

*Wednesday,  
5th September, 1888*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XXVII**

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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 XXVII



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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 Vict., cap. 67.*

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The Council met at Viceregal Lodge, Simla, on Wednesday, the 5th September,  
1888.

P R E S E N T :

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 Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

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

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

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

The Hon'ble J. Westland, C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble G. R. Elsmie.

TOLLS VALIDATION BILL.

The Hon'ble MR. ELSMIE moved that the Bill to remove doubts as to the legality of the levy of certain Tolls be taken into consideration. He said :—

“ My Lord, in introducing this Bill into Council on the 11th July last, I explained briefly the general scope of the measure and the reasons which had rendered legislation necessary.

“ The Bill has now been published in the Gazette of India and in the local official Gazettes, while the Local Governments have been invited to express their opinions in regard to it. No adverse criticisms have been elicited and no suggestions for altering the wording of the Bill have been received. The Government of the Punjab, by whom the necessity for the proposed legislation was first pointed out, accepts the Bill in its entirety, and the other Local Governments affected by it approve of its provisions.”

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill be passed.

The Motion was put and agreed to.

[ *Sir Charles Aitchison* ; *Mr. Elsmie.* ] [ 5TH SEPTEMBER,

## CONTAGIOUS DISEASES ACTS REPEAL BILL.

The Hon'ble SIR CHARLES AITCHISON moved that the Bill to repeal certain enactments relating to Contagious Diseases be taken into consideration. He said :—

“ This Bill, as I explained when moving for leave to introduce it, is of a very simple character. Its object is to remove from the statute-book certain enactments relating to contagious diseases which have become inoperative. When introducing it I mentioned that the question of contagious diseases in cantonments was under separate consideration. The provisions of the law relating to cantonments are separate and different from the Acts which the Bill before us is intended to repeal. But, in order that the attitude of the Government of India to the whole question may be understood, I may perhaps be permitted here to explain in a general way that it is intended to deal with the cantonment question in a Bill to consolidate and amend the law relating to cantonments, which has been under consideration for several years past and has recently been submitted to Local Governments for their opinions. It is proposed to abandon the powers conferred by clause 7 of section 27 of the Cantonment Act of 1880, and the corresponding Acts in Madras and Bombay, and to take power to make rules to exclude from cantonments persons suffering from contagious or infectious diseases, and to organize a system of voluntary hospital relief for patients suffering from such diseases. In the meantime, pending the necessary steps preliminary to legislation, the cantonment authorities have received executive orders that the existing rules are to be so worked that there shall be no compulsory examination of women, no registration of women and no granting of licences to practise prostitution.

“ The Bill was sent to Local Governments and has been published as usual in the local Gazettes.”

The Hon'ble MR. ELSMIE said :—

“ My Lord, Act XIV of 1868, the repeal of which is now proposed, has been on the statute-book for twenty years, but during that period, according to the best information I have been able to obtain, has never been put in force in any part of the Punjab.

“ I understand, from what was stated by the Hon'ble Sir Charles Aitchison on introducing the Bill, that the provisions of this Act have been found very difficult to work and more or less ineffective in the very few towns of other provinces of India to which it has been extended.

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“In these circumstances it is extremely unlikely that this law in its present form would ever be made applicable to the Punjab, the province with which I am best acquainted. So far as the Punjab is concerned, therefore, there seems to me to be no objection to the proposed measure. In saying this, however, I am anxious personally to guard against being understood as having at present been satisfied that this Act should be repealed on the ground that it belongs to a class of legislation which should be removed from the statute-book as being necessarily opposed to good policy in India.”

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill be passed.

The Motion was put and agreed to.

#### SHAN STATES BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States. He said :—

“Among the territories formerly governed by King Thebaw which, by the Proclamation of 1st January, 1886, were declared to have become part of Her Majesty's dominions, were several groups of Shan States, a few lying to the west of the Irrawaddy, and some beyond the Salween, but most of them occupying the great Shan plateau between those two rivers. These States, upwards of seventy in number, large and small, have an aggregate area of over 40,000 square miles, and contain a population estimated at two millions. Under the Burmese Government, their administration seems to have been left in the hands of their own Chiefs or Sawbwas, with but little interference so long as the due amount of tribute was regularly paid.

