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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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 Thursday, the 2nd July 1874.

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 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 introduced the Bill to amend the law relating to Civil Appeals in the Presidency of Fort William, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the main principles and larger details of the Bill were fully discussed on the last occasion, if anything could be said to be discussed which was only spoken to by one man. He had now only to show how it was proposed to carry into effect the principles explained at the last Meeting.

The Bill was by the first section confined to Bengal.

Section two dealt with the twenty rupee limit. The Council would observe that it was confined to cases of what he had called the Small Cause type; that was to say, roughly speaking, to ordinary money demands. That would not affect that large class of suits which were concerned with questions in dispute between landlord and tenant, and which was now excluded from the jurisdiction of Small Cause Courts, and from the rule which prevailed in the Civil Courts prohibiting second appeals when the value of the suit was under five hundred rupees. It was only in cases where at present a second appeal was barred in suits under the value of five hundred rupees, that we proposed to abolish the first appeal when the value of the suit was under twenty rupees. There appeared to be some misapprehension

on this subject. He mentioned that particularly, as he was informed that some persons had become alarmed by supposing that the bar was extended to all appeals whatever, even in suits concerning land, where the subject-matter was only of the value of twenty rupees. That was the principal effect of section two. Two other cases were inserted in the section in which it was proposed to bar all appeal. Neither was of great importance, and they might be the subject of discussion in Committee. One case thus added, in which all appeal was prohibited, was where the decree had been made by consent of parties, or where there had been a written agreement to abide by the result of a decree made by an impartial tribunal. It was suggested to us by Mr. Ricketts of the North-Western Provinces, who urged that it would be a good thing to encourage agreements not to appeal. In the second case it was provided that there should be no appeal when it would only affect costs which by law were left to the discretion of the Courts. That was the rule which prevailed in England. In fact, the rule was wider there than the expression of it in this paragraph. The rule in England was that the Court above would not hear appeals in any matter which was purely discretionary with the Court below. It considered that it had not got the materials to enable it to hear appeals on such subjects, and that the Judge of first instance was likely to be the better judge in purely discretionary matters. This rule would probably not affect many suits.

Then came section three which contained the principal rules on which MR. HOBHOUSE had last week detained the Council a long time. Second appeals were barred when the limit of value did not exceed two hundred rupees; and again, when the first Court of appeal had agreed with the Court of first instance. The Council would perceive in the sub-section (*a*) to section three, a qualification placed on the first rule of pecuniary limit. It was provided that the limit should be two hundred rupees, or such less sum as the Local Government might from time to time direct for the district in which the suit was brought. That was a suggestion made, with a number of other useful suggestions, by Mr. Field, who had pointed out that what might be a good limit to lay down in the 24-Parganas, might be a bad limit in Chittagong. Therefore, he suggested that some discretion should be left to the Local Government to draw the line lower than the limit laid down by the Act. The next thing was to provide the means of moderating the action of the preceding limitations, lest they should be too harsh and stringent. For this purpose section four gave power to the Judge who made the decree to say that there might be an appeal from that decree. The Council would perceive that this power was confined to the judge personally, and not given to the Court: it was given

to the Judge who was the very person who made the decree, and not to his successor. There were two reasons for conferring this power. The first was that the man who had heard the whole case and who had made the very decree from which the parties wished to appeal, was perhaps the best judge of any body on the question whether there should be an appeal or not—at all events his opinion that there should be an appeal was a very weighty one. The second reason for giving this discretionary power to the Judge who made the decree was to save the expense of an application to the High Court. There might be a great many cases in which it might be quite obvious that a second or special appeal should be allowed, and in these the application might be made and granted without any separate hearing and within five minutes of the delivery of the judgment, and the parties would be put to no expense in going to the High Court for such permission. It was obvious that these reasons did not apply to a man's successor, but only to the man who had pronounced the decree. By section five it was provided that the Judge who did allow a second appeal should put his reasons into writing, and that such statement should form part of the record.

Section six provided the further qualifications of the general rules of limitation above laid down. Under that section a second appeal might be allowed to the Court above where it was not possible to estimate the subject-matter of the suit at a money-value, and where any question raised in the suit was of such importance to the public as in the opinion of the Court allowing the appeal to render an appeal expedient. These expressions were intended to cover the various cases which MR. HOBHOUSE specified in moving for leave to introduce the Bill. Whether they were so covered or not would be for the Select Committee to determine. He would only say, generally, that it was intended to cover cases of a particular character which raised important public questions, and cases whose value to the parties was not adequately represented by the money-value of the subject-matter in dispute. Then came the more general qualification, which he had mentioned as being a subject of considerable difficulty, namely, that a second appeal might be allowed where in the opinion of the Court above an appeal was necessary for the purposes of justice. It was proposed to add an explanation that it was not meant that the Court should ask itself the question whether or no it agreed with the decision of the Court below, and on finding that it did not, should hold that it was necessary for the purposes of justice that an appeal should be granted. That would make the whole rule perfectly nugatory. But where there had not been a proper hearing, or where some manifest mistake had been made, the Court might allow a second appeal. It had lately been publicly stated,

