ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1874.

WITH INDEX.

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1875.

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 Tuesday, the 23rd June 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.

The Hon'ble B. H. Ellis.

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

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble Rájá Ramánáth Tagore.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE in moving for leave to introduce a Bill to amend the law relating to Civil Appeals in the Presidency of Fort William said:—

"The main objects of the measure which I desire to introduce are these:—to place some check on the great latitude of appeal which is allowed in this country, and at the same time to provide for the more efficient hearing of such cases as are proper subjects of appeal to the High Court. It is confined to Bengal, because it is in that province that the mischief of the present system is chiefly felt. It originated in a Minute written by the Chief Justice of Calcutta, in which he set forth the very unsatisfactory nature of the arrangements regulating those appeals which are known as special appeals. Upon consideration of that Minute, the Government framed some proposals which they sent round to the various local authorities. The measure now proposed has been framed after consideration of a number of opinions thus elicited. To some extent, it deals with appeals generally, but it is principally concerned with those which are called special appeals. And as the matter is important and not free from complication, and as a great many minds have been addressed to it and have given conflicting opinions on it, I must ask for the indulgence of the Council if I detain them some time on what I fear is an exceedingly dry subject, while I attempt to make clear what is the nature of the Bill, and what are the reasons of the Government for promoting it.

"In order to give the Council a clear idea of what I am asking them to do, it will be necessary first to show what the present condition of things is, and how it came about; the more so, because the term 'special appeals' is, in its present application, a misleading one, and describes that which used to be, rather than that which is. I have heard the present plan commonly described as a plan for abolishing special appeals; but if words had their proper meaning, it would be more correctly described as a plan for restoring special appeals.

"Well, before the year 1793, there was no appeal at all from the Mofussil or Zila Courts, except to the Governor General and Council in their character of Sadr Díwání Adálat, and that appeal was not allowed unless the matter in dispute was worth more than a thousand rupees. In the year 1793, Provincial Courts of Appeal were established, and these appeals lay from the Zila Courts, which were the Courts of First Instance, to the Provincial Courts in every case, and a second appeal lay to the Sadr Díwání Adálat in cases over one thousand rupees in value.

"Shortly afterwards, Courts were established under the Zila Courts and with limited pecuniary jurisdiction: appeals lay from them to the Zila Courts in all cases, and then there was no further appeal.

"But it was soon found that cases differed in quality as well as in value, and that second appeals from the Zila Courts were wanted in many cases where the stake was below the pecuniary limit. The want was met by Regulation XLIX of 1803, the material portion of which is as follows:—

"'Suits tried in the first instance by the Native commissioners, or by the registers of the zillah and city courts, and heard in appeal by the judges of those courts, may also occasionally involve questions of a general and important nature; particularly in causes between landholders or farmers of land, and the ryots, for arrears or exactions of rent, wherein the rights of the landlord and tenant may be at issue; and an erroneous decision not revocable by appeal, might be of serious ill consequence. It is therefore hereby provided, that in all cases wherein a regular appeal may not lie to the provincial courts of appeal from the decrees of the judges of the zillah and city courts, under the present or any other regulation, it shall be competent to the provincial court to admit a special appeal, (on performance of the general conditions of appeals,) if on the face of the decree of the zillah or city judge, or from any information before the provincial court, it shall appear to them erroneous or unjust; or if, from the nature of the cause, as stated in the decree, or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal.'

In the year 1805, a similar power was given to the Sadr Díwání Adálat.

"That is the origin of special appeals. And the Council will observe that the appeals really were special appeals, that is to say, appeals not lying as of right or

in the option of the parties, but in the discretion of the Court, and granted only on account of something special in the case. And when they were granted, the whole case was open to the Court of Appeal; there was no distinction between the facts and the law, or anything to prevent the Court of Appeal from doing what appeared to it to be justice.

"I pass over the modifications of this system which were made from time to time; substantially the system remained till the year 1843, when a radical change was introduced. By Act III of 1843 it was provided that appeals should lie to the Courts of Sadr Díwání Adálat

"'from all decisions passed on regular appeals in the Civil Courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the Courts, or shall involve some question of law, usage or practice, upon which there may be a reasonable doubt.'

"That enactment effected the abolition of special appeals properly so called. The discretion of the Courts was taken away; it was not required that the case should possess any special features; any case, however trivial or trumpery, might at the option of the beaten party be the subject of a second appeal upon any point of law or practice; and no case, however important, could be the subject of a second appeal if it turned on facts alone. From that moment the second appeal, though called special, was every whit as regular as the first appeal, to which the name of regular has been applied.

