

Tuesday, July 11, 1871

ABSTRACT OF THE PROCEEDINGS

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**  
**LAWS AND REGULATIONS.**

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**PL**

The Council met at Simla on Tuesday, the 11th July 1871.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb.

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

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble F. R. Cockerell.

The Hon'ble R. E. Egerton.

The Hon'ble MR. EGERTON took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

OATHS AND DECLARATIONS AMENDMENT BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to amend Act No. V of 1840 (concerning the oaths and declarations of Hindoos and Mahometans), said that the measure had been necessitated by the discovery of one of those small inaccuracies which it was so difficult to escape in legislation, but which were calculated to produce inconvenience. Act V of 1840, by which at present the subject was regulated, was so worded as to be applicable only to the case of witnesses in Court. It was desirable, however, that the substitution of a solemn affirmation for an oath should be lawful in other cases, besides that of witnesses, as, for example, jurors in criminal cases tried by juries, and under the Coroners' Act, 1871. The object of the proposed measure was to extend Act V of 1840 so as to embrace such cases.

The Motion was put and agreed to.

## BRAHMA MARRIAGE BILL.

The Hon'ble MR. STEPHEN, in moving to add the Hon'ble Mr. Strachey to the Select Committee on the Bill to legalize marriages between members of the Bráhma Samája, wished to take the opportunity of making a few observations as to the present position of the Bill. The matter was one of great delicacy and importance, and some explanation appeared desirable as to the course which had been pursued with respect to it. The Bill, which was originally brought forward by his predecessor (Mr. Maine), would have had the effect of establishing a system of civil marriage for all classes in India. This step was justly considered one of extreme importance, and the opinions of all the Local Governments were requested with reference to it. Their opinions were, in many instances, unfavourable to the proposed measure; but it appeared to be generally thought that there would be no objection to a measure which would meet the wants of any individual sect, such as the Bráhma Samáj. A Bill, thus restricted in its scope, was framed accordingly, and published in the Gazette. Thereupon, a deputation had represented that there were great objections to it on the part of many members of the sect. This was entirely new to him (MR. STEPHEN), as he had supposed that the whole of the Bráhma body wished for a Bráhma Bill, if the general Bill could not be had. He had accordingly promised to wait for three months before proceeding with the Bill. Just before the end of the three months there had come another deputation with memorials, the signatures to which were alleged to amount to 2,000, objecting strongly, for reasons set forth in their petition, to the passing of any Bill at all on the subject. Under these circumstances, there seemed but one course open to him, namely, to promise to postpone any further dealings with the Bill till the Government returned to Calcutta, when the representatives of the two opposite factions of the Bráhma sect might be confronted, and the real wishes and objects of each be ascertained. There had been warm discussion in the papers, and the advocates of the measure—progressive Bráhmas as they were called—had complained vehemently at the delay of three years which had occurred in dealing with the measure; their complaints were certainly not altogether unnatural. Many personal imputations had been made, which MR. STEPHEN had been sorry to see, but of the justice of which he individually knew nothing. MR. STEPHEN himself had been blamed for delaying to pass the Bill now in deference to objections which the Committee was supposed to have considered before it submitted its report, which objections were contained in a memorial submitted to them in 1868 by the Adi Bráhma Samáj. The fact was, that the memorial in which those grounds were urged, though mentioned in the

list of papers referred to in the margin of the report, had never come before him, though it had apparently been considered by the Committee as originally constituted and probably formed one at least of the reasons why the Bill had been thrown originally into a general form. The Bill, as brought to his notice, was a general Civil Marriage Bill, and all the papers before him discussed the propriety of a measure of that nature. There was nothing in any of them to show the existence of any difference of opinion between different sections of the Bráhmās as to a Bráhma Marriage Bill. It was quite true that he had signed the report which stated that the Committee had examined a number of papers mentioned in the margin, of which the memorial of the *Adi Bráhma Samáj* was one; but he individually had never seen that paper. The papers which he did see referred to the general measure exclusively. The difficulty was really a very considerable one, owing to the divided condition of the sect, and their opposed wishes on the matter. Any class of persons practically debarred from marriage by their religious belief, certainly seemed to be entitled to legislative relief; but it was one thing to meet the wishes of a small body of persons, and another to make a change which might be regarded in the light of a direct attack on the institutions of the country. When the wishes of the two contending parties among the Bráhmās had been ascertained, an opportunity would be taken of announcing the course which Government intended to pursue with reference to the subject, and of stating the form in which whatever relief it might be considered necessary to give, would be given. Apart, however, from this, the character of the new memorials submitted to him was such that he considered himself bound to get, if possible, to the bottom of the matter, even at the expense of a delay which he regretted, and the case was emphatically one in which it was a less evil to go too slow than to go too fast.

