

*Friday,*  
*11th March, 1887*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVI

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

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

The Council met at Government House, on Friday, the 11th March, 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*.  
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 J. W. Quinton, C.S.I.

**BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL 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 Civil Courts in Bengal, the North-Western Provinces and Assam be taken into consideration. He said :—

“The Bill to which I now have to ask the assent of the Council was introduced by my learned friend the Hon'ble Mr. Stokes in 1881. Its object was to consolidate the two existing Acts regarding the Bengal Civil Courts, taking advantage of the opportunity to remove certain administrative difficulties and make such changes in the wording of the law as the experience of the previous ten years had shown to be desirable. It was referred, in the usual course, to a Select Committee, and was circulated for opinion, and would probably have been passed into law some years ago but for a proposal to establish Appellate Benches in Bengal, which rendered it necessary to suspend its consideration.

[Mr. Scoble.]

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"The Appellate Benches scheme, however, went the way of many similar proposals, and the Hon'ble Mr. Ilbert, in October last, finding himself the sole surviving member of the Select Committee on this Bill, presented a Report upon it, in which he recommended that it should be considered in connection with the Provincial Small Cause Courts Bill, and suggested that the two measures should be considered together, as far as possible, by the same Committee.

"This course has been adopted. The Provincial Small Cause Courts Bill was passed a fortnight ago, and I hope this Bill, which provides a system of Civil Courts for Bengal, the North-Western Provinces and Assam, will be passed today.

"There is not much in it, I think, to provoke adverse criticism. The lines of the Act of 1871 have been, in the main, adhered to; but we have, I hope, adopted every suggestion that pointed to a real improvement in the existing system. It would be tedious to go through an enumeration of the changes we have made: the test of an Act of this kind is in its working; and that, I trust, will prove satisfactory.

"Upon two matters, however, I think I ought to make a few observations.

"The first is that, by section 31 of the Bill, the power of appointing ministerial officers in the subordinate Civil Courts is conferred on the District Judge. There is no doubt a good deal to be said on both sides of this question, but on the whole argument, the advantage lies, in the opinion of the Committee, in favour of the plan which we have adopted. The case is well stated on the one side by Mr. Daniell, District Judge of Moradabad, who says—

'I consider it essential to the efficiency of the ministerial officers of the subordinate Civil Courts in a judgship that a stream of promotion should be maintained from the lowest to the highest grade of these officials throughout the Judgship. If this is secured, every hard-working man knows that there are several appointments to which he can aspire, the field for his promotion is widened, and he is more encouraged to do his work well than if he had only to look to the rare vacancies in a single munsifi for advancement. On the other hand, the Judge can promote any man from any one of several situations to any other that he may be qualified for in the whole judgship, and a stimulus is provided to efficient and industrious work which is entirely absent if the Judge can promote no one but the officials of his own office, or if, in order to promote a deserving man in a munsifi, he is obliged to place him over the heads of other men in his own office, without being at the same time able to provide any of his own officials with a step on promotion in any of the munsifis subordinate to him.'

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[*Mr. Scoble.*]

“ This view is adopted by many other experienced officers, and is supported by the Governments of Bengal and of the North-Western Provinces. On the other side, Mr. Justice Chunder Madhub Ghose argues—and Mr. Justice Wilson and Mr. Justice Tottenham concur generally in his opinion—that although it may be very desirable, as Mr. Daniell says, that, for the efficiency of the ministerial officers of the Subordinate Courts, ‘ a stream of promotion should be maintained from the lowest to the highest throughout the judgeship,’ and although it may also be very true that this serves as a ‘ stimulus to efficient and industrious work,’ there is another view of the matter which demands much consideration. That view is thus stated by the learned Judge—

‘ That for the proper and efficient working of the establishments, it is essentially necessary that the officer who is responsible for the entire work should be left to select his ministerial officers. It is not suggested that the District Judge under the law now proposed should become more responsible than he is at present for the proper working of the establishments of the Subordinate Courts. The Judges of those Courts will continue to be as responsible as they are now, and yet they would be compelled to work with men whom, had they the option, they would decline to select. And if the proposed alteration in the law is carried out, I apprehend that it will tend to lower the prestige of the Subordinate Judiciary, and to create between them and their ministerial officers a state of feeling which it is desirable to avoid.’