whether truly or not he did not know, of a certain Judge, that he was in the habit of committing the hearing of cases brought before him to one of the inferior officers of his Court. In such a case there would be good ground to apply to the Court above and say that there had been no proper hearing: that the Judge, it was true, had delivered judgment, but he had taken all his materials from somebody else. And then it would be for the Appellate Court to say whether or no there should be a second appeal. Again, there might be a mistake made which was common to all the parties, for which it could not be said that anybody was to blame and which had prevented the true case from coming before the Court. MR. HOBHOUSE remembered applying for the re-hearing of a case after some thirty years, because all the parties had overlooked a very old private Act of Parliament that bore upon the case. Its very existence had been forgotten, and it had a material bearing upon the case. The question debated was whether the Act of Parliament had been overlooked or not. The Crown, which was opposing the application, contended that his clients knew of the Act but considered that it was of no use to them, and that it was too late to alter their opinion. He persuaded the Court that there had been a complete forgetfulness of the matter, and so got a re-hearing. It was difficult to explain in abstract terms exactly what was meant, and the Select Committee might probably find it useful to give illustrations. It would be difficult, if not impossible, to use any language but such as was vague and would leave a great deal to the discretion of the Courts.

Section seven prescribed the time within which applications should be made for leave to appeal. The Bill proposed to give a short time where the application was to be made to the same Judge who made the decree. It was proposed that the time to be allowed in such cases should be ten days. It might, he thought, be even a shorter time. It was not desirable to prolong materially the time for appealing beyond what the present law allowed, so it was proposed to fix for the application for leave a time considerably shorter than that now laid down for appealing, and to make the time for appealing run from the date of the order allowing the appeal, instead of, as at present, from the date of the decree or order appealed against.

Then came a clause prohibiting special appeals in cases in which a second appeal was not specially allowed under the Bill. The next clause was intended to be a simple expression of the present system of appeals; and another was added for giving the subordinate Courts the power of stating a case or point of law for the decision of the Court above, instead of allowing an appeal.

That was the whole of the Bill. It was a matter of considerable delicacy and difficulty, and it was by no means sure that the meaning intended was

expressed. Any criticism, either within the Council or from without, would be most gladly welcomed.

He would add one remark. He had mentioned last week that the materials for judging of the number of appeals which the measure would affect were but scanty. He had that morning just received from Chief Justice Couch a further return embracing the period from the 1st January 1873 to the end of May of this year. That return brought out very nearly the same result as the similar return for four months which MR. HOBHOUSE had already mentioned. That earlier return showed that five-sixths of the appeals came under the combined operation of the two rules of limitation, if unqualified. The figures now furnished to him gave very nearly the same result, showing, as he calculated, that about six-sevenths came under the combined operation of the two rules. Of course the numbers which would be let in again by the discretionary action of the Courts must remain quite uncertain.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the *Calcutta Gazette* in English and in such other language as the Local Government might think fit.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Select Committee consist of the Hon'ble Messrs. Ellis, Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE said he had been somewhat unwell and therefore had not been able to go over the Bill so carefully as he ought to have done, considering its great importance. But he would state to the Council some of the objections which had occurred to him, and he trusted the Council would receive his observations indulgently. He did not deny that special appeals had been the cause of much litigation in this country; so much so that men sometimes risked their whole fortune to fight out the battle in the second appeal. Besides, the second appeal was, no doubt, sometimes used as an instrument in the hands of the powerful to oppress the weak. That, perhaps, was well known to the Council. To put a stop to this evil, the hon'ble and learned Mover of the Bill had thought proper to propose the remedy set forth in the present Bill. It was proposed that where the money-value of the subject-matter in dispute was less than twenty rupees, and the suit was in the nature of a Small Cause suit, there should be no appeal. And

