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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 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 25th September 1872.

Present:

- His Excellency the VICEROY AND GOVERNOR GENERAL OF INDIA, G.M.S.I., *presiding.*
- His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.
- The Honourable Sir JOHN STRACHEY, K.C.S.I.
- The Honourable Sir RICHARD TEMPLE, K.C.S.I.
- Major General the Honourable H. W. NORMAN, C.B.
- The Honourable ARTHUR HOBHOUSE, Q.C.
- The Honourable E. C. BAYLEY, C.S.I.
- The Honourable R. E. EGERTON.

ODUH LAND REVENUE BILL.

The Honourable Sir JOHN STRACHEY moved for leave to introduce a Bill for consolidating and defining the law relating to the settlement and collection of land-revenue in Oudh. He said that in June 1871, when moving for leave to introduce a Bill for declaring what laws were in force in the Punjab, their late colleague Mr. Stephen had dwelt on the necessity of placing on a definite footing the law not only in the Punjab but also in the other non-regulation provinces. Mr. Stephen explained that, before 1861, it had been supposed that the Government of India had the same right to make laws for newly conquered provinces as Her Majesty had to make laws for Crown colonies, but that doubt had subsequently been thrown on this opinion. The result was, that Parliament by the 25th section of the Indian Councils Act, declared the legal validity of every "rule, law or regulation" previously made by the Governor General, or any Lieutenant-Governor, in respect of any non-regulation province. The result was that the force of law was given to an immense mass of orders of every description, referring to almost every conceivable subject, worded often in the vaguest terms, and, in many instances, given without the least idea that they possessed legislative, as distinguished from executive, authority. The consequence was, that it was impossible to say, with certainty, what was and what was not law in those Provinces. Mr. Stephen had given some curious examples of the difficulties thus produced. One vexed question

was as to whether the Punjáb Civil Code had acquired the force of law. This had apparently been settled by an incidental remark of the Lieutenant-Governor in reviewing an annual report of the Judicial Commissioner. To quote Mr. Stephen's speech—

"The question as to how far this was the case had been much debated; and Mr. Barkley, to whose labours they were all much indebted, had, in the course of a very careful investigation, discovered a remark which appeared to be the most distinct recognition of the Punjáb Civil Code on the Part of Government that was ever made. But it laboured under the disadvantages of being equivocal, unknown to every one whom it concerned, and of being obviously made without the least intention on the part of the person who made it to legislate. The remark was as follows:—The Lieutenant-Governor, in reviewing the Judicial Commissioner's Administration Report for 1858, observed—'His Honour's assent is fully given to your remarks concerning the necessity and importance of exacting a strict adherence to the letter and spirit of the Punjáb Law and Procedure.'

"The Council would probably agree with him in thinking that if a law was to be considered to have come into existence because the Lieutenant-Governor in the course of official correspondence, with no idea of legislation present to his mind, made an incidental remark, which was fished up years afterwards by an industrious official, any one who managed to know what the law was, must be uncommonly fortunate."

That gave by no means an exaggerated idea of the state of things which prevailed, not only in the Punjáb, but, more or less, in all the non-regulation provinces. It was obviously desirable that the law of those provinces should be brought into a definite and rational shape. And it was right that he should mention that the necessity for doing so had previously been pointed out by Sir Henry Maine, under whose instructions the Legislative Department had in May, 1869, issued a circular calling for full information on the subject: the result was that we had now valuable compilations showing, amongst other things, the rules that had gained the force of law in the Punjáb, Oudh, and the non-regulation parts of the North-Western and the Lower Provinces of Bengal.

On the 4th July 1871, the Honourable Mr. Cockerell had moved for leave to introduce a Bill for declaring what laws were in force in Oudh. He said that the measure was part of the general scheme for removing all ambiguity as to the legal effect of section twenty-five of the Indian Councils Act on orders issued in the non-regulation Provinces. Leave to bring in the Bill was granted, but nothing further had been done by the Council, as it was found necessary to refer the matter to the Local Government of Oudh. The Chief Commissioner had now, after full consideration and in communication with the Judicial Commissioner, submitted a draft Bill not only to consolidate the revenue law of the province, but also to declare what laws were there in force. Sir JOHN STRACHEY, however, agreed with the Legislative Department in thinking that it would be more convenient to follow, in this respect, the example of the Punjáb legislation, and treat these subjects separately. The Bill which he now asked leave to introduce dealt only with revenue, and would be found to correspond in its main features with the Punjáb Act, XXIII. of 1871. The Chief Commissioner had explained in a paper, which would be circulated to Honourable Members, that the revenue administration of Oudh had been originally based on the Punjáb system; and though in some points of importance it differed from that system, the necessary legislation would generally resemble the Punjáb Act which he (Sir JOHN STRACHEY) had mentioned.

The Motion was put and agreed to.

RE-IMPORTATION OF GOODS (BURMAH) BILL.