"Again I pass over the modifications of the system of 1843; it is substantially the system of the present day, and is expressed in section 372 of the Civil Procedure Code, which I will read—

* * * "'a special appeal shall lie to the Sadr Court from *all* decisions passed in regular appeal by the Courts subordinate to the Sadr court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.'

"The Council, however, must not imagine that such appeals lie in every class of case; for large classes of cases have been excepted from their operation. The Courts of Small Causes have a jurisdiction over certain classes of suits up to the value of one thousand rupees. Those suits may be roughly described as suits for mere money demands. And from the Small Cause Courts there is no appeal at all. The only proceeding in the nature of an appeal is a reference of points of law to the High Court, which the Small Cause Court *may* make in any case, but is not bound to make, however much the parties may wish

it, unless the value of the suit exceeds five hundred rupees. Again it is provided that, in suits of the Small Cause type decided by the ordinary Courts, there shall be no second appeal if the value of the suit does not exceed five hundred rupees. Instead of it, there is given the same power of reference to the High Court which the Small Cause Courts have.

"I do not know that I need state with much particularity the nature of the judicial system which works the system of appeal I have sketched, because we are not proposing to alter it. It is sufficient to say that a decision by a Munsif may always be appealed to a Subordinate or a District Judge, and an original decision by a Subordinate Judge to a District Judge, and that all second appeals lie to the High Court.

"To state it briefly, the system of appeal is as follows:—Every decision of a Court of original jurisdiction, except a Small Cause Court, may be the subject of one appeal. That appeal opens the whole case. Every appellate decision may be the subject of a second appeal, except in cases which are of the Small Cause type and whose value does not exceed five hundred rupees, and except decisions passed by the High Court. The second appeal does not open the whole case. The High Court is bound by the conclusions of the Appellate Court below it on all questions of fact, however strongly it may think that there has been error. If, however, it can trace the error to some erroneous legal principle, it may remand the case for a rehearing; and that is a course very frequently taken.

"It is under this state of things that the Minute of Sir R. Couch has been written. He dwells principally on the highly unsatisfactory nature of an appeal in which the Court is not at liberty to go into the whole case. What he says would come with great authority if it stood alone; but in fact it accords with many other opinions on the same subject, which of late years have reached the Government of India, and some of which will be found stated and commented on in Mr. Stephen's great Minute on the Administration of Justice. I will try to state briefly the bad consequences which the existing system is found to produce.

"First, we are told that the body of Munsifs has for some years past been improving in education and judicial ability, and that many of them are quite as competent to decide questions of fact as many Subordinate or District Judges. Moreover, the Munsif sees the living witnesses, whereas the Court of Appeal sees only the dead record. Doubtless, in one way every Judge of Appeal has an advantage over the Judge of first instance; cases are more

licked into shape when they reach him; they are better argued before him; the attention is more concentrated on the material points. But taking all things into consideration, the chances are that the Munsif's judgment on questions of fact is as likely to be right as that of the Court above; yet the Court above can reverse it, and over that reversal the High Court has no direct power. This is of itself a mischief, which ramifies into other mischiefs.

"One of these secondary mischiefs is the great number of hopeless and frivolous appeals brought before the High Court merely to be dismissed. The real hope of the parties is that the High Court will be so struck with the hardship done by a reversal of the Munsif's judgment, that it will find a way to interfere. But the appeal will only lie on some question of law or practice: so all the pleader's ingenuity is set to work to ferret out some question of that kind on which he can hang his appeal. The waste of time and money thus caused is considerable.

"Another secondary mischief is that strained and unnatural interpretations are put upon the law. It is not in human nature to see glaring error and injustice without striving to remedy it. The maxim that 'hard cases make bad law' is well known; and if that is so under a system which leaves the whole case open to the Court, what must it be under a system which precludes the Court from entering on the most material parts of a case? In point of fact, the Judges are placed under strong temptation to wrest the law to the purposes of justice, and to this temptation, we are told, they sometimes yield.

"But it constantly happens that, wish as they may, they are unable to do what they see to be justice. The legal objection taken to the appellate decree is too weak to stand. So the parties have all the vexation and cost of an appeal which practically decides nothing. And the High Court and the parties who prevailed before the Munsif have the dissatisfaction of feeling certain that he was right, even that he may have been overruled in ignorance or from carelessness, and yet that there is no possibility of restoring his decree.