it was further proposed—proposals to which he (Rájá Ramánáth Tagore) agreed —that there should be no appeal where the decree had been made by consent, or the parties had agreed not to appeal, and where the subject-matter related to costs only, which were left to the discretion of the Court. The proposals also extended to prohibit second appeals where the money-value of the subject-matter was less than two hundred rupees, and where the first Court of appeal agreed with the Court of first instance. These prohibitions might, however, be dispensed with by the Court that made the decree whenever it thought fit, and by the Court above where it was impossible to estimate the subject at a money-value, or where any question raised in the suit was of such importance to the public as to render a second appeal expedient, or where an appeal was necessary for the purposes of justice. Power was also given to the first Court of Appeal to state a case instead of allowing a second appeal. He had no objection to offer to the first of these proposals, namely, to the limitation of twenty rupees in suits in the nature of Small Causes; and he had none also to state to the proposal that there should be no appeal where the decree had been made by consent, or where the parties had agreed not to appeal, or where the subject-matter in dispute related only to costs. To these proposals he had no objections, and with regard to them he agreed entirely with the hon'ble and learned Mover of the Bill. But to the prohibition of a second appeal where the subject-matter in dispute was less than two hundred rupees, he took objection. If the right of second appeal were limited to cases where the money-value of the suit exceeded two hundred rupees, the greater portion of the suits which the people now brought in order to carry on ordinary trade and mercantile operations would, in a measure, be excluded. Consequently, the limit proposed appeared to him to be somewhat arbitrary. Why should the limit be fixed at two hundred rupees and not at some higher figure? Then, again, he begged respectfully to ask the hon'ble and learned Mover whether he intended to exclude from the advantages of a second appeal zamíndárs and ryots whose litigation generally was for small amounts—five, ten, or perhaps a hundred rupees. If the litigation between zamíndárs and ryots were to be excluded from the advantages of a second appeal, then grave injustice would be done to a most important section of the community, for, speaking broadly, they were the props of the British Government, so far as its financial prosperity was concerned. They were the people who contributed the greatest amount of revenue; and they had the largest stake in the stability of the British Government in this country. But he believed the hon'ble and learned Mover of the Bill did not knowingly intend to take away from the ryots and zamíndárs a privilege which they had enjoyed ever since the time of the permanent settlement. At present, whatever was

the magnitude of the amount at stake, they had the privilege of going up to the High Court for final decision. Let the hon'ble member consider the great rent case of Nuddea which came before the High Court, and say whether it would have come before it under the limitation of two hundred rupees as now proposed by him. Rájá Ramánáth Tagore therefore trusted that the Select Committee to which the Bill would be referred would take this important point into careful consideration.

He thought also that the proposal that there should be no second appeal where the Court of first appeal agreed with the Court of first instance was open to objection on principle; because, taking into consideration the constitution of the Mofussil Courts, if such a restriction were put upon the right of second appeal, it would lead to great abuses. And therefore he trusted that the Select Committee would also take this point into consideration.

He had no further remarks to make except, that he found there was a clause in the Bill which provided that the Act should come into operation immediately upon its passing. This, he thought, was objectionable on principle. The legislature ought to give time to the people whose cases would be affected by the operation of this Bill to arrange their affairs and settle their disputes before this Act came into operation, because many transactions had taken place between men under the belief that their cases would be thoroughly sifted on second appeal; and if they were suddenly deprived of that benefit, the injustice to them would be very great. He would suggest, therefore, that a certain time should be allowed to dealers, merchants, and others to settle existing disputes.

The Hon'ble MR. HOBHOUSE quite concurred with his hon'ble friend Rájá Ramánáth Tagore in thinking that the Select Committee ought to pay very great attention to all that he, the Rájá, had stated; and MR. HOBHOUSE had no doubt that they would do so, and he was glad that they were to have his hon'ble friend's services on the Select Committee. He would now answer him on two points.

In the first place his hon'ble friend appealed to him to know whether it was proposed to exclude from second appeal all questions between landlords and tenants. What MR. HOBHOUSE said was this—where these questions assumed the shape of mere money-questions; where there were no rights, which could not be quite well measured by money in dispute, it was his intention to exclude such cases from second appeal. If there were less than two

hundred rupees at stake, both parties should be contented with a single appeal. Enough of tribunals was provided for the amount at stake. But if they could show that there were rights involved beyond the mere money at stake—rights affecting other persons; rights of such importance to the public as to render a second appeal expedient; rights of importance in a political point of view—such cases would fall within the qualifications which would enable the Court to dispense with the prohibitions prescribed.

Again, his hon'ble friend was under the impression that the latitude of appeal which was now open to these parties had been their right ever since the time of the permanent settlement. On the last occasion MR. HOBHOUSE was at some pains to trace the history of this matter, and if he was right, his hon'ble friend was not right. Down to the year 1803, there was only one appeal which lay to the Sadr Díwání Adálat, and no case of less than one thousand rupees in value could be the subject of such appeal. From 1803 to 1843 there was a special appeal properly so called, such as it was proposed to give by this Bill. But there was no right of second appeal. The appeal was only given under the Regulation of 1803 and subsequent Regulations to the same effect, at the discretion of the Court, "if on the face of the decree of the zila or city Judge, or from any information before the Court, it should appear to them to be erroneous or unjust, or if from the nature of the cause, as stated in the decree, or otherwise, it should appear to them of sufficient importance to merit a further investigation in appeal". So that during those forty years there was the same sort of discretion which it was proposed to give now, only not so wide; and his hon'ble friend was mistaken when he said there was any such right ever since the time of the permanent settlement. In 1843 there was established the mongrel thing which succeeded to the name, but not to the nature, of the Special Appeal, namely, a regular second appeal upon points of law and practice at the will of the parties. And that was the arrangement which had caused so much reasonable dissatisfaction.

