

Friday, December 8, 1871

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 Government House on Friday, the 8th December 1871.

P R E S E N T :

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

The Hon'ble John Strachey.

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

The Hon'ble B. H. Ellis.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble W. Robinson, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble R. Stewart.

The Hon'ble J. R. Bullen Smith.

The Hon'ble MESSRS. CHAPMAN, STEWART and BULLEN SMITH took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

ADMINISTRATOR GENERAL'S ACT EXTENSION BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to extend the operation of Act XXIV of 1867 to certain Native States, said, the object of this Bill was to extend the operation of the Administrator General's Act to the collection of the effects of British subjects dying in Native States. The Act did not, it appeared, extend to the collection of the effects of British subjects dying in Native States. But it was obvious that, in the present state of things, this ought not to be; and he therefore moved for leave to bring in this Bill.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STEPHEN also moved that the Hon'ble Messrs. Chapman, Stewart and Bullen Smith be added to the Select Committees on the following Bills :—

To define and amend the Law relating to Contracts, sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

To define and amend the Law of Evidence.

To amend the Law of Insolvency.

For regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter.

Also that the Hon'ble Messrs. Inglis, Robinson and Chapman be added to the Select Committees on the following Bills :—

To legalize marriages between certain Natives of India not professing the Christian Religion.

To amend Act No. V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahometans).

MR. STEPHEN proposed to take the opportunity afforded by this motion, not to raise a discussion in regard to these Bills, but to make a few observations as to the stages at which they had arrived, and in regard to certain points connected with them, to which he wished to give as much publicity as he could at the present time.

The first Bill, to the Committee upon which Hon'ble Members were to be added, was the Contract Bill. The state of things in regard to this Bill was as follows :—The Bill had been before the Council, as the Council was probably aware, for between four and five years. It had been referred for the opinion of the persons most competent to give an opinion on the subject, throughout India. Matters connected with it had been discussed with the Secretary of State; it had been carefully considered in all its details by the Committee, which at one time consisted of nearly every Member of the Council; and, finally, a reference was made to the Secretary of State upon certain points connected with the Bill, as to which there was difference of opinion, in the Spring of the year 1870. On the 23rd of February 1871, a despatch was addressed by the Secretary of State to the Government of India in the Legislative Department, which arrived here in due course, shortly before the Government left Calcutta for Simla last Spring. After referring to certain

amendments which were proposed by the Select Committee, upon which difference of opinion had arisen between the Government of India and the Local Governments, the despatch concluded thus:—

“I consider on the whole I shall best consult the interests of the public by leaving the question of their adoption or modification to the decision of Your Excellency in Council. Under these circumstances I trust that a contract law for India will be enacted at an early date.”

The intimation contained in the concluding words of this Despatch amounted to an expression of the Secretary of State's wish that the Contract Law should be taken up and disposed of as early as possible. The delay which had occurred since the receipt of that Despatch would be explained by the reply to it which the Government of India had sent to the Secretary of State, and in which they stated that they did not wish to dispose of a matter of such importance, applying to the whole country, except at Calcutta; but that, on the return of the Government to the Presidency, the Bill would be proceeded with forthwith. The opportunity afforded by that delay had been taken to introduce some amendments, principally in matters of expression and arrangement, and also to add to the Bill one or two points. He hoped these additional matters might be readily disposed of by the Committee, and that the Bill might be afterwards passed into law, if the Council thought fit, in a very short time.

The next Bill, to which he had to refer, was the Evidence Bill. He need not say anything more about it, than that it was under the consideration of the Committee. He, however, wished to make one or two remarks. In the first place, although the matter had excited a great deal of public attention and much discussion, and although the Bill had been sent for the opinion of the Local Governments some time in June last, with a request that their opinion on the subject might be forwarded in the course of the Autumn, many of the Local Governments had not yet sent in any opinions whatever on the subject. He earnestly hoped that these opinions might be received in order that they might be fully considered. Some memorials had been received on the subject from individuals, especially from certain members of the Bar. He did not wish to discuss them. But he wished to say that he thought that the opinion of some persons, that the Council in general, and MR. STEPHEN in particular, were animated by some feeling of hostility against the Bar, was perfectly unfounded, and was almost as unnatural and absurd as that His Lordship, the President, should be accused of a strong prejudice against Irishmen, or that any other of MR. STEPHEN'S colleagues should be accused of prejudice and dislike against the Civil Service. He was the last person in British India who had any right or any wish to make an attack upon the members of the

Bar. Everything that had been said upon the subject of this Bill would receive most earnest and careful attention in a perfectly fair and friendly spirit, without the slightest notion of making any attack upon the independence or position generally of the honourable profession in question.

