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,

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LAWS AND REGULATIONS.

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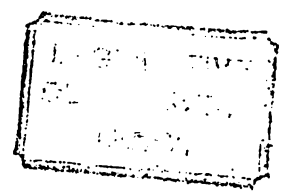

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 21st February 1877.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant Governor of Bengal.
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble D. Cowie.
The Hon'ble Mahárájá Narendra Krishna.
The Hon'ble J. R. Bullen Smith, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble R. A. Dalyell.
The Hon'ble R. E. Egerton, C.S.I.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.

LIMITATION OF SUITS BILL.

The Hon'ble SIR ARTHUR HOBHOUSE introduced the Bill for the limitation of suits, and for other purposes, and moved that it be referred to a Select Committee. He said that at the last meeting he had given reasons which the Council thought sufficient for the introduction of some Bill, and had said that he would explain the nature of the Bill when he came to introduce it.

He would first mention that the "other purposes" which were tacked on to the expression "limitation of suits" were to provide for the acquisition of rights by prescription and to ascertain the periods of time within which applications should be made in proceedings in law-suits. But the principal object of the Act was the limitation of suits; and in order to show the Council the

nature of the amendments, he would remind them briefly of the principle upon which the Act was framed.

Now everybody knew what was the nature and object of a Statute of Limitations: its object was to prevent stale claims from being enforced; and its nature was to specify the times at which claims should be considered to be stale claims. For that purpose it was necessary to fix some point of time as a point from which the period of limitation assigned should begin to run. And, secondly, it was necessary to fix what that period should be.

With regard to the second matter, it was a comparatively easy thing to mention the length of time which should run in order to bar a claim. Of course such rules must follow general custom and convenience, and he supposed it would not be possible to frame a satisfactory time-table without considerable previous experience of law-suits. But such rules were in their own nature of an arbitrary kind. There was no reason in the nature of things why a claim which was in full force on the 31st of December should be extinguished on the 1st of January. We could assign no reason except necessity, the tyrant's plea; unless we were to let a claim run on for ever, we must draw a line somewhere. Wherever it was drawn, it must be an abrupt and arbitrary line; and it was just as easy to draw a line of that kind at one point as at another.

But the great difficulty was to fix the time which should be the starting point of the period of limitation. That had been usually done by saying that the suit should be brought within such and such a time from the creation or arising of the cause of action; and so it was done by the law which prevailed in India before the Act which they were now amending, Act IX of 1871. But such enactments as these were pregnant with numerous embarrassments. "Cause of action" was an ambiguous term; and it was found in many cases a matter of much difficulty to say when the cause of action arose. The consequence had been that there had been difficulties, disputes and law-suits innumerable turning on this expression "cause of action." It would not be difficult to state to the Council cases in which such questions were of a refined and subtle nature. But by way of illustration, he would take a case of the simplest kind and of most constant occurrence. Take the case of a bill of exchange payable at a future date, drawn by one man in favour of another; accepted by a third person, and endorsed by a fourth. When did the cause of action arise in favour of the drawee? Was it when the bill was drawn, or when it was accepted, or when it was made payable, or when it was dishonoured, or when it was endorsed, or when notice of dishonour was given to

the endorsee? All these events might happen at different times, each entered into the cause of action, and of each it might be contended that it was the cause of action. Again, the cause of action would be varied according as an action on the bill was brought by the drawer, the endorser, or the endorsee. To each of these parties there would be different times at which happened the principal one of those events which together constituted the cause of action. It would be seen therefore that the use of this phrase "cause of action" led to a great deal of dispute when you came to fix the starting-point of limitation.

The principle of the Indian Limitation Act was that for the most part it abandoned the phrase "cause of action," and instead thereof specified a great number of different suits, and took for each suit some definite time or definite event to constitute the starting-point of the period of limitation. He would refer again to the case of a bill of exchange or a promissory note, which was the same thing. In the schedule of our Act no less than fourteen different cases were put relating to suits on bills of exchange or promissory notes, and in each of these cases some definite time or event had been fixed as the starting point for the period of limitation. For instance in No. 68 of the schedule it was said that a suit shall not be brought on a bill of exchange payable at a fixed time after date except within three years after the time when the bill falls due. In No. 69 it was said that a suit shall not be brought on a bill payable at sight except within three years after it has been presented. And so on through the various circumstances attending bills and notes. There were 150 different kinds of suits mentioned in the schedule, in each of which, excepting he thought only one, some appropriate time or event was fixed as the time from which the period of limitation should be computed.

