

Friday, November 18, 1870

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 18th November 1870.

PRESENT :

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

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

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

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

The Hon'ble D. Cowie.

The Hon'ble Francis Steuart Chapman.

The Hon'ble F. R. Cockerell.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN presented the final report of the Select Committee on the Bill to amend the Indian Penal Code. This Bill had been much discussed. He hoped to explain at a very early opportunity the policy of the Government in respect to it.

LIMITATION OF SUITS BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to consolidate and amend the law relating to the limitation of suits, said that this Bill was one with regard to which it would be improper to occupy the attention of the Council at any length, inasmuch as it was a Bill of a most technical character, although he hoped it would prove to be one of great utility. The present law regarding the limitation of suits, as contained in Act XIV of 1859, contained twenty-four sections, and he was very sorry to say that those twenty-four sections had given rise to nearly 1,100 decisions, so that the law had got into a state which could be easily imagined by those accustomed to reading law-books, and which it would be difficult to describe to others.

It was enough to say that since the Act came into force, there had been more than 125 decisions a year upon it. These decisions had been collected with great care, and discriminated with much learning and intelligence, by

Mr. Ninian Thomson, a Judge of the Small Cause Court of Calcutta, in a work which he had lately published on the subject. The work was creditable to Mr. Thomson, but the necessity for it was discreditable to the law. MR. STEPHEN thought it was the duty of the legislature, as soon as it could, to reduce this enormous mass of decisions to a certain number of plain enactments. The general principle on which statutes of limitation were framed was plain and notorious. The practical difficulty of framing them lay in the circumstance that it had been customary to provide that actions should be brought within a certain time "after the cause of action arose." To say when the cause of action arose in particular cases was often very difficult. The Bill proposed to deal with the difficulty by setting forth in a schedule every sort of suit, and stating specifically, in the case of each suit, the precise moment at which the period of limitation began to run. The schedule thus prepared contained 157 different items, and was furnished with a copious index, which would enable anybody to find with ease the law relating to the suit in which he was interested. That was the great feature of the Bill.

Besides that feature, there was another of considerable importance in point of simplification. The Bill repealed different portions of no less than 25 enactments. He need not say much about the substance of the provisions of the Bill itself: they did not greatly alter the substantive law, except in introducing provisions which would enable persons to acquire a title by prescription. This would alter rather the theory than the practice of the law. The schedule was long, but he believed it would be found to embody the substance of the whole of that enormous mass of decisions in which the present law was contained, and that it would very much abridge and simplify the existing law.

The Motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his motion to introduce the Bill for the Registration of Assurances.

Leave was granted.

CIVIL COURTS (BENGAL) BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill had been published in the *Gazette of India*

under Rule 19. It purported to consolidate the law relating to the constitution and jurisdiction of all the Civil Courts (except the Small Cause Courts) subordinate to the High Courts in Lower Bengal and the North-Western Provinces.

There was, he thought, no part of the Statutes which stood in greater need of consolidation than that which related to the subject of this Bill, for the course of legislation had brought the law regarding the Bengal Courts into such a disjointed state that it was no easy matter at the present time to ascertain the precise legal jurisdiction and functions of a District Judge.

The original legislation on this subject, contained in the Regulations of 1793, and the corresponding Regulations of 1795, 1803 and 1805, which virtually extended the provisions of the former Regulation to Benares and the territories which were then known as the Ceded and Conquered Provinces, combined directions as to the application of substantive law and rules of procedure, and applied only to the Zila or District Courts.

The Courts of Munsifs and Sadr Amíns were first established on their present footing by Regulation XXIII of 1814, and those of Principal Sadr Amíns by Regulation V of 1831. These Regulations specifically prescribed certain rules of procedure for the above Courts, and in general terms extended to them the provisions of the older enactments, which regulated the application of substantive law in the adjudication of litigated matters by the Zila Courts.