The Motion was put and agreed to.

CHIEF COMMISSIONER'S POWERS (SYLHET) BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the introduction of the Bill to provide for the exercise, in Sylhet, of the powers of the Lieutenant Governor and Board of Revenue of Bengal.

Leave was granted.

EUROPEAN BRITISH MINORS' BILL.

The Hon'ble MR. HOBHOUSE then introduced the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors, and moved that it be referred to a Select Committee, with instructions to report in three months. He had explained the object of this Bill when he got leave to introduce it, and he would now show how it was proposed to effect that object. The first section of the Bill before the Council showed its extent, which in one respect was a matter of very great difficulty. There was no particular difficulty about defining the geographical extent of the operation of the Bill, because it was necessary only to take care that it covered all British India not within the jurisdiction of a High Court. But with regard to its social extent, there was that difficulty which was always encountered in endeavouring to provide one law for one class of persons and another law for another class of persons. The definition of European British subjects, British-born subjects, Christian subjects of Her Majesty, and other similar expressions, which occurred both in English and Indian Acts, was an exceedingly difficult thing. What was proposed here, and it would be a matter for the Select Committee carefully to consider, was that the Bill should apply to persons born in the United Kingdom of Great Britain and Ireland, or any British colony, plantation, or settlement other than British India, and to their children and grandchildren. As far as could be judged, that would include all that it was desired to affect. There was no doubt that by this definition persons might be included for whom the law was not designed, such as negroes and others. It was easy to point out some absurdities of that kind, and to make the definition a subject of jest. But probably no practical difficulty would arise from including too many classes. Practically speaking, such machinery as this was used only by persons possessing property, and classes of the kind just referred to would not be found in this country and in possession of property. In such a matter as a Criminal Procedure Code, it was much more difficult to define all that was wanted and to exclude all that was not wanted. But in a subject-matter of this kind, a wide definition might more safely be relied on, because the Act would be applied only to persons possessing property.

It was proposed that a minor should be defined as a person who had not completed the age of eighteen years, so as to follow former precedents and the rule adopted in the Mahárájá of Vizianagram's Bill.

One part of the Bill, Part II, related to the appointment of guardians. It was proposed to give this power to the mother of a minor, who had not that power at present by law, in case the father was incompetent or dead; and the Court would have such power in every instance. Then the

question arose as to what should be done if a minor had property in more than one province: suppose, for instance, in the Panjáb and in Oudh. It was proposed that the Court which had jurisdiction over the minor by his residence should appoint such guardians of his properties as it thought fit. That was the simplest plan. Whether there were any administrative objections to that plan Mr. HOBHOUSE did not know at the present moment. There might be such objections. There might be reasons why the Courts of the Province in which the minor did not reside but did possess property should have something to say to the appointment of a guardian. If there were any such, he hoped they would be brought to notice by the local authorities. What was thought the simplest plan had been followed, and what was *primâ facie* the best. Then came two or three sections relating to procedure, and the Council would see that in framing them, Act IX of 1861 had been followed. Then there were laid down one or two broad rules to guide the Court in its appointment of guardians. These would be found in section 10, and two of these rules, (*a*) and (*c*), expressed what was the English law. Rule (*b*) did not express the English law, because it gave rather more *locus standi* to the mother than the English law did. Here the New York Civil Code had been followed.

The next Part related to the duties, rights, and liabilities of the guardian, and it was proposed with respect to the religion of the ward, and with respect to the bringing back a ward who had deserted to the home of the guardian, to follow what he believed to be the rules of the English law. That part of the Bill prescribed some of the simplest duties of guardians, as to taking care of his ward's property and as to his power of leasing, and also showed when his authority ceased.

Several of these provisions, referring to the duties and liabilities of guardians, were in the Bill which was now before the Council, to declare and amend the laws in Oudh. There they had experienced the same difficulty as that which had led the Panjáb authorities to propose the present measure. The provisions in the Oudh Bill would therefore be superseded by this Bill if passed into Law.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE moved that the Bill be published in English in the Panjáb, Oudh, the Central Provinces, British Burmah, Coorg, and Assam Gazettes.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend the law relating to Civil Appeals in the Presidency of Fort William,——The Hon'ble Messrs. Ellis, Bayley, and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors,——The Hon'ble Messrs. Bayley and Inglis and the Mover.

The Council adjourned *sine die*.

CALCUTTA,
The 2nd July 1874.

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

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