It was obvious that a law framed on this principle was much more specific and easy to work than one which was constantly referring us back to the cause of action in order to find the starting-point of time. It was also obvious that, inasmuch as the legislator took upon himself work which had previously been done by Courts of Law, he was likely to fall into mistakes by fixing sometimes inconvenient starting-points, and sometimes inconsistent ones for similar cases.

We had no reason to believe but that the existing Act had on the whole adopted convenient and reasonable starting-points, or that it was on the whole consistent and easy to work. But some cases had been brought to his notice, principally by Chief Justice Garth, in which the point fixed was not convenient, and some in which the Act was not altogether consistent with itself.

These were the respects in which it was proposed to amend the Act. And it was observed by his predecessor, Sir James Stephen, when the Act was pending before Council, that one of the advantages of constructing the law on this principle was, that it would admit of amendment with great ease. It was obvious that if they were merely to alter a single item in the schedule, they could amend the Act with a less amount of consideration and trouble than if they were changing the whole principle which applied to a numerous class of cases. They had therefore taken the opportunity afforded by the necessity of making a number of alterations in order to bring part of the Act into accord with the Civil Procedure Code, to introduce other amendments which were recommended by Sir Richard Garth, or which had been noted from time to time in the Legislative Department as desirable.

He always felt great difficulty in explaining to the Council a Bill like this, which consisted of a great number of details. It would take a great deal of time, and probably the time would not be well spent, if he went through all the different items in which it was proposed to amend the law. Perhaps it would be better if he were to give two or three instances by way of sample, from which the Council could judge of the bulk, and could see the way in which they proposed to alter the Act.

He would take the 22nd item in the schedule to the Bill which answered to No. 23 of the existing Act. That item said that a suit for malicious prosecution must be brought within one year from the time when the plaintiff was acquitted. But it had been pointed out that the plaintiff might never be acquitted, and in fact no prosecution was so likely to break down as a malicious prosecution. It might be abandoned without the jury or the Judge being called on for a verdict. It was proposed to alter that No. by saying that the time when the period of limitation began to run should commence when the plaintiff was acquitted, or the prosecution was otherwise terminated.

He would take next No. 33 in the schedule to the Bill, which was equivalent to No. 38 of the existing Act, which said that a suit against one who, having a right to use property for specific purposes, perverted it to other uses, must be brought within two years from the time of the perversion. Again it had been pointed out that no cases were so likely to escape notice for considerable periods of time, as the case of a man who had lawful possession of property and had a right to use it for one purpose, but used it for another.

Sir Arthur Hobhouse said that he might hand his clothes over to the care of his valet, and go upon his travels for a year or two, and that the valet, instead of performing the usual duties of a valet and keeping the clothes clean and

tidy, might wear them, and he on his return might find them dirty, patched and threadbare. Or he might leave his plate with his bankers, who instead of locking it up in their strong-room might take a fancy to use it at their entertainments and return it to him battered, dinted and spoilt. In such cases the whole period of limitation might elapse before the injured man had any chance of knowing of the wrong done to him, and there was no reason why he should be so deprived of his remedy. It was therefore proposed to alter the law by providing that such a suit might be instituted within two years from the time when the perversion first became known to the person injured.

He would pass on to No. 122, which answered to No. 125 in the existing Act, which said that a suit by a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property must be brought within twelve years of the date of the alienation. There again it had been shown that the alienation was a thing likely to be unknown to the party injured. A father and son, for instance, lived together, and the father executed a mortgage of the ancestral property; there might be no change of possession and nothing might be known to the son of the alienation that had been made. They might perhaps continue to live together, and the father might die twenty years after the alienation, and then it might be found that an alienation had been effected, and the son was barred of his right merely by lapse of time, although he did not know of the act which constituted the alienation. It was proposed to alter that by saying that a suit might be brought within twelve years of the time when the alienee took possession of the property. Change of possession was a fact which must be known and which must call everybody's attention to what had taken place, and it was right enough that if with that notice of an invasion of his property the injured man did not stir to protect it, he should be barred by time.