"Again, when the High Court can disturb the finding of fact as being grounded on some erroneous principle, they cannot do so directly, but only by the clumsy and circuitous process of a remand: a process which remits the case to the same Judge, which may or may not produce the desired results, and which sometimes has to be repeated, and even repeated again.

"I might give the Council some detailed evidence on the point I am now discussing; but really there is found to be so little difference of opinion about

it, that I feel I should be wasting time by dwelling upon it longer. Sir R. Couch proposes that where there is a second appeal, it shall be an effectual one: that is to say, an appeal on the whole case, and on this point there is a very general concurrence of opinion, at least in Bengal.

"There are indeed those, and among them gentlemen of great authority, who tell us that we are doing an idle thing to attempt any improvement of our present system at all, for that we are only putting our superstructure in order, whereas it is our foundations that are rotten. I am sorry that the late Lieutenant-Governor of Bengal does not now occupy that empty chair, for if he were there we should hear that view of the case ably and eloquently set forth. He would abolish the right of appeal *in toto*, and substitute for it some system of inspection and revision. Others tell us that all we can do is nothing, or worse than nothing, unless we improve our Courts of First Instance. Others say that there should be strong Provincial Courts of Appeal; others, on the contrary, that the intermediate Courts of Appeal should be entirely swept away.

"Now, as between appeal on the one hand, and inspection and revision on the other, I have not seen any detailed or even any outlined plan of the latter system. I can therefore only say at present that a well-organized plan of appeal seems to me absolutely necessary for the healthy and efficient administration of justice.

"As to improving the Courts of First Instance, I most cordially agree with those who put it in the very first place of importance. I agree that Judges of first instance are, and must be, the most powerful part of any judicial system, and that, if they are incompetent, no contrivances however ingenious about appeals and, I will add, about inspection, will make our administration of justice otherwise than weak. But how are we to improve them? Improve them by getting better men, says one. Well, we cannot create men to order. We can only get better men by education, by experience, by careful selection. That is being done, but it is the work of time. We are told that there is a marked improvement in the men, and that improvement will doubtless go on, but it is, and must continue to be, slow and gradual, and we must not be impatient about it. Improve them by setting two Judges to sit together, says another. Well, would that plan get the business better done? I know that it would be expensive, and I know that it would consume a great deal more time, for two men cannot get through business as one can, but whether it would be more efficacious, I do not know. I believe it would not, for according

to such experience as I have, judicial work of the first instance is done better by a single Judge than by a plurality of Judges.

"As for the other plans, I have shown the Council to-day that there was a time when there was no intermediate Court of Appeal, and again a time when there were Provincial Courts of Appeal. I do not mean to say that those who would now revert to the principle of past arrangements would revert to it under the same circumstances or with the same machinery. But they propose great changes of a speculative character,—changes on which there are the widest differences of opinion,—changes which, in the year 1871, when the Bengal Civil Courts Act was passed, were thought too great to be attempted without much more consideration and delay, and of which the same may be said now. I think it will be wiser to take the modest measure of reform which this Bill proposes, if we see our way clear to an advantageous outcome from it, than to wait for great organic reforms which may be many years in coming.

"I ought to mention one other general counter-proposal to the plan of the Government, both on account of its importance and on account of the high authority by which it comes recommended. It is that for the correction of error we should place our principal reliance on new trials instead of appeals, and its chief advocate is Mr. Justice Phear.

"Now, in England, a new trial is a most efficient instrument for the correction of error. But then new minds come to the work: there is always a fresh jury, and generally a fresh Judge. In fact, it is considered to be a reason why a Judge should not go the same circuit twice running, that if he does so he may have to conduct new trials ordered in consequence of his own rulings.

"But unless we are to make large changes in our system of Courts, for which as I have said we are not prepared, a new trial in India must involve one of two things—either the parties and their witnesses must go into another district at very serious inconvenience, or the trial must take place before the same Judge. Practically, they would be before the same Judge. I do not believe that new trials by the same Judges will produce much good result. The appeal from Philip drunk to Philip sober was, as we all know, successful; but an appeal from Philip sober to Philip drunk—from a man with an unbiassed mind to the same man prepossessed with an adverse view of the case—is usually a hopeless affair.

