



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

SATURDAY, 16TH AUGUST 1862.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

THE following Extract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Victoria, Chapter 67, is published for the information of all whom it may concern :—

The Council met at Poona on Wednesday, the 13th August 1862.

PRESENT :—

THE HONORABLE W. E. FRERE, presiding.
HIS EXCELLENCY SIR W. R. MANSFIELD, K.C.B.,
THE HONORABLE MR. INVERARITY,
THE HONORABLE MR. TRISTRAM,
THE HONORABLE MR. RUSTOMJEE JAMSETJEE JEJEEBHAY,
THE HONORABLE MR. MADHOWROW VITUL VINCHOORKUR,
THE HONORABLE MR. JUGONNATH SUNKERSETT,
THE HONORABLE MR. ROBERTSON,
THE HONORABLE MR. SCOTT, and
THE DEPUTY SECRETARY.

The PRESIDENT said the first subject was the further Report of Select Committee on "A Bill to amend Section 45, Clause 1 of Regulation XIII. of 1827."

He had received a letter from the Advocate General, in which he thanked the Council for having adjourned the consideration of the Bill at the last meeting in consequence of his absence, and stated that he would be unable to attend this meeting, but that he had no objection to the Report of the Select Committee being adopted, if the Council approved of it.

Mr. FRERE then moved that the Bill, as amended by the Select Committee, be read a second time.

Mr. INVERARITY proposed the amendment of which he had given notice, viz. that the following Section be substituted for Section I. of the Bill.

I. "Prisoners sentenced to hard labour, transportation, penal servitude, or death, may, when necessary, be secured, at the discretion of the Session Judge, or other Officer in charge, with fetters, handcuffs, or stocks, which means of restraint may also, when necessary, be used to secure other prisoners."

Mr. SCOTT preferred the Bill as it stood.

Mr. TRISTRAM and Mr. JUGONNATH SUNKERSETT were in favor of the amendment.

Sir W. R. MANSFIELD thought it not certain that a Zillah Judge would clearly understand the real meaning of the proposed amendment, and might feel bound to take the irons off the hundreds of prisoners under his charge, because he could not accuse them individually of violence or dangerous intentions, thus giving great opportunity to the escape of the prisoners. He alluded to the state of the Tannah Jail which he had personally inspected. He moved that the Bill be referred to a Select Committee to consider the very important points respecting Prison discipline raised by the amendment.

The President said that he hoped to bring in a Bill for the regulation of Jails at the next Session, when the whole subject of Jail discipline would be brought under discussion; and he thought it very desirable that the Bill as amended by the Select Committee should be passed.

Mr. INVERARITY's amendment was then put and carried.

Sir W. R. MANSFIELD moved that the whole Bill and the amendment be referred to a Select Committee, consisting of—

The Honorable Mr. INVERARITY,
The Honorable Mr. SCOTT,
The Honorable Mr. JUGONNATH SUNKERSETT,
The Honorable Mr. ROBERTSON, and
The MOVER,

with instructions to report at the next meeting.

Carried.

The PRESIDENT said the next subject was the Report on "A Bill for amending the Law relating to the Small Cause Court at Kurrachee."

Agreed to stand over *sine die*, as a reference respecting the Bill had been made to the First Judge of the Bombay Court of Small Causes, to which no answer had as yet been received.

The PRESIDENT said the next subject was the Report of Select Committee on "A Bill for the levy of Port-dues in the Ports of the North Canara District."

Mr. TRISTRAM moved that the Bill, as amended by the Select Committee, be read a second time.

Carried.

The Bill was then read a second time, and passed.

The PRESIDENT said the next subject was "A Bill for further amending Act XXVI. of 1850."

Mr. INVERARITY introduced the Bill, which was to give power to Government to depute certain powers to the Police Commissioners who were confidential servants of Government.

He moved the Bill be read a first time.

Carried.

The Bill was read a first time.

Mr. INVERARITY then moved that the Bill be referred to a Select Committee, consisting of—

The Honorable Mr. TRISTRAM,
The Honorable Mr. ROBERTSON,
The Honorable Mr. JUGONNATH SUNKERSETT, and
The MOVER,

with instructions to report at the next meeting.

Carried.

The PRESIDENT said the next subject was "A Bill to extend the Jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court."

Mr. SCOTT, in introducing the Bill, said :

"The Bill which I now beg to bring before the Council is one to extend the jurisdiction of the Bombay Court of Small Causes, and to provide for the appointment of additional Judges of that Court."

"The object of the Bill is to extend the usefulness of the Court, and we have sought to effect this—

1st.—By extending its jurisdiction to all suits when the amount at issue does not exceed Rupees 1,000.

2nd.—By enabling it to take cognizance of suits involving any amount, provided that the parties thereto agree to submit to its decision.

3rd.—By increasing the number of Judges.

4th.—By enabling Legatees or next of kin, in cases when the assets of an Estate do not exceed Rupees 5,000, to recover by its comparatively inexpensive process their legacies or distributive shares against executors or administrators."

"It will be seen that the Bill, to a certain extent, is precisely similar to that introduced on 22nd March last into the Bengal Legislative Council : it is, however, a much more comprehensive measure."

"Sections I., III., and V. contain the provisions whereby the jurisdiction of the Court is extended to suits involving an amount of Rupees 1,000."

"Section I. is precisely the same as the corresponding one in the Bengal Bill, and it does not seem to call for any remark."

"Section III. provides that when by a set-off of any debt or demand, the amount involved in any suit is reduced to Rupees 1,000, or less, the Court shall have jurisdiction. This appears to me to be a very important and useful provision, though it has not been inserted in the Bill brought forward in Bengal. A precisely similar provision has been made in the English County Courts Amendment Act of 1856."