The next item which he would notice was No. 123, which answered to No. 127 of the existing Act. The Act said that a suit by a Hindú excluded from joint family-property to enforce a right to share therein must be brought within twelve years from the time when the plaintiff claimed and was refused his share. There the starting-point was the claiming of the share; but a man might not choose to claim his share; he might allow his claim to lie by thirty forty or fifty years, seeing himself excluded: and at the end of fifty years, he might claim his share, and from that time the period of limitation would begin to run. He had been informed by the Chief Justice that such a case had recently happened, in which a man saw himself excluded from property for twenty or thirty years, during which time he had stood by and made no claim.

At the end of that time he turned up and made a claim, and it was found that the statutory limitation had not run against him. It was proposed to alter that, and to provide that such a suit should be barred by the lapse of twelve years from the date of the exclusion.

He had mentioned cases in which the Bill altered the starting-point of the periods of limitation. There were some other alterations of the same kind. In other cases the Bill altered the length of the period of limitation. Take for instance No. 39 of its schedule, which answered to No. 11 of the existing Act. The Act said that a suit for damages for infringing copy-right or any other exclusive privilege must be brought within one year from the date of the infringement. Now that was a kind of case in which it often took more than a year for the injury to assume sufficient proportions for the injured person to know anything about it, or for him to think it worth while to bring a suit. A piracy may be committed on a book which for a year or more may meet with no success, but after that, by dint of advertising or by some good luck, the piratical work may meet with a great sale, interfere seriously with the genuine one, and make it worth the author's while to protect his rights. In such case he would find that his chance of protection was gone. Therefore it was proposed to fix a limitation of three years for such cases.

The other points in which the Bill altered the periods of time were the last three suits mentioned in the Act, in which the enormous period of sixty years had been allowed. That was a continuation of old law, and was generally felt to be inconvenient. The cases in which this lengthened period of time was allowed were—(1) suits against a mortgagee to recover possession of immoveable property mortgaged; (2) before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged; (3) any suit in the name of the Secretary of State for India in Council. The Bill proposed in these cases to fix the more moderate period of thirty years.

The body of the Act contained some general rules applying to *all* suits mentioned in the schedule, and in one or two of these the Bill proposed to make some addition to the law. Section 7 provided for the case of persons who were under successive disabilities. For instance, at the time when a right to sue accrued, a man might be an infant, and before he attained his majority, he might become a lunatic. Here no point of time had occurred during which such person could bring a suit. The question was whether the starting-point for the period of limitation should not be after he was free from disabilities. It was not so provided in the existing Act, SIR ARTHUR HOBHOUSE thought, on

the sole ground that such consecutive disabilities were exceedingly rare. The attention of the Legislative Department, however, had been called to this omission, and he thought it a sound principle that every man should, if possible, have some time in which he might bring a suit when he was freed from disabilities. They had adopted the rule of the English law, that when two disabilities were concurrent, the period of limitation should not begin to run until both those disabilities ceased.

Section 30 of the Bill provided for the case of a series of trespassers on land adverse to one another and to the rightful owner. A case might happen in which successive squatters occupied land for periods of time sufficient in the aggregate to bar a suit by the owner. Which should retain the property? It was not a case which often happened, but it did sometimes, and so it was necessary to say which of the wrong-doers should have the property. He thought that it was more convenient and more defensible in principle to let the property be retained by the man who was in possession when the rightful title was extinguished. If the successive trespassers had relations with one another which gave to one a right of possession as against another, that right might be enforced. But if they were entire strangers to one another, and all were alike wrong-doers as regards the rightful owner, the possession had better remain where accident placed it at the time when the law said that no suit should be brought by the rightful owner to disturb it. It had been so decided by the late Master of the Rolls a few years ago.