"For these reasons, I think we ought to adhere to appeals as the best instrument we are likely to get for correcting error.

"Well, but if all appeals are to open the whole case, the High Court will be overwhelmed with work, unless steps are taken to protect it. Sir R. Couch therefore proposes that there shall be no second appeal when the first appeal results in a confirmation of the judgment of the Court below. And this is the next main object of the Bill.

"I must say that this seems to me the most reasonable of all limitations to place on the right of appeal. All others (and every system has some), whether of time or of subject-matter or of money, are more or less arbitrary. This is founded on the presumption that justice has actually been done. I contend that the State is not bound to find machinery for litigation until all suitors are satisfied. Some never will be satisfied as long as anything they seek is denied them. The State's duty is to provide such reasonable amount of judicial machinery as may satisfy reasonable people that their cases have been fully and fairly heard, even if erroneously decided, so that they may not be driven to take the law into their own hands. When that duty has been discharged, we may apply the maxim, *Expedit reipublicæ ut sit finis litium.* What quantity and quality of judicial power will suffice for the case, must depend upon the nature of the case. But, subject to the qualifications I shall presently mention, I think we may say that when two impartial and independent Judges, one sitting in appeal from the other, are agreed, the presumption arises that justice is not likely to be better served by any further enquiry. The chances are that if a third Court differed from the two first, it would, in other than exceptional cases, be wrong: and it is certain that the then beaten party would be even less satisfied than one who was beaten before two consecutive courts, and was then compelled to stop. I do not further argue the principle, because I find very general approval of it. The only specific argument against it is, that it will have a bad effect on the Subordinate and District Judges. That view appears to have been held by Sir George Campbell, and it finds favour with some others. I will read what is said of it by Mr. Field, who has sent in a very thoughtful and valuable commentary on the proposals of Government, one which I have found of great use, though I cannot always agree in his conclusions. Mr. Field says:—

"'The second of the proposed changes is that no second appeal be allowed, as of right, when the Appellate Court agrees with the court of first instance. I must confess that I share the apprehensions of His Honour the Lieutenant-Governor of Bengal that the tendency of this provision will be to induce a lazy and inefficient Appellate Judge to shirk his duty. With a local Press and a strong public opinion, the danger would be less; but where these do not exist, the proposed change, while it lessens the work of the High Court, will certainly diminish the efficiency of the lower appellate courts. As these latter courts are said to have at present nothing to spare in the way of efficiency, I doubt the propriety of this change.'

"On the other hand, the majority of local authorities think that a Judge is likely to be stimulated to do his duty more carefully by the knowledge that his decision is absolutely final.

"If it were necessary to take a side in this controversy I should side with those who take the more favourable view of human nature. I think, however, that the objection may be met in another way, and that the objectors have not thoroughly realized the position of the intermediate Judge. But before I can explain my meaning, I must unfold the plan further.

"The next proposal for limiting the number of appeals is, that there shall be no second appeal when the value of the suit is under two hundred rupees. This is the subject of great controversy, many authorities urging us to carry the pecuniary limit a great deal higher, and many objecting to the principle altogether. To show what are the objections in principle, I will read to the Council what is said by the Judicial Commissioner of British Burma, who, I think, has put them as fully and forcibly as any one:—

"'I believe the money limitation to be unjust, and founded on a fallacious argument: unjust because it will introduce one law for the rich and another for the poor; because there can be no just reason why the suitor, who is wronged in a matter of what may relatively be considered of small pecuniary value, should be obliged to submit to the judgment of a tribunal which is admitted to be so inferior that it cannot be trusted with the final decision of cases of larger value: and founded on an argument which is fallacious; because it *is* fallacious to compare the value of the property at stake with the amount of public money spent in the machinery of the Court, and having discovered that the latter is the higher, to proclaim the time of the court to be wasted. The test of the value of the time and labour of the Court is, not merely the value of the property in dispute and the benefit which its decision may confer on the successful party, but also the benefit which its decision may confer by declaring disputed points of law, and the still greater benefit which the existence of the Court confers upon the community at large, by affording a peaceful means of settling disputes which otherwise would be settled by violent and lawless means.

"'I would reject altogether the money limitation, and I believe its existence in the Courts of Small Causes not to rest upon defensible grounds.'

"The arguments are substantially four in number:—

1. To make a difference between the rich and the poor is unjust.
2. It is fallacious to weigh the expenditure of public money as against the amount at stake in the suit.
3. A good judicial system should aim at settling the law in a proper way.
4. It should also aim at affording peaceful solutions to quarrels.

