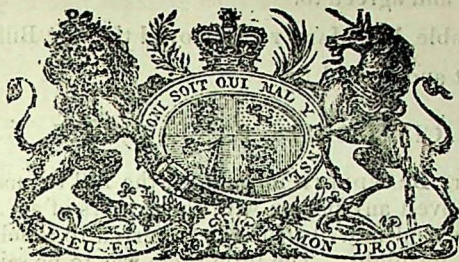


THE



Bombay Government Gazette.

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Separate paging is given to this Part in order that it may be filed as a separate compilation.
The paging of this Part commenced with the Number for January 1867.

PART V.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

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 24th January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

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

The Honourable G. NOBLE TAYLOR.

The Right Honourable W. N. MASSEY.

The Honourable Major General Sir H. M. DURAND. C.B., K.C.S.I.

The Honourable Sir W. MUIR, K.C.S.I.

The Honourable E. L. BRANDRETH.

The Honourable M. J. SHAW STEWART.

The Honourable J. SKINNER.

The Honourable STEUART GLADSTONE.

The Honourable KHAJA 'ABD-UL-GHANI.

The Honourable F. R. COCKERELL.

The Honourable J. I. MINCHIN.

The Honourable Mr. MINCHIN took the oath of allegiance, and the oath that he would faithfully discharge the duties of his Office.

PEPPER DUTY (COCHIN) BILL.

The Right Honourable Mr. MASSEY moved that the report of the Select Committee on the Bill to amend Act No. III. of 1861 (to provide for the collection of duty of

customs on pepper exported by sea from the British port of Cochin) to be taken into consideration. The Committee had merely made one or two verbal alterations.

The motion was put and agreed to.

The Right Honourable Mr. MASSEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL SUITS (PANJA'B) BILL.

The Honourable Mr. BRANDRETH introduced the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits, and moved that it be referred to a Select Committee with instructions to report in a fortnight. The little there was to be said about this Bill he had said when he moved for leave to introduce it. Certain Courts had been established in the Panjáb for trial of civil suits, besides those recognized in the Panjáb Courts' Act (No. XIX. of 1865), and, in consequence of no mention having been made of those Courts in the Panjáb Courts' Act, doubts had been entertained of their legality. The object of this Bill was to remove those doubts, and to enable the Local Government to invest any person with limited powers to try civil suits, in the same way as it could by the Criminal Procedure Code invest any person with the powers of a Magistrate. The Secretary to the Government of the Panjáb had suggested an alteration in the concluding part of the second section of the Bill; he proposed that it should be worded thus—"all decrees heretofore passed by any person invested by the said Local Government, otherwise than under Act XIX. of 1865, with power to try and decide civil suits, shall be deemed as valid as if the said power had been conferred under this Act." The Secretary suggested the alteration on the ground that he was not sure that the former notification had always been in the form of investing with the powers of an Assistant Commissioner or Tahsildár; he thought it had as often been investiture with power to try and decide civil suits up to certain amounts, and that the Bill, as printed, would not legalize decrees passed in accordance with the last mentioned powers. This appeared a good criticism. The Bill might appropriately be amended as proposed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Honourable Mr. SHAW STEWART, in moving for leave to introduce a Bill to amend and consolidate the Law of Procedure in the Courts of Criminal Judicature not established by Royal Charter, said, The reform of the Courts of Civil and Criminal Judicature was first brought before the consideration of the Legislative Council on the 27th of December 1856, by a Resolution of the Government of India, which he would take the liberty of reading to the Council:—

"The Right Honourable the Governor General in Council resolves that the First Report of the Law Commissioners, together with the Honourable Court's Despatches relating thereto, and the communications since received on the subject from the Lieutenant Governor of Bengal and the Judges of Her Majesty's Supreme Court, be forwarded to the Legislative Council, with a view to the consideration of the recommendations of the Law Commissioners in respect to the forms of civil and criminal procedure, and to the enactment of a law in general accordance therewith.

"His Lordship in Council also resolves, that the Code of Procedure framed by Messrs. Mills and Harington, and the papers therewith connected, and all other recommendations recently brought forward for the alteration of the present law of Civil and Criminal Procedure in Bengal, be also forwarded to the Legislative Council.

"His Lordship in Council is of opinion that financial considerations render it at present impossible to sacrifice the large amount of revenue derived from judicial stamps.

"The Honourable Mr. Peacock has consented to prepare and bring in a Bill for giving effect to the proposed Codes of Procedure, with the exception noticed in the preceding paragraph.

"The question of amalgamating the Sudder and Supreme Courts, and the formation of a High Court, will be separately considered and reported to the Honourable Court."