He did not know that he need go further into the details of the amending Bill. He had given specimens of the various kinds of amendments which had been proposed. If any of his hon'ble colleagues wished to go further into the matter, he should be glad of it, and would be happy to postpone his motion to refer the Bill to Committee. He hoped that in that case his hon'ble colleague would read the Bill and the Statement of Objects and Reasons, in which every one of the alterations was specified, and would state his views before the Bill went into Committee. But perhaps the Council would be content to leave the matter in the hands of the Select Committee: if so, they would accept the motion he had to make, that the Bill be referred to a Select Committee.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE would beg to draw the attention of the Council to one or two points in the Bill. In the first place he would observe that under section 27, any person who had enjoyed the use of light, air or a water-course for twenty years without interruption, acquired thereby an absolute and indefeasible right to the easement. Then, by

section 24, in the case of a continuing wrong, a recurring right to sue arose at every moment of the time during which the wrong continued. Suppose the person to whose prejudice this right to easements were exercised felt that he had a continuing wrong, in that case MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE thought that twenty years' use would not give a prescriptive right; for this section provided that, in the case of a continuing wrong, a fresh period of limitation began to run at every moment of time during which the wrong continued. He might be mistaken, but it appeared to him that the two sections taken together were somewhat inconsistent.

Then with regard to No. 123 of the schedule, which corresponded with No. 127 of the existing Act, and to which the hon'ble and learned mover of the Bill had just alluded, he observed that the period of limitation to enforce his right in the case of a Hindú excluded from joint family-property was proposed to be fixed at twelve years from the date of the exclusion. The existing law provided that the period of limitation should run from the time when the party claimed and was refused his share of the property, but in the present Bill it was proposed to alter the limitation to twelve years from the date of the exclusion. The Maháráját must confess that this provision might operate very harshly upon a person (a Native of Bengal for instance) who had been living for a long time in the Panjáb; he might not have the opportunity of knowing when he was excluded. His co-sharers might have executed a document excluding him, and registered it, without his having the opportunity of knowing it. It would be very hard therefore if the period of limitation were to run from the date of the exclusion, and not from the time when he claimed and was refused his share: it was from no wilful negligence that he had no knowledge of his exclusion.

Then again in No. 42 the period of limitation was to run from the date when a sale had been effected by the guardian of a ward. But in other cases the principle had been adopted that the date of limitation in the case of minors and wards should run from the date when they attained their majority. MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE did not see why there should be an alteration in computing the period of limitation with regard to sales by the guardians of wards.

In other parts of the Bill some discrepancy occurred with regard to the periods of limitation fixed by the Civil Procedure Code and by this Bill. In No. 151, for instance, it was provided that an application for an order under section 258 of the Code, compelling a decree-holder to certify payment or adjustment, should be made within ten days from the time when the payment

or adjustment was made. In the Civil Procedure Code it was provided that such applications should be made within eight days. And so in No. 153, for leave to appear and defend a suit under chapter XXXIX of the Code.

Then No. 160 provided that applications under section 364 or 366 of the Civil Procedure Code by persons claiming to be the representatives of deceased plaintiffs should be made within thirty days from the date of the plaintiffs' death. That appeared to MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE to be too short a time. In most cases thirty days was the time of mourning for Hindús, and unless the time was extended, it might operate harshly: a man could not be expected to come forward and put in his claim within the period of mourning.

These were the points in the Bill to which he would invite the attention of the Council, in order that they might receive the consideration of the Select Committee.

The Hon'ble SIR ARTHUR HOBHOUSE thought it would be most satisfactory, if his hon'ble friend Mahárájá Jotíndra Mohan Tagore consented to it, that he should be placed upon the Select Committee. He had paid great attention to various items in the schedule, and he would have an opportunity to state his views in Committee. It would not be convenient if we entered into a discussion of the various items in the schedule at the present time.

The Motion was put and agreed to.

The Hon'ble SIR ARTHUR HOBHOUSE moved that the Bill be published in the *Gazette of India* in English, and in the local Gazettes in English and in such other languages as the Local Government directs.

The Motion was put and agreed to.

PRESIDENCY MAGISTRATES BILL.

The Hon'ble MR. HOPE presented the final Report of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of Police Magistrates in the Presidency Towns.

CIVIL PROCEDURE BILL.

The Hon'ble SIR ARTHUR HOBHOUSE moved that the Hon'ble Mahárájá Jotíndra Mohan Tagore be added to the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the limitation of suits, and for other purposes—The Hon'ble Sir E. C. Bayley, the Hon'ble Messrs. Cockerell and Dalyell and the Mahárájá Jotíndra Mohan Tagore and the Mover.

The Council adjourned to Wednesday the 28th February 1877.

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

CALCUTTA,
The 21st February 1877.

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