“After the fall of Mandalay, letters were sent to the Shan Chiefs telling them that the British Government did not desire to interfere with their autonomy so long as they kept the peace, paid the usual moderate tribute, and abstained from fighting with each other. Accordingly, my learned predecessor, Mr. Ilbert, in presenting the Upper Burma Laws Bill to this Council in September, 1886, remarked :—

‘There is no present intention of importing British law into the Shan States, and therefore we have excluded those States from the operation of the laws which we declare in force in Upper Burma, merely reserving a power, which may possibly be useful hereafter, to introduce into any portion of those States such laws, if any, as may be required.’

[*Mr. Scoble.*]

[5TH SEPTEMBER,

“ During the two years which have elapsed since this Bill became law considerable progress has been made in the settlement of the relations between the Shan States and the British Government; and the object of the measure which I now ask leave to introduce is to put these relations upon a legal basis. Its main feature is to vest the administration of civil and criminal justice and the collection of the revenue within each State in the person for the time being recognized by the Government as the Chief of the State, subject to such conditions as the Government may prescribe; and to provide that, until varied by the introduction of British law, the law to be administered in a Shan State shall be the customary law of the State in so far as that law is in accordance with justice, equity and good conscience, and the punishments which may be awarded thereunder, or the practices which are permitted thereby, are in conformity with the spirit of the law in force in the rest of British India.

“ The system thus introduced carries out the traditional policy of the Government of India. When a territory has newly come under our administration, and is not ripe for the introduction of the more perfect system which prevails in our older provinces, we have not introduced it. ‘ To govern the people through their native Chiefs,’ as Mr. Mountstuart Elphinstone well observes in his Report on the Territories conquered from the Peshwa, ‘ is the only one practicable plan until the gradual effects of civilization have produced their natural results. \* \* \* ‘ The plan,’ he adds, ‘ has many obvious and palpable defects, and many more will no doubt appear when its operations are fully observed. It has this advantage that it leaves unimpaired the institutions, the opinions and the feelings that have hitherto kept the community together, and that, as its fault is meddling too little, it may be gradually remedied by interfering when urgently required. \* \* \* It makes no great changes, either real or apparent, in the laws, and it leads to no revolution in the state of property. The established practice also, though it be worse than another proposed in its room, will be less grievous to the people, who have accommodated themselves to the present defects and are scarcely aware of their existence; while every fault in a new system, and perhaps many things that are not faults, would be severely felt for the want of this adaptation.’

“ Working upon the lines thus laid down by one of the wisest of Indian statesmen the Bill empowers the Local Government, with the previous sanction of the Governor General in Council,—

to appoint officers to take part in the administration of civil and criminal justice and the collection of the revenue within any Shan State into which it may be desirable to introduce British agency;

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[*Mr. Scoble.*]

- to define the powers and regulate the procedure of the officers so appointed ;
- to direct by what authority any jurisdiction, power or duty incident to the operation of any British law that may be introduced into the State is to be exercised or performed ; and
- to modify the customary law of the State in so far as, in the opinion of the Local Government, that law is not in accordance with justice, equity and good conscience, or authorises punishments, or permits practices, which are essentially repugnant to civilized ideas.

“ These powers will be exercised, as regards the Shan States generally, only when the occasion for putting them in force is imperatively demonstrated ; but there is a collection of petty States, called the Myelat, or middleland, between Burma proper and the Shan plateau, in regard to which, though it may not be desirable to introduce direct British administration, it is necessary to make immediate provision for the establishment of the British Government as the direct controlling authority. Under the Burmese *regime*, these petty States had a certain independence in the management of their internal affairs, but in all important matters were subject to the orders of the Government at Mandalay. Section 6 of the Bill will enable the Chief Commissioner to exercise in the Myelat the powers formerly possessed by the King of Burma ; and it is hoped that by carefully regulating, watching, and as opportunity occurs improving, the existing methods of local government, he may be able to render the Myelat an example which the other Shan States may be spontaneously glad to follow.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and in the Burma Gazette.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 12th September, 1888.

S. HARVEY JAMES,

SIMLA ;  
 The 7th September, 1888. }

*Secretary to the Government of India,  
 Legislative Department.*