“ I may remark here that experience shows the learned Judge’s apprehensions on this score to be unfounded. Under Act XIV of 1869, all ministerial officers of the Civil Courts in each district in the Bombay Presidency are appointed by the District Judge; and the system has not been found either to lower the prestige of the Subordinate Judges, or to create undesirable relations between them and their establishments. The learned Judge goes on to say—

‘ No doubt, it may serve as a stimulus to efficient and industrious work if a stream of promotion be maintained. But I am afraid that in very few cases only, if in any, can the District Judge, notwithstanding his annual inspection of the Subordinate Courts, even if regularly carried out, be in a position to acquire any sufficient knowledge of the real merits of the ministerial officers of these Courts; and the result will therefore be, if the proposed change in the law be carried, that the promotions made by the District Judge will in many cases be unsatisfactory. There is nothing under the present law to prevent some sort of rule of promotion being laid down in each judgeship, under which recognition shall be secured of the claims of all deserving officers in the district on the occasion of a vacancy occurring in the higher appointments of any of the Courts; and it does not seem to me that the change as proposed would be a real improvement in that direction.’

[Mr. Scoble.]

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"The conclusion to which the Committee came was that Mr. Justice Ghose had pointed out the real cure for any misapplication of the proposed system in the establishment of a settled 'rule of promotion'; and that in these days of supervision and publicity there is little danger of a District Judge misusing the power conferred on him. Systematic jobbery is, let us hope, impossible; individual nepotism is more likely to occur. In practice, it will probably be found that though the Judge appoints, the Subordinate Judges and Munsifs will nominate their ministerial officers. But as the final responsibility must rest somewhere, we think, in the interests of the public service, it ought to rest with the officer under whose administrative control the Courts are placed.

"The other point arises on section 36 of the Bill, as to which notice of two amendments has been given.

"The first of these, proposed by my learned friend the Hon'ble Mr. Eyans, I am willing to accept with the slight modification of substituting 'after' for 'in'. The second is brought forward by our hon'ble colleague, Rájá Peári Mohan Mukerji, and I will briefly state the effect of it.

"By section 36 of the Bill, it is provided that the Local Government may invest officers in the Chutiá Nágpur, Jalpaigori and Darjiling Districts, and in the greater part of Assam, with the powers of a Civil Court. The Upper Assam Sarbojanik Sova objects to this, on the ground that 'the principle involved in investing executive officers with civil powers is altogether an unsound one,' though they go on to admit that 'its partial adoption in Assam till 1871 was no doubt justified to some extent by the undeveloped condition of the province and the paucity of officers.' This justification, I am bound to say, still exists. In a letter of 11th February, 1887, which constitutes annexure No. 5 to this Bill, the Chief Commissioner writes that he—

'thinks there is some force in the contention that the office of Judge and Commissioner of the Assam Valley Districts should not be combined in the same person; but the Government of India is well aware of the circumstances under which the two offices came to be combined. If they were now separated, the Judge would have very little work to do, and the Commissioner would also not have his time fully occupied. To separate the judicial and executive administration in the Assam Valley Districts or Cachar would entail additional expenditure of public money which would be wholly unjustifiable under the circumstances of this province. These districts are not sufficiently advanced for such a measure, and, moreover, the result of such separation would be to leave both executive and judicial officers with half their time unoccupied.'

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[*Mr. Scoble; Rájá Peári Mohan Mukerji.*]

“This answer appeared to the Committee conclusive, and I doubt not it will so appear to the Council. We must do our best with the means at our command. The Rájá's amendment would involve an entire reconstruction of the civil administration of Assam, and this it would be foreign to the scope of this Bill to undertake.”

The Motion was put and agreed to.