The Motion was put and agreed to.

#### GENERAL REGULATIONS AND ACTS (DEHRÁ DÚN) BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to bring the Dehrá Dún within the operation of the General Regulations and Acts be taken into consideration. He said that the Bill, as introduced, was framed on the assumption that, although the result of previous legislation in regard to the Dehrá Dún had been to leave it not subject to the General Regulations and Acts, the District had, in fact, since the passing of Regulation V of 1829, been administered as though such enactments were legally in force there. It had since been ascertained that, even if such was

the case as regards a large majority of the enactments in force in the Regulation Districts, it was not so in regard to all.

For example, up to the occurrence of the case of *Dick v. Heseltine*, during the year 1868, it would appear that Act X of 1859 was held not to be in force in the Dún, and that it was the practice in all matters relating to rent to follow the old 'Summary Suit' Regulations, as they were called, which were superseded, and, in fact, expressly repealed by the said Act.

Why that Act, which was obviously designed to take the place of the 'Summary Suit' Regulations and to be the rent law wherever the latter were in force at the time of its enactment—for it contained no other indication of its intended local extent—was supposed not to be applicable to the Dún, previously to the occurrence of the case to which he had referred; and why it was then suddenly treated as though it were in operation in that tract, he was unable to discover.

In this curiously confused state of things provision had to be made for curing the possible invalidity of two classes of past proceedings on the part of the Courts heretofore exercising jurisdiction in the Dehrá Dún District,—(1st), decisions and orders passed on the supposition that the General Regulations and Acts constituted the law of the Dún, and, (2nd), decisions and orders governed by the 'Summary Suit' laws which were repealed by Act X of 1859.

We had at the same time to maintain the legality of proceedings which might have been held on the authority of the High Court's ruling in the case of *Dick v. Heseltine*, to the effect that the General Regulations and Acts were not legally in force in the Dehrá Dún.

The first section of the Bill had been re-cast so as to secure those objects. It purported to set up whatever had been done in accordance with any Regulation or Act, repealed or unrepealed, without, at the same time, invalidating what had been done at any time not in conformity to any such enactment.

The only other alterations contained in the amended Bill related to the jurisdiction of the Courts and Chief Revenue Authorities. It had been found necessary to confer jurisdiction within the Dún upon the High Court and Board of Revenue in express terms. The mere extension of the Regulations and Acts would have been insufficient to give that jurisdiction.

The local limits of the High Court's ordinary jurisdiction were identical with those of the former Sadr Adálat. The local jurisdiction of the latter

was derived from Regulation VI of 1831; that of the Board of Revenue from Regulation X of 1831. In both those Regulations the local jurisdiction was defined by reference to another Regulation (I of 1829), and the latter contained no mention of the Dehrá Dún District.

So also as regards the District Court of Saharanpúr. That Court had for many years past exercised, and still continued to exercise, jurisdiction within the Dún without any legal authority. The third section had been added to give retrospective validity to its proceedings, and to reserve a right of appeal within the period allowed by the law of limitation in cases in which the decision or order of the Court of first instance might have been passed before this Act came into operation.

In the settlement of these details, the Select Committee had had the advantage of personal consultation with Mr. Jardine, the Government Advocate of the North-Western Provinces, who, having been professionally engaged in the case out of which this legislation had arisen, was thoroughly conversant with the several points of difficulty presented by the High Court's judgment in that case; and he (MR. COCKERELL) might say that Mr. Jardine fully concurred in the opinion of the Committee that the amended Bill effectually provided for the rectification of all past irregularities.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the words "in the said district" be inserted after the words "proceeding had" in the sixth line of section one.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 18th July 1871.

H. S. CUNNINGHAM,

SIMLA; }  
The 11th July 1871. }

*Offg. Secy. to the Council of the Governor  
General for making Laws and Regulations.*