Pishin and Quetta very serious inconvenience and very heavy cost. The difficulty of reaching the Pishin plateau now is very great, and can only be thoroughly understood by those who have had the misfortune to be obliged to surmount it. The cost of all provisions and stores and of everything in Pishin is something utterly abnormal. I do not exaggerate when I say that servants who in ordinary places can be obtained at Rs. 10 a month are extremely difficult to get there at Rs. 25, owing to the isolation of the country. As soon as we can get this railway utilised, all these wages and also the high price of provisions and stores will be brought to their proper bearings. We think, therefore,

that it is in the interest of the public, notwithstanding the risks that may be incurred, to throw the line open to them without further delay. At the same time, in order to make the public, on the one hand, fully aware of a certain amount of risk which they will incur, and, on the other hand, to protect the interests of the State, we propose to extend to this line only such portions of the existing Railway Act as are applicable to the particular circumstances of the case, and, moreover, to take power to limit the liability of the Government for losses on account of injury to person or property which may happen to those who make use of it. This limitation, however, it is not intended, I may say executively, to apply to the whole line. There are portions of it, for instance, the lower part, which are just as level as the plains of Bengal, and on that part no doubt, as also on the plateau, we should not desire to limit our liability, while we should apply these special provisions to such portions of the railway as they are really and reasonably intended for. As to the nature of those limitations, I may mention that what are contemplated will probably be simply of the same nature as those which are to be found in many portions of America. In the States of Massachusetts and New York there are railway laws which provide for a restriction of the liability of the railway companies for losses to a certain fixed amount. I have therefore upon these grounds to solicit permission to introduce the Bill."

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE also introduced the Bill.

The Hon'ble SIR THEODORE HOPE having applied to His Excellency the President to suspend the Rules for the conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Hon'ble SIR THEODORE HOPE moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE then moved that the Bill be passed. He said:—"In explanation of putting the Bill through with this amount of urgency, I trust the Council will deem it sufficient if I say that the official inspection of the line previous to its being thrown open with special regulations for its safer working is now in progress; and as this is the opening of the season, the spring time, when we should naturally look to traffic after the winter being very considerable, it will be a great convenience to the public generally to

[*Sir Theodore Hope.*]

use the railway with the least possible delay. It will also give sufficient time for the fact of the opening of the railway becoming known in the regions beyond Pishin, and promote caravan traffic during the present year, before the coming winter."

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th March, 1887.

S. HARVEY JAMES,

*Offg. Secretary to the Govt. of India,  
Legislative Department.*

FORT WILLIAM;     }  
The 2nd March, 1887. }

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The Meeting fixed for the 25th February, 1887, was held on the 24th idem.