The next Bill upon which he had a word to say was the Insolvency Bill. This was a Bill upon which the Government had received a considerable mass of opinions from various persons, and very grave questions indeed had been raised regarding it. The gravest of those questions was whether the Bill ought to extend beyond the Presidency towns. Considerable doubts had been intimated, as to its suitability even to the Presidency towns, by a considerable number of persons whose opinions were entitled to great respect, although the balance of opinion was the other way. He might state, with regard to this Bill, that he did not think it was of equal general importance, or equally necessary to be disposed of, with the other two Bills which he had mentioned. However, it was in a forward state, and would be considered, but it was very possible that the Committee might not proceed with it at present. At all events, he wished to say publicly that this Bill was in a less forward state than the others to which he had referred.

Another Bill, to which he would now refer, was the Bill for the re-enactment of the Code of Criminal Procedure. On that Bill the Committee was actively engaged, and in reference to it he had a remark to make of considerable public importance. The Committee had received a large number of opinions from the Local Governments and persons connected with the administration of justice in reference to it, and, amongst others, they had received a most important paper from the Government of Bengal. That paper contained a suggestion that European British subjects should be made to a great degree amenable to the ordinary criminal courts of the country.

The present law on the subject was this. Out of the Presidency towns, European British subjects were liable only to the jurisdiction of Justices of the Peace to an extent specially defined in the statute 53rd of Geo. III, cap. 155, and were liable only to a fine, or, in default of payment of the fine, to simple imprisonment for two months. The suggestion of the Bengal Government was, that this state of things should be altered, and that European British subjects should be rendered liable to punishment of a more severe character. Now, he should not at present express any opinion or enter in any way into a discussion upon the subject; nor did he think it necessary to trespass upon the time of the Council by reading out the whole of the despatch of the Government of Bengal upon the subject. Means would be taken to bring it to the notice of the Council

and of the Local Governments. He mentioned this fact thus publicly, because it was eminently desirable that the public should not be taken by surprise in a matter of this kind; that they should be made aware of the fact that such a suggestion had been made and was under consideration; and that they should express their opinion on the subject. It was also intended to request the Local Governments specially to express their opinion on this point, and he mentioned all this, because, when he introduced the Bill now before the Committee, this was not one of the points to which he specially directed attention in his speech. It had, however, been brought before the Council by the Bengal Government, and it would be left to the Committee to consider what was to be done in the matter. As he had said, he mentioned this publicly in order to give the public at large notice that they might express their views upon the subject. There were some other points of importance which would come up for consideration, but he did not think that they were of such a character that he need refer to them on this occasion.

With regard to the next Bill, it was also one that had been a long time before the public, and he hoped it might be speedily disposed of. It was a Bill to legalize marriages between certain Natives of India not professing the Christian religion. It was a Bill introduced by his predecessor, Sir H. Maine, at the end of the year 1868, three years ago. It was subsequently modified and assumed the form of a Bill to legalize marriages between members of the Bráhma Samája, whose position as to marriage occasioned the introduction of the Bill. Subsequently, objections were taken to the Bill as modified, by one of the sections into which that body was divided, who considered it would be injurious to their interests. In deference to their objections, the Bill was further considered and postponed, and since that time he was happy to say that he had been in communication with gentlemen who represented both sections of the body in question—the body called the Progressive Brahmists (he did not know whether they were properly so called) and the Adi-Bráhma Samája. He was very happy to be able to announce that, after a good deal of discussion on the subject with those bodies, the Committee had been able to devise a measure with which they expressed themselves completely satisfied, and against which, he thought, no other person would be found to take any solid objection. He hoped this Bill would be very speedily disposed of, and that the Council would be able to pass it into law. He would have to trespass upon the time of the Council at considerable length when the Report of the Committee came on for consideration, and, therefore, would not take up its time at present.

The other Bill, regarding oaths and declarations, required no remarks from him at present.

The Hon'ble MR. CHAPMAN desired to avail himself of this early opportunity to state it as his decided opinion that the revised Code of Criminal Procedure should be made applicable, without distinction, to all Courts in British India. He considered that any measure that fell short of this would be unsatisfactory and incomplete.

The Motion was put and agreed to.

INDIAN CHRISTIAN MARRIAGE BILL.

The Hon'ble MR. COCKERELL moved that the Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian religion be referred to a Select Committee with instructions to report in two months. He said that the Bill had been already introduced and published, and at the time of its introduction he had explained the few amendments of the existing law for which it provided.