"I fear that, with the time at my disposal, I cannot do full justice to these arguments or to the replies to them, but I will briefly show how I think it right to deal with them.

"*First*, I fully admit that to make differences between rich and poor as such, is unjust. But to say that there are or shall be no such differences, and to make our arrangements as if there were none, is to shut our eyes to the plain facts of the world we live in. Suits for small amounts are usually much simpler than suits for great amounts. Suits for small amounts usually concern society at large much less than suits for great amounts. Therefore, a simpler machinery usually suffices to settle suits for small amounts. The circumstance that the parties to suits for small amounts are usually poor, and the parties to suits for great amounts usually rich, ought not to affect the case. The arrangement is made, not on the ground of the wealth of the parties, but on the ground of the magnitude of the stakes.

"*Secondly*, I protest in the name of the non-litigant public against the doctrine that there is to be no comparison between the amount of public money spent and the amount of the private stake. I will just put a case to the Council. My Khidmatgár demands ten rupees of me. I say I only agreed for nine rupees, and pay him nine rupees. He sues me for the odd rupee, and the Munsif gives him a decree. Am I to take that case up to the District Judge, the High Court, and the Privy Council, because I happen to be very angry about it, and am willing to spend money in litigation? Would it not rather be a monstrous abuse of judicial establishments, to say nothing of the hardship on the respondent? Is it not clear that there ought to be some proportion between the value at stake and the judicial power brought to bear upon it? If so, a line must be drawn somewhere, and then the only question is, where it shall be drawn.

"Now, Sir Barnes Peacock entered on some enquiries pretty well known by this time, by which he showed that out of 3,047 special appeals presented in the year 1869, 1,543 were under one hundred rupees in value, and he calculated the expense of each such case to the public alone at from one hundred to one hundred and twenty rupees. He then pointed out that, as regards these 1,543 cases, it would be cheaper to the Government to pay the amount demanded, with the costs of both parties, and to give them a bonus besides for being good enough to abstain from litigation, than it was to try the cases. I should have thought it impossible to contend gravely that such a state of things is right.

"If the argument merely means that the cost ought not to be the sole and conclusive test, it is not addressed to the present measure, for though others may have proposed such a thing, the Government have not.

"But besides the cost to the public, we have to consider the cost to the litigants. Is that to be no element in considering how far we shall provide means for one party to disturb another in the possession of the decree he has got? A great deal of the argument I see in favour of numerous appeals seems to lose sight of the fact that there is such a being as the respondent, who has got a decree, and who may be most grievously harassed by protracted litigation. Sir Barnes Peacock shows that, in the year 1869, 97 cases were decided on special appeal under five rupees in value. The result was 64 affirmations, 22 remands and only 11 alterations of the decree below. He calculates that each successful appellant was at least ten rupees out of pocket by his appeal, and that each successful respondent spent ten rupees in maintaining his decree for something less than five rupees. I hardly understand the doubt, at all events I cannot doubt, that it is for the interest of the parties, even the appellants, to say nothing of respondents, to stop such litigation, if the real value of the suit is anything near the amount of money directly involved in it.

"As to the third argument, I admit it and say that it has entered into the Government plan.

"As regards the fourth argument, I admit its abstract truth, and say that it also has entered into the Government plan. But I do not admit the assumption which underlies it, and which alone makes it relevant in the present controversy. I do not admit that to place pecuniary limits on appeal need have any tendency to excite violence. What people want is, to have their quarrels settled by authority. Simple quarrels are best settled by simple methods. It seems to me an unwarrantable assumption that the defeated party will be tempted to violent courses. The presumption is that he who gets a decree is right, and the fact is so in the great bulk of cases. Even when it is otherwise, a defeated party hardly ever does anything but acquiesce in the judgment of an impartial tribunal which he cannot lawfully dispute. I think this argument loses sight of the essential difference in the position of two men whose quarrel is wholly unsettled, and the position of the same men when one has got a judgment, to say nothing of two independent judgments, in his favour.