The Honourable Sir RICHARD TEMPLE moved that the Report of the Select Committee on the Bill for regulating the re-importation into British territory of goods cleared at Rangoon for the territory of the King of Ava, be taken into consideration. The Committee had made no change in the Bill, except defining 'master' so as to include persons in charge of Native boats. As to the general object of the measure, he had already sufficiently described it. Goods were allowed to be cleared at Rangoon for Ava on payment of the nominal fee of one rupee per cent. Merchants, however, sometimes found it expedient to re-import goods so cleared: in such case they should obviously pay the difference between the fee of one rupee and the duty which would have been payable if the goods had been cleared for home consumption when originally imported into British Burmah. The Bill, if it became law, would render this legal.

The Motion was put and agreed to.

The Honourable Sir R. TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY REGULATION XIII. OF 1827, SECTION THIRTY-FOUR, CLAUSE NINE, REPEALING BILL.

The Honourable Mr. HOBHOUSE moved that the Report of the Select Committee on the Bill to repeal Bombay Regulation XIII. of 1827, section thirty-four, clause nine, be taken into consideration. The Committee had made no amendment.

The Motion was put and agreed to.

The Honourable Mr. HOBHOUSE also moved that the Bill be passed. He said that the Bill was merely intended to remove from the Statute-book a clause which, by some oversight, had not been repealed by Act X. of 1872, and which rendered the law regarding certain payments to witnesses different in the Bombay Presidency from that which prevailed in the rest of British India.

The Motion was put and agreed to.

PRIVY COUNCIL APPEALS BILL.

The Honourable Mr. HOBHOUSE presented the further Report of the Select Committee on the Bill to consolidate and amend the law relating to appeals to the Privy Council. He invited attention to the three last paragraphs of the Report :

“With exception of the clauses relating to appeals from Subordinate Courts of final appellate jurisdiction—an innovation made necessary by the altered position of these Courts in Oudh and Burmah—the Bill is merely a measure of consolidation. We have, therefore, abstained from dealing with three important questions,—*1st*, as to whether the limit of value should be raised ; *2nd*, whether appeals should be confined to matters of pure law ; and *3rd*, whether the High Courts might not in proper cases allow a decree to be executed, without demanding security, notwithstanding that an appeal has been preferred to the Privy Council.

“We think that, before proceeding further with the Bill, it will be expedient to submit it for the approval of the Secretary of State for India and of the Judicial Committee of the Privy Council.

“We recommend that the Bill as now amended be re-published in the *Gazette of India*, and that copies of the Bill be sent to England for the purpose indicated in the last preceding paragraph of this Report.”

Should the recommendation of the Committee be adopted, the passing of the Bill was likely to be delayed for some time. It was found impossible to deal satisfactorily with the subject without affecting to some degree, the prerogative of the Crown and contravening some of the rules laid down by the Privy Council. The Bill had taken the invariable course of all measures of consolidation, and become also, to some extent, a Bill to amend the law. The High Court at Fort William had suggested that every High Court should be expressly empowered, in cases in which it thought fit to do so, to allow a decree to be executed, notwithstanding that an appeal had been preferred to the Privy Council. The learned Judges (to whom the Committee were much indebted for their remarks on the Bill) further observed that, as the law stood, the mere lodging of an appeal very often operated practically as a stay of execution for at least three or four years, and there was reason to believe that this rule of the law had the effect, in a considerable number of cases, of inducing parties to appeal to the Privy Council for the mere purpose of vexation or delay.

The Government of India had also received further suggestions from the Secretary of State for India, who had appointed a Committee of the Council of India to consider the subject of Indian appeals to the Privy Council. That Committee had proposed either that appeals should be confined to matters of pure law, or that at all events the power of appealing on matters of fact should be curtailed. Mr. Stephen had suggested the desirability of restricting the plurality of appeals by a single appellant. All these matters required communication with the home authorities, and he (Mr. HOBHOUSE) had written a minute on the subject, which was now in the hands of the Department presided over by his Honourable friend Mr. BAYLEY. The result was, that the Committee had determined to complete the Bill as (with the exception of the provisions regarding Subordinate Courts of final jurisdiction) a mere measure of consolidation, and to forward it to the Secretary of State as showing, in a convenient form, what the law on the subject really was, and so enabling him the better to judge how far the proposed alterations could be grafted on it.

MADRAS DISTRICT MUNSIFS BILL.

The Honourable Mr. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District Munsifs in the Presidency of Fort St. George.

BURMA FERRIES BILL.

The Honourable Mr. BAYLEY introduced the Bill to regulate ferries in British Burma, and moved that it be referred to a Select Committee with instructions to report in a month. He said that, in asking leave to introduce this Bill, he had mentioned the reasons which rendered it desirable. The Bill had been prepared by the officiating Chief Commissioner, Mr. Eden, and had been revised in the Legislative Department, where, at his (Mr. BAYLEY'S) suggestion, clauses relating to the exemption from ferry-tolls of persons, stores, &c., employed or transmitted on the public service, had been added to section eight.

In most of its other details the Bill would be found to agree with the ferry-laws in force in other parts of British India.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to regulate ferries in British Burma—The Honourable Mr. Hobhouse and the Mover.

The Council then adjourned to the 2nd October 1872.

WHITLEY STOKES,
Secretary to the Government of India.

Simla, the 25th September 1872.