The most important of these was in regard to the certifying of marriages between Native Christians under Part V of Act V of 1865.

By that Act, if the persons intending marriage had attained the age of sixteen years in the case of the male, and thirteen years in that of the female, the marriage might be certified without any reference to the consent of parents or guardians. This was, as MR. COCKERELL thought, most justly represented to be a great hardship where the parties to such marriages were minors, and had, up to the time of the marriage, lived with or under the control of their parents or guardians.

To meet this defect in the present law, it was provided in section fifty-four of the Bill, that—

“no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section eighteen has been given to the intended marriage, or unless the party who has not completed his or her eighteenth year is proved, to the satisfaction of the person licensed to grant certificates under section nine, to have resided apart from, and to have been independent of the control of, his or her parents or guardians.”

The intention of this was to make the consent of parents or guardians an essential condition to the legal contracting of marriages between minors, in those cases in which the parents or guardians ought obviously to have a voice in the matter, without at the same time imposing the obligation of serving notices, which would be burdensome to the poorer and more uneducated classes who formed the bulk of the Native Christian community, and which it was doubtless a main object of past legislation on this matter to avoid.

The Bill was published some weeks ago, but MR. COCKERELL had not yet seen any expression of opinion as to the sufficiency of the amendment to which he had just adverted.

It would probably be necessary to invite specially the opinions of the President of the Society at whose instance this amendment was undertaken, and of some of the missionary clergymen who were best acquainted with the circumstances of the persons who were chiefly affected by it.

The Hon'ble MR. STEPHEN said he wished to make one remark with regard to this Bill, with reference to a clause which he thought it would be necessary to add to it in consequence of certain matters which had come to notice recently; and that was, that a declaration should be inserted in the Bill, making it perfectly clear and beyond all doubt that no European British subject, and no person who by his law of domicile was a monogamist, should be permitted to acquire the right to commit polygamy by any change whatever of his religious opinions. A case had occurred, in which a man had been known to become a Muhammadan obviously for the fraudulent purpose of acquiring, as MR. STEPHEN thought utterly wrongly, a right to break the most solemn contract which one human being could possibly form with another, by introducing to the wife a second woman, or a third, or a fourth for that matter, who would have a legal right to be on the same footing as the first wife. He hardly liked to trust himself to say what he thought of such conduct. It appeared to him to be a complication of bigamy, adultery, and as gross a breach of faith and contract as it was possible for a human being to commit. And he also thought that, in a moral and civilized society as this was, we ought not to allow any misconception on this point; that although we ought not to interfere with Native institutions for which we were in no way responsible; although we would faithfully and honourably administer the Native law which we found in the country, we did not on that account undervalue our own English and European law, as it applied to men who by their birth and breeding were subject to it. He could not admit, and he never would admit, that the institution of monogamy was one which depended in any degree upon a man's theological opinions. And he could not admit that an Englishman was to be allowed to escape from the obligations which he had contracted under the law of England by any change, real or pretended, in his religious opinions. He proposed, therefore, when the Bill was in Committee, to insert in it a declaration which he believed to be absolutely in accordance with the existing law, and which he believed any Court of Justice would hold if the matter were brought before it, that if a man, being a European British subject, had once contracted a binding monogamous

marriage, he was not at liberty to absolve himself from the obligations of that marriage, in consequence of any change in his religious opinions.

The Motion was put and agreed to.

LOCAL EXTENT ACTS BILL.

The Hon'ble MR. COCKERELL also moved that the Hon'ble Messrs. Inglis, Robinson and Chapman be added to the Select Committee on the Bill for declaring the local extent of certain Acts passed by the Imperial Legislative Council.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS ACT AMENDMENT BILL.

The Hon'ble MR. CHAPMAN, in moving for leave to introduce a Bill to amend Act XII of 1870, the Native Passenger Ships Act, said that Chapter II of the present Act contained very stringent provisions for the protection of Native passengers; but the Law officers of Government considered these provisions applicable only to sailing vessels and not to steamers. Now, the class of people who required to be specially protected were pilgrims proceeding to Jeddah and other ports in the Red Sea, *en route* to Mecca; and as it was understood to be a common practice to convey them in steamers, it was advisable to extend the provisions of the Act to this class of vessels.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to consolidate and amend the Law relating to the solemnization in India of marriages of persons professing the Christian religion—The Hon'ble Messrs. Stephen, Inglis, Robinson, Chapman and Bullen Smith and the Mover.

The Council adjourned to Friday, the 15th December 1871.

CALCUTTA;
The 8th December 1871.

H. S. CUNNINGHAM,
*Offg. Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.*