"No man can be more ready than I am to admit—nay I insist—that the pecuniary limit is an arbitrary one. It is part of my case that it would

produce a great many hardships if not moderated in some manner. But after all, have we been going wrong on this point ever since we have been in India? Was the ancient pecuniary limit of appeal to the Sadr Díwání Adálat wrong? Is our present and long-standing division of jurisdiction between higher and lower Courts wrong? Is our Small Cause system wrong? Are the Privy Council wrong in insisting on a pecuniary limit? Is the English County Court system wrong? I think there can be but one answer to these questions. The principle is not wrong: it is a rough one, but it is simple, it is intelligible, and it works very smoothly in a vast number of cases.

"If, then, we accept the principle, it will be for the Select Committee to decide at what point the line shall be drawn. I propose two hundred rupees, being, perhaps, something above the cost to the public of a suit involving a second appeal, but considerably below the estimated cost of such a suit to the parties. It is always very difficult to draw a line of this kind, but if opinions go for anything, we have drawn our line at a low level. An able Equity Judge once told me that, when he had to decide questions of valuation, he found that the experts of one side valued very high, and those of the other side very low, and that he could not discover whose opinion was the better one. So he used to add up all the values and divide the sum by the number of experts. The quotient was the value for which he pronounced. If I were to do the same with this case, I think the quotient would come out a good deal above two hundred rupees. I do not mean to say that this primitive arithmetical process would produce a very trustworthy result, but it tends to show that, if we are erring, it is on the side of caution. That, I think, is the right side to incline to, in introducing such an alteration. If this experiment succeeds, it will be easy for our successors to raise the limit of value whenever they find it expedient.

"I come now to the qualifications by which we propose to guard the working of these principles; for if we attempt rigid unyielding limitations, they are sure to break under the pressure of hard cases. There are many cases in which money is not the measure of the thing at stake. The real quarrel may be about a person's honour, as in a defamation case; or the dignity of a family, as in a suit for an office; or for a revered chattel, such as an idol; or a cherished spot of ground, such as a grave. Or the suit may involve a point of law of great public importance. The amount of ship-money demanded of Hampden was only twenty shillings; but the question was whether the King, or only Parliament, could levy taxes. In all such cases, we propose to give the High Court a discretion to admit a second appeal. It will be a question which the

Select Committee must determine, whether we shall say generally that they may admit a second appeal whenever necessary for the purposes of justice. I myself am disposed to think that the more elastic such a power is, the better it will work; and there is authority for it in the Court Acts recently passed for Oudh and for British Burma. But I will not further discuss it here.

"We propose also to give to the Judge who pronounced the decree power to allow an appeal from himself. This seems very absurd to some gentlemen, who think that Judges cannot be trusted with such a power. It seems to me, however, that this safeguard is a desirable one; that this power will often save the expense and trouble of applying to the High Court; that it is not likely to be lavishly used; and that if we can trust a man with the power of pronouncing a final decree, *à fortiori* we may trust him to say that an appeal shall lie from it.

"Now that the Council have heard a tolerably full account of the restrictions we propose to place on second appeals, they are in a position to decide whether the circumstances of the intermediate Judge justify the fears of those who think that the rule about two concurrent decrees will make him lazy. In the first place, the rule will only tempt him to affirm the first decree in those cases which are over two hundred rupees in value. If he deals differently with this class of cases and with those which are under two hundred rupees, his inconsistency will soon betray him. If, on the other hand, he affirms all decrees indiscriminately in order to preserve his consistency, applications to the High Court to have a second appeal admitted will certainly disclose his neglect of duty. I must say that the apprehension seems to me rather a chimerical one.

"It remains for me to give the Council some idea of the number of appeals which will be shut out by the proposed measure. I can only do it very imperfectly. I have a return showing that, in the year 1873, there were 2,453 special appeals decided in the High Court, of which 1,655 were under two hundred rupees in value. How many were appeals from affirmations, I do not know. In the first four months of 1873, 620 special appeals were decided, of which 260, or about two-fifths, were appeals from affirmations; 416 fell under the limit of two hundred rupees, and 521 under the aggregate operation of the two limitations. According to this, about five-sixths of the cases would be excluded by the two rules if unqualified: but of course many would be let in again by the discretionary powers of the Court, and how many those would be it is impossible to conjecture. I should be surprised if it were found that less than half of the appeals which now reach the Court were shut out. I believe that fully that proportion

ought to be shut out. On the other hand, there will be some appeals on questions of fact, which are shut out under the present system. At all events, we may hope that the frivolous and petty cases which now reach the High Court in great numbers will cease to do so; that some substantial cases will reach it which now cannot do so; and that those which do reach it will be decided in a way more satisfactory to Judges and suitors.