The Hon'ble RAJA PEARI MOHAN MUKERJI moved that clause (a) and the word “other” in clause (b) of sub-section (r) of section 36 of the Bill be omitted. He said:—“The hon'ble and learned Law Member has tried to make out that the proposed amendment would introduce a radical change in the administration of the non-regulation provinces, but I still venture to think that my Motion involves only a very slight modification of one of the provisions of the Bill. The Bill gives power to the Chief Commissioners of the non-regulation provinces to invest any officer in those provinces with the powers of the Civil Court, either of original or appellate jurisdiction. My amendment is that only such officers should be invested with judicial powers as shall come under a class to be defined by the Local Governments, with the previous sanction of your Excellency in Council, so that the powers of the Local Governments in the non-regulation provinces should be controlled in this respect in the same manner as the Bill provides for the control of the powers of the Local Governments in Bengal and the North-Western Provinces. In the non-regulation districts, where the extent of territory is large and the population sparse, it has long been found necessary, on financial and other considerations, to unite in the same officers executive and judicial functions; but it was truly observed by Mr. Justice Field, in a case relating to Assam, reported in I. L. R. 10 Cal. 915, that ‘this union of duties is an abnormal state of things, and experience of its operation is not wanting in instances to show that, in the interests of justice, the discharge of judicial duties by an officer who also exercises executive functions cannot be too carefully watched.’ In another case which involved a conflict between the revenue and the judicial authorities Sir Richard Garth observed in his judgment, reported in I. L. R. 9 Cal. 925, that ‘if that is the state of the law in Assam I think the sooner the notice of the Supreme Government is called to it the better.’ At present any officer, whatever might be his acquirements and the character of his training, may be invested with judicial powers. In fact, the latitude of selection is practically unlimited. We have been told by an Assam association, in a petition submitted to this Hon'ble Council, that a manager of a tea-garden, an agent of a carrying company, a military officer fresh

[Rájá Peári Mohan Mukerji; Syud Ameer Hossein.] [11TH MARCH,

from his regiment, or an accountant of the Public Works Department is vested with judicial powers the moment he is appointed an Extra Assistant or Assistant Commissioner. The case becomes worse when an officer having no judicial experience is vested with appellate powers and required by virtue of his office to affirm or reverse the decisions of experienced judicial officers. There could be no greater condemnation of such a state of things than is found in the remark of the Chief Commissioner of Assam made in September, 1885, that 'it is an anomalous state of things that civil appeals should in Cachar be disposed of by an officer, who probably never tried a civil suit in his life.' A system which allows of such appointments being made must be radically unsound. I do not for a moment wish to say that judicial appointments should never be given to any but experienced lawyers. Lord Lyndhurst looked out for a gentleman when he wanted a Judge. But, as regards the non-regulation districts, objection is taken not merely to investing with judicial power officers having no special training or experience, but also to the union of executive and judicial functions in the same officer. The amendment which I have moved would cause no great disturbance in the existing system. It would leave the Local Governments full discretion to select their officers from a defined class which should receive the sanction of your Excellency in Council, but it would nevertheless be a measure of reform which, without entailing any additional cost to the State, would materially lessen the force of the objections taken at present to the constitution of the judicial machinery in the non-regulation districts. My Lord, in delivering the judgment of the House of Lords in *Dimes v. The Proprietors of the Grand Junction Canal*, Lord Campbell took occasion to observe that in the administration of justice care should be taken to see not merely that justice is done, but that the very appearance of possible injustice is avoided. If such an assurance was necessary to satisfy the enlightened people of the British Isles of the purity of their judicial administration, how much more so is it in this country, where the vast majority of the population is steeped in ignorance, and where the policy of Governmental measures is so little understood?"