The Civil Procedure Code superseded the rules of procedure prescribed by the Regulations, and it thereafter became necessary to set aside the latter by express repeal; but, as in the manner just described, rules as to the application of substantive law and of procedure had become so interwoven, especially as regards the inferior Civil Courts, that the repealing process was inadvertently carried too far, and operative rules were extinguished in conjunction with those which had become obsolete.

Thus it happened that, although nearly all litigation was, at least in its primary stages, carried on in the Civil Courts subordinate to the District Courts, the former were not under any law at present in force bound by the very important rule contained in section 18 of the Bill.

The provision of section 17 also was, in the present state of the law, legally applicable only to the Zila or District Courts.

Section 19 contained a new and useful provision, taken from the law in force in the Madras Presidency.

In Part V (section 28) there was a new provision for dealing with charges of grave misconduct on the part of Munsifs. As those officers were removable from office without the sanction of the Government, Act XXXVII of 1850 would not *per se* be directly applicable to such cases.

The existing law on the subject of Part VI was, as regards the District Courts, held to leave the extent of the power conferred on those Courts for the removal of their ministerial subordinates open to some doubt. The High Court claimed to have, and did in fact, he believed, exercise, a power of interference in such cases.

As the Bill now stood this power was disallowed, and it would be a question for the consideration of the Select Committee to which this Bill might be referred, whether the reservation to the superior Court of a power of interference was expedient.

If the High Court was to have the power of removing the ministerial officers of the District Courts from one District Court to another, he thought it should only be exercised at the instance of a District Judge.

It seemed to be essential to the maintenance of a proper control over his office establishment, and the consequent efficient conduct of the routine business both of the District and Subordinate Courts, that the authority of the Judge for the punishment of misconduct on the part of his ministerial officers should not be impaired by the existence of a power of interference *proprio motu* vested in a remotely located superior Court; and it would surely be contrary to sound policy to fetter the discretion of so high a functionary as the Judge of a District Court in the government of his office establishment, for whose efficiency he was solely responsible.

In other respects the Bill attempted no more than the reproduction of the substance of the existing law in more concise language, and with a clearer and more intelligible arrangement of its subject-matter.

The Motion was put and agreed to.

INSOLVENCY BILL.

The Hon'ble MR. STEPHEN introduced the Bill to amend the Law of Insolvency, and moved that it be referred to a Select Committee with instructions to report in two months. He said that since he had moved for leave to introduce this Bill, it had been printed and published for public information. He had stated on a former occasion what the principles of the Bill were, and

pointed out the manner in which it had been framed on the English law lately passed. The Bill was published while the Council was at Simla, in order to afford to the mercantile community, and especially to the mercantile Members of the Council, the opportunity of forming an opinion on the subject. It would be considered during the winter; but he (MR. STEPHEN) might observe, with reference to a remark he had seen made, that it was a mistake to infer, from the first of January next having been fixed as the date for the commencement of the Act, that there would be any particular hurry about passing the Bill. Such dates were always inserted subject to alteration.

In the mean time he hoped to receive the opinions of the mercantile community, and especially the opinions of the three Chambers of Commerce, on the provisions of the Bill. It had been already approved by the Official Assignee at Calcutta, who had made some valuable observations as to the mode by which frauds might be prevented; and MR. STEPHEN hoped that, before the end of the session, the Bill would be passed into law.

The Motion was put and agreed to.

EVIDENCE AND CORONERS' BILLS.

The Hon'ble MR. STEPHEN also moved that the Hon'ble Mr. Chapman be added to the Select Committees on the Bills to define and amend the Law of Evidence, and to consolidate the laws relating to Coroners.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the Law relating to the District and Subordinate Civil Courts in Bengal—The Hon'ble Messrs. Stephen and Chapman and the mover.

On the Bill to amend the Law of Insolvency—The Hon'ble Messrs. Cowie, Chapman, Bullen Smith and Cockerell and the mover.

The Council adjourned to Friday, the 25th November 1870.

CALCUTTA,
The 18th November 1870. }

WHITLEY STOKES,
Secy. to the Govt. of India.