"I ought to add that the High Court as a body have given a general approval to the principles of the measure so far as I have described them.

"There is yet, however, an important proposal which I have not mentioned. I told you that in cases of the Small Cause type decided in the Munsif's Court, there is no second appeal unless their value exceeds five hundred rupees. We now propose to enact that in such cases there shall be no appeal at all unless their value exceeds twenty rupees. This, again, is a point at which the costs must exceed the sum at stake. The Council will remember that from the Small Cause Courts themselves there is no appeal, though the suit may be for one thousand rupees. With regard to suits for twenty rupees, it is provided that the Registrar of the Small Cause Court shall have jurisdiction if the Local Government chooses to give it to him, and that without appeal. I understand that no Registrars have been appointed, so that this provision has not been brought into work. But it shows what has been thought prudent in Small Cause Courts. We think it reasonable to put the Munsif's decree on the same footing as the Registrar's, though with considerably more safeguard, because we propose to qualify the finality of his decrees in the same way as we qualify the finality of appellate decrees. I am sorry that I have not in my hands information which would enable me to give the Council an idea what number of suits would be affected by this alteration. I can only commend it to you as sound in principle, at least if my foregoing arguments are accepted, and likely to be useful in practice."

The Motion was put and agreed to.

CHIEF COMMISSIONER'S POWERS (SYLHET) BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide for the exercise, in Sylhet, of the powers of the Lieutenant-Governor and Board of Revenue of Bengal. He said that the Council would remember the little Act recently passed to provide for the transfer of powers when the Chief Commissionership of Assam was set up. It was merely a formal matter. Now it was necessary to introduce a Bill of the same kind for Sylhet, because Sylhet was being assigned to the Chief Commissioner of Assam.

The Motion was put and agreed to.

EUROPEAN BRITISH MINORS BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide in the Panjáb and elsewhere for the guardianship of European British Minors. He said that this was a very simple case. In the territories which were subject to the jurisdiction of the High Courts, the Charters of the various High Courts provided for appointing guardians of European British Minors. Several Acts of this Council, XIV of 1858, XL of 1858, IX of 1861 and XX of 1864, provided for those persons who were not European British subjects. But there was a gap in the law with respect to those parts of the country to which the powers of the High Courts did not extend, and with respect to European British subjects; and this defect had been illustrated by two cases which occurred in the Panjáb. The object of this Bill was to provide for those cases.

The Motion was put and agreed to.

DISTRESSES (PRESIDENCY TOWNS) BILL.
SHERIFFS BILL.
STATUTES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE then said that the next three items in the list of business were all connected together, and he would ask the Council to allow him to make some preliminary observations which would apply to all the Bills. They all sprung from the wish of the Government to publish a new edition of the Statutes applying to British India. In framing the list of Statutes it was found that there were some cases in which it was doubtful whether or no a statute applied to British India, and others in which the old Statute-law was in a confused state.

In the year 1726, Courts were established by Royal Charter in the Presidency Towns, called 'Mayors' Courts;' and it had always been held that, at that time, the whole of the English Statute-law applicable to the local circumstances of the country was introduced into the Presidency Towns. The great mass of English Statute-law prior to 1726 fell under one of the four classes he would mention. First, there were a great number of Statutes which never were applicable in India at all; such as the Statutes regarding such subjects as Advowsons, Elections, and many others of the same kind. Then there was also a great mass of Statutes superseded by Indian legislation; such were all those relating to criminal law which were superseded by the Penal Code and the Criminal Procedure Code. These two classes comprised the great bulk of the Statute-law prior to 1726. Then there were some clearly applicable to the

whole of British India and indeed to all British possessions; such were the Statutes relating to the Settlement of the Crown. There were others again which were applicable to English persons and their property, but were not applicable to Hindús or Muhammadans, or other persons having a law of their own. Such were those which underlay the law of Real Property, the Statutes of Entails or *De donis*, of Subinfeudations or *Quia emptores*, and of Uses; Statutes which had got so encrusted with commentaries and judicial decisions that they seemed to an ordinary eye to be a part of the Common Law. These four classes embraced nearly the whole of the Statute-law prior to 1726. But there was another class of Statutes as to which there was some doubt whether they did apply, and if they did, whether they ought to apply to India. Such were the Statutes regarding Maintenance and Champerty; the Statutes relating to Arrests on Sunday; the Statutes relating to Distresses for Rents, and so forth.