The Hon'ble SYUD AMEER HOSSEIN said:—"I do not quite see my way to support this amendment. In the first place, if my hon'ble friend carries his amendment, the effect will be that clause (a) will be omitted and also the word 'other' from clause (b), but the practical effect of the clause (a) will remain as it is; because clause (b) will enable the Local Government to invest, if necessary, any officer with the powers of a Civil Court. Section 1 of the Bill extends the Act to the territories for the time being respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces



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Mr. Scoble.*]

and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts, and except the Jhānsi Division. So all the territories mentioned in section 36, clause (a), are either within the jurisdiction of the Lieutenant-Governor of Bengal or the Chief Commissioner of Assam. I gather from the Report of the Select Committee that clause (b) was specially enacted to enable the Lieutenant-Governor of Bengal to invest those Civilians who have elected a judicial career with the powers of a Civil Court. But there is nothing in the wording of clause (b) to prevent any Local Government from investing any Assistant Commissioner or Deputy Commissioner in any district mentioned under clause (a) with the powers of a Civil Court. On the merits of the amendment I beg to say that the Government has in my opinion already done much to separate the judicial functions of officers from their executive functions. In Assam there is a Judge of the Assam Valley District. In Chutiá Nágpur there is a Judicial Commissioner with purely judicial functions. In Jalpaigori and in the districts of the Chutiá Nágpur Division there are Munsifs; and there are Munsifs also, I believe, in Assam. Considering these facts, and considering the backwardness of the districts mentioned in clause (a), and the financial exigencies of the State, I think the Government could not at present do more."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" I am sorry that at this stage of the Bill I do not see my way to accept any of the amendments for which my hon'ble friend contends. If Assam is a backward province, I think these provisions might well have been suggested at an earlier stage, seeing that the Bill had been five years before the Council, when it might have been found desirable to re-cast it and divide it if possible into two, applying respectively to the regulation and the non-regulation districts. But to disturb the Bill at this stage seems to me a very impracticable measure, and I therefore regret that I shall not be able to vote for the amendment."

The Motion was put and negatived.

The Hon'ble MR. EVANS' amendment that the words "in consultation with the High Court" be inserted at the commencement of clause (b) of sub-section (1) of section 36 of the Bill was put and agreed to with the substitution of the word "after" for the word "in".

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

The Motion was put and agreed to.

## ELECTRICITY BILL.

The Hon'ble SIR THEODORE HOPE moved that the Report of the Select Committee on the Bill to regulate the supply of electricity for lighting and other purposes be taken into consideration.

The Motion was put and agreed to.

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

“The Select Committee, in going through this Bill, have made two alterations which appear to me of sufficient moment to bring to the notice of the Council, although they do not necessitate the republication of the Bill. We have on the one hand defined, and also strengthened, the control which will be exercised over the use of electricity for the general purposes of the public; that is to say, we have provided for the protection of the public whenever any person intends to use electricity for any public purpose or in any public place or in a place where there are likely to be a hundred or more of the public assembled, or a place which is a factory within the meaning of the Factories Act, as defined in section 3 of the Bill; the object being to take proper precautions against injury to life in places where electricity is even temporarily introduced for the purpose of lighting. This precaution, however, we have thought would be sufficiently provided for by simply requiring persons who intend to use the light to give notice to the proper authorities. We do not think it necessary, in the interests of the public in general, that such persons should be troubled to take out a license. On the other hand, we felt it would be necessary hereafter, whenever the lighting of our towns and streets on a large scale was taken up, that extensive provisions should be made to regulate the use of electricity for such purposes. At the same time, considering the backward state of the subject in India, we did not think that there was at present any necessity for prescribing the details under which Electric Lighting Companies would be required to work. We have therefore cut out from this part of the Bill the portion which related to the grant of licenses; but we have substituted in the preamble words to convey, as far as it is possible for this Council to do so, a clear warning to any persons who may hereafter wish to take up the matter of lighting our streets and towns in general, that they will not be allowed to do so

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[*Sir Theodore Hope.*]

without due restrictions, and probably under the same sort of arrangements as are made for the protection of the public in general in other parts of the civilized world."

The Motion was put and agreed to.

The Council adjourned *sine die*.

FORT WILLIAM; }  
The 16th March, 1887. }

S. HARVEY JAMES,  
*Offg. Secy. to the Govt. of India,*  
*Legislative Department.*