In accordance with that Resolution, the then Honourable Mr. Peacock brought into the Council four Bills for the Amendment of the Procedure in the Criminal Courts in the Presidencies of Bengal, Madras, and Bombay, and in the North-Western Provinces. His reason for bringing in four separate Bills was to be found in the following remarks:—

“He had felt some doubts at one time whether it would not be better to make one Bill applicable to all the presidencies and to the North-Western Provinces; but as he found that there were various suggestions from the Local Governments which might possibly render it necessary that the Codes of the several presidencies should slightly differ from each other, he had thought it advisable to frame a separate Bill for each presidency and for the North-Western Provinces. If, after considering those communications, the Council should be of opinion, as probably they would be, that separate Bills were not necessary, and that the same Code of Procedure should be applicable to all the presidencies, the Council, after considering the Report of the Select Committee to whom the Bills might be referred, might make such alterations as would adapt one of the Bills to all the presidencies.”

These Bills were accordingly referred to four Select Committees, who, after deliberating for two years, presented a joint report recommending that one Bill should be passed for the whole of India. This Bill was considered in Committee of the whole Council for several months, and the Bill, as settled by the Council, was republished for a year. It was then referred back to a Select Committee to consider the proposed alterations that had been suggested by various authorities during the time the Bill was under publication, and to adapt the Bill to the amendments which had been made during that time in the Indian Penal Code. The Bill finally became law on the 27th of September 1861. This *resumé* of the five years' course of the Bill which became the Code of Criminal Procedure would give a faint idea of the great care and attention bestowed on every sentence of the Code; the debates on the Bill occupied many hundred pages of the printed proceedings of the Council, and the papers printed during the discussions before the Select Committee and the Council amounted to a very good load for a man. It was, therefore, with no slight diffidence that Mr. SHAW STEWART undertook the task of amending an Act so carefully prepared, and he would briefly explain the reasons that rendered an amending Act necessary.

The Indian Penal Code and the Code of Criminal Procedure had been in operation since 1861, and during that time the weak points in both had been indicated. Many more exceptions had been taken to the Code of Criminal Procedure than to the Penal Code, probably because the Penal Code applied to human nature, and the Code of Criminal Procedure to official nature. Human nature was the same everywhere, whereas official nature differed in different parts of India, and it was impossible to expect that the procedure that might be worked well by the official machinery of one presidency should be worked with equal success by that of another. In some cases, discrepancies had been pointed out between different parts of the Code; in some cases its provisions were too stringent; and in some not defined with sufficient accuracy. Various provisions of the Code had, moreover been interpreted in a manner not quite consistent with local requirements and what appeared to be the intention of the framers of the Code. In the Schedule especially, some of the points in which amendment had been imperatively required had already been dealt with in the three amending Acts which had been passed since the introduction of the Code, which would be incorporated in the proposed Bill. The Executive Governments in different parts of India had been sending in returns of the points raised in connection with the Code by the several Courts and officers who had had to work it, and the papers so collected had already reached an enormous bulk. The consideration of the proposed amendments was first entrusted to the late Mr. Stewart Gordon, who was desired to examine them. That task was stopped by his lamented death, and the papers were then entrusted to him (Mr. SHAW STEWART), and, as a preliminary measure, Mr. Maine had requested him, in conjunction with Mr. Hobhouse and Mr. Brandreth, to examine the papers, and report what amendments of the Code appeared necessary. They had had several meetings, but press of business prevented their completing the task before the end of the last session of the Council. Mr. SHAW STEWART saw enough, however, to make it quite clear that amendments were required, and he had since received a communication from the Home Department, intimating that the time had come for an amendment of the Code. The course which he had followed with regard to the Bill he now proposed to introduce was this. He had gone through all the papers that had been recorded, and had selected all points of sufficient importance to require amendment. He had consulted the debates of the late Legis-

lative Council, and had tried to ascertain, in regard to each of those points, the intentions of the framers. He had consulted the rulings of the Government of India and of the different Local Governments on such points, and where it was a point for determination by Courts of law, he had carefully considered the interpretations recorded by them. There were also various verbal amendments required to meet changes that had taken place since the Code was passed, and he had endeavoured to include all those amendments in the amending Bill. If leave was given to introduce the Bill, he did not propose to go on with it at once; he would have the Bill published, and let the Select Committee carefully consider the suggestions that would be made by various authorities in different parts of the country. He thought it unnecessary to trouble the Council with any detail of the various points in which the Code was proposed to be amended. He was however prepared, if any Honourable Member required it, to mention the more important points that had been dealt with.

The Motion was put and agreed to.

The Honourable Mr. BRANDRETH moved that His Excellency the Commander-in-Chief and the Honourable Sir William Muir be added to the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in towns in the North-Western Provinces and for other purposes.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable the Lieutenant Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits—The Honourable Sir W. Muir, the Honourable Messrs. Shaw Stewart and Cockerell, and the Mover.

The Council adjourned till the 31st January 1868.

(Signed) WHITLEY STOKES,

CALCUTTA,
The 24th January 1868. }

Asst. Secy. to the Govt. of India,
Home Department (Legislative).