What the Government proposed to do was, first, to enact a declaratory law, saying that the Statutes which were placed in the schedule were in force in British India, and repealing all the other Statutes. By that means we should get, in a compendious form, a declaration of the state of the Statute-law prior to 1726.

There were two special subjects upon which there were a number of old Statutes. We could not say that they were not in force, but they contained a great quantity of obsolete matter. These were the Statutes relating to Distresses for Rents and the Statutes relating to Sheriffs, and, in connection with the duties of Sheriffs, the law relating to the execution of decrees. Therefore it was proposed to pass the three Bills which were entered in the list.

First in importance was the Bill to declare the Statutes in force in the Presidency Towns. That Bill would clear away some doubtful questions. Take, for instance, such a law as that relating to Maintenance and Champerty. There were eight old Statutes on that subject, the most modern of which was a Statute of Henry VIII. The law, as practically administered, both in England and in India, was entirely different from the Statute-law. The old Statutes were in some respects too wide, and declared to be illegal and criminal a number of transactions very common in practice and treated as quite innocent and legal. In other respects they were too narrow, and failed to include a number of transactions which Courts of Justice held to be void as being unrighteous and against public policy. The fact was that the Courts had been proceeding on a code of morality rather than upon the Statute-law. Maxims much broader and more flexible than those of the Statutes had been intro-

duced, he believed originally by the great Ecclesiastical Chancellors, had been adopted by the Courts and had become part of the English Common Law. In India exactly the same law prevailed. We might abolish every one of those Statutes without interfering with the course of justice: on the contrary, if we were now to promulgate them, they would be taken as expressing the actual law and do considerable mischief. The schedule to the Bill had been framed on the cautious side, by the insertion of every Statute as to which it did not appear clear either that it did not apply or ought no longer to apply to British India. He hoped the learned lawyers in the Presidency Towns would give the Council the benefit of their opinion, and would point out all cases in which they thought the Bill had erred.

There was one section of the Bill which applied to Statutes passed subsequently to 1726. It was the third and last section. There was sometimes a good deal of doubt whether a particular Statute applied to British India or not, and there were conflicting decisions upon the point. Again, it was doubtful whether, where an old Statute did apply, subsequent amendments made by the Statute-law in England applied to India also. Of course there was not the least reason why they should. They might be suitable to the state of circumstances in England, and not to those in India. It was therefore proposed to apply the reasonable rule that a Statute should not apply to India unless it was applied by express words, or by necessary implication.

With regard to the Bill relating to Distresses for Rents, there were no less than eleven Statutes which related to that subject. They contained much obsolete matter. They were passed in days when legislators were all landlords, and they doubtless thought the subject of enormous importance. As regards arrears of rent which did not exceed one thousand rupees, they were provided for by our own Small Cause Court Act. It was now proposed to extend the provisions of that Act, with such amendments as experience had suggested, to all rents. It would be found that the Bill drawn on this subject contained every thing useful in the old Statutes, and that we might safely repeal all the eleven Statutes to which he had referred.

With regard to the Sheriff, there were ten Statutes relating to him, and they also contained a great quantity of obsolete matter. It was proposed to repeal them and to consolidate the law. The law was now contained in the old charters of the Supreme Courts and in two Acts of this Council, VIII of 1852 and VI of 1855, and in the ten old Statutes. The Sheriff's Bill was a purely consolidation Bill, and as such MR. HOBHOUSE introduced it.

The Hon'ble MR. HOBHOUSE then introduced the Bills—

To regulate Distresses for Rents in the Presidency Towns.

To consolidate the law relating to the Sheriffs, and to the execution of the decrees of the High Courts in the exercise of their Original Civil Jurisdiction.

To declare the Statutes in force in the Presidency Towns.

and moved that they be respectively referred to Select Committees with instructions to report in three months.

The Motion was put and agreed to.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill for the further amendment of Act No. I of 1859 *(for the amendment of the law relating to Merchant Seamen)*, and for other purposes.

Leave was granted.

The following Select Committees were named:—

On the Bill to regulate Distresses for Rent in the Presidency Towns——The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to consolidate the law relating to the Sheriffs, and to the execution of the decrees of the High Courts in the exercise of their Original Civil Jurisdiction——The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to declare the Statutes in force in the Presidency Towns——The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Council adjourned to Thursday the 2nd July 1874.

CALCUTTA,
The 23rd June 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

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