"Section V. extends the jurisdiction given to the Court by Section XCI. of Act IX. of 1850, to cases when the rent due in respect of any house, land, or tenement, does not exceed Rupees 1,000, and further provides that for the word "owner" in Sections XCI., XCII., XCIII. and XCVI. of the said Act, the word "owner, land, or other person having right to the immediate possession of the premises" shall be substituted. The first Clause of this Section requires no remark ; the necessity of the second was recently pointed out in Court by the present able Judge of the Small Cause Court.

"I may state that, since this Bill was drafted, I have ascertained that the Mercantile community of Bombay are in favour of an even greater extension of the compulsory jurisdiction of the Court than that for which we have provided. They believe that the limit might, with advantage, be extended to Rupees 2,000, and in this I personally most cordially concur : this point is one which will doubtless receive most careful consideration in Committee."

"Section II. provides for the second means by which it is sought to increase the usefulness of the Court."

"A similar provision is made in the 2nd Section of the Bengal Bill, but the wording of the latter seems to have been taken from Section 17 of Clause 61 of the original English County Courts Act of 1850, repealed by the amended Act of 1856. We have adopted what appears to be the improved phraseology of Section 23 of the latter Act."

"I can speak from personal experience of the boon which the passing of this Section will confer on the Mercantile community."

"Sections X. and XI. provide for the appointment of additional Judges. Even as the Court is at present constituted, I believe that the work is far too great for the present Judges to overtake, and it seems therefore absolutely necessary to provide assistance. It may also be considered desirable—it certainly seems to me necessary—to increase very considerably the emoluments of the Judges. The fees of the Court already amount to a large sum; they will be greatly increased under the extended jurisdiction, and will, I conceive, amply suffice for all necessary increase of salaries. This point I would urge upon the careful consideration of the Committee to which the Bill may be referred."

"Sections XII., XIII., and XIV. provide that all suits involving a greater amount than Rupees 500, shall be tried before a Barrister Judge, and that in any case in which jurisdiction is given by this Act, appeal shall, under certain provisions, lie to the High Court. These provisions are based on the recommendations of the present Judges of the Supreme Court. The Sections themselves have been adopted from the English County Courts Act."

"Section XV., also adopted from the same Act, provides that the right of appeal may, by mutual consent of both parties to a suit, be abandoned."

"Sections XVII. to XXII. have been framed on the recommendation of the Judges of the Supreme Court, but a somewhat more extended jurisdiction has been given than that which was proposed by them. These Sections have been adopted from the Irish Act 14 and 15 Vict. Chapter 57."

"Since this Bill was framed, an elaborate report has, I believe, been received from the present Chief Judge of the Small Cause Court, and I have no doubt it will contain many very valuable suggestions for consideration in Committee."

"I now beg to move that this Bill be read a first time."

Sir W. MANSFIELD said he should like to make some observation on Sections 10 and 11. He did not see why an invidious distinction should be made in regard to a distinguished Service by prescribing that the Chief Judge of the Small Cause Court should necessarily be a Barrister Judge, or forbidding the Civil Service Small Cause Court Judges from trying the cases of a value exceeding 500 Rupees. He thought that now that the High Court was thrown open to Civil Servants, who were in this respect put on a par with the Barrister Judges, except the Chief Justice, and considering that Zillah Judges had always been chosen from that body, that no such distinction should have been made. He paid a high tribute to the services of those Officers (the Zillah Judges), and said he believed that substantial justice had been generally administered by them, to which ample testimony had been borne by a late learned and distinguished Chief Judge of the Common Pleas. A distinction which was intelligible in the case of the Chief Justice, was quite the reverse in the sphere of a Small Cause Court, in which the business was confined to unimportant cases of an insignificant value, as compared with those disposed of in the Zillah Courts. The proposed measure called to his recollection a saying of a very learned person, who, while admitting that substantial justice had been rendered by the Civil Servants, remarked that their innings had lasted 100 years, and others would have their turn now. He would not oppose the first reading of the Bill, but begged to call the attention of the Honorable Member, Mr. Scott, to the point.

Mr. Scott said, that looking to the provisions with regard to right of appeal, he would gladly adopt His Excellency the Commander in Chief's suggestions.

The motion for the first reading was then carried.

The Bill was then read a first time.

Mr. Scott proposed that the Bill be referred to a Select Committee, consisting of—

His Excellency Sir W. R. MANSFIELD,
The Honorable Mr. FRERE,
The Honorable Mr. LEWIS,
The Honorable Mr. TRISTRAM,
The Honorable Mr. JUGONNATH SUNKERSETT, and
The MOVER,

with power to consider the report of the Chief Judge of the Small Cause Court, and such other reports, &c., as may come before them, and to call for such information as they may consider desirable to report within a fortnight.

Carried.

His Excellency Sir W. R. MANSFIELD said it had been brought to the notice of Government that considerable delay in the business of the Council had been caused by the existing rules; what with the necessity for translations into the various Native languages, and the length of time required to elapse after Reports, &c., had been furnished to Honorable Members, the Council had hitherto been doing little more than "marking time."

It appeared unnecessary that a Bill relating to Sudashewghur should be translated into Mahratta, or that one relating to the Small Cause Court at Kurrachee should be translated into Canarese. But in all cases of general importance, or involving any general principle, the Bills would be translated into all the languages.

He explained the various alterations he proposed, and mentioned that as he was finishing the Draft of his proposed amendments, His Excellency the Governor chanced to honour him with a visit, when His Excellency was pleased to approve of them. There were two clerical alterations in Rules 14 and 27, which he begged to make, and moved that the Rules, as amended, be adopted by the Council.

Carried.

The President then adjourned the Council to Wednesday next, at such hour as the Governor should direct.

By order of His Excellency the Governor in Council,

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 13th August 1862.