

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

OF THE

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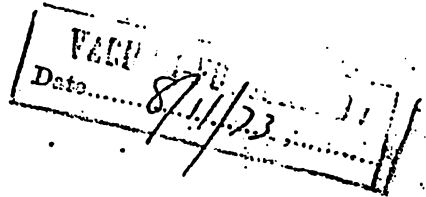
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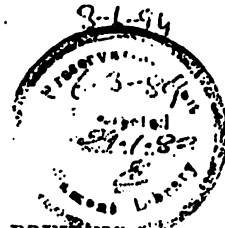
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1880.



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 7th May, 1879.

P R E S E N T :

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

His Excellency the Commander-in-Chief, G.C.B.

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., C.S.I.

The Hon'ble Sir J. Strachey, G.C.S.I.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to amend the law relating to Civil Courts in Oudh. He said that the origin of the proposed legislation was the necessity which had arisen for levelling up the judicial establishments of the "Non-Regulation" to the standard of those maintained in the "Regulation" Provinces.

From the time of the introduction of uniform Codes of Procedure into *all* the Provinces of the Empire, this result must have been foreseen as sooner or later inevitable; for an elaborate Code of Procedure naturally not only promoted an increase of litigation, but also tended in a still more marked degree to enhance the time occupied in the disposal of every contested suit. The Secretary to the Government of the North-Western Provinces, in a letter addressed to the Government of India relating to this measure, wrote :—

"Although Sir George Couper has always been strongly in favour of the non-regulation system, he must admit that, owing to various causes, it is now out of date. It is enough to mention one fact; and that is the number of legal practitioners who practise in our Courts. Formerly, the parties appeared in person, and the Judge had little difficulty in ascertaining the facts of the case. Now, in a great number of suits the parties are represented by barristers or pleaders; it is not only much more difficult to get at the bottom of the case,

but a great deal of time is taken up by the arguments of the lawyers; and it is no exaggeration to say that a case which would formerly have been disposed of in an hour, now often occupies the Court for two days."

Now he (MR. COCKERELL) did not wish it to be inferred from his citation of this passage that he in any way endorsed the suggestion that the action of lawyers in the conduct of cases tended to mystify or obscure the true facts and history thereof; on the contrary, he could say from his own experience that the aid afforded by the presence of lawyers on behalf of the parties in the trial of cases was extremely valuable; but at the same time it was an unquestionable fact that the interposition of these gentlemen did tend to protract the trial of suits in a great degree, and that such interposition had considerably increased of late years, and was one of the direct results of the introduction of a clear and elaborate law of procedure.

It was a somewhat remarkable fact also that in this little Oudh Province the proportion of contested to uncontested suits was far greater than in any other Province; it amounted to about 45 per cent. of the entire number of suits disposed of, whilst (to take, for the sake of comparison, a case in the extreme converse direction) in the Bombay Presidency the ratio of contested to uncontested suits was, according to the latest published statistics, barely one to five. The strain of increased judicial work upon the Oudh officers in their dual capacity of Judges and Revenue Administrators became so great, and the Revenue administration of the Province was found to have suffered from this cause to such a marked extent, that in 1876-77 a Committee of Oudh officers was appointed to look into the whole matter, and devise some means of relief. The measure now to be adopted, if the Bill which he was asking leave to introduce became law, was the outcome of that Committee's report. It was certainly a much more comprehensive measure than that which was adopted to meet a similar state of things in the Panjáb a few years ago, not only because it afforded more substantial relief to the overworked local executive, but because it was likely to be far more satisfactory to the public, inasmuch as it purported to create a judiciary absolutely distinct from, and wholly independent of, that executive, after the model of the system which was in force in the older Provinces.

The "Oudh Judicial Scheme," as it was called, which had received the sanction of the Secretary of State, provided for the entertainment of four District Judges, twelve Subordinate Judges and twenty-two Munsifs, all subject to the control of the existing Judicial Commissioner as a High Court for the trial of all civil suits and appeals. Oudh was at present divided into twelve districts and four Commissioners' divisions, which for revenue and executive purposes would remain unaltered. For the administration of civil justice these divisions

would constitute "districts," with one Judge and an average of about four Subordinate Judges and six Munsifs for each "district." No practical inconvenience was to be anticipated from an arrangement of this kind ; for there was nothing new in thus combining two or more revenue districts for civil Court purposes and placing them under a single Judge. There were in the North-Western Provinces, he believed, some six or seven, and in Bengal certainly not less than eight or nine, such combinations, which hitherto had been found to work satisfactorily.

The present Oudh Courts Act, both as regarded the nomenclature of the several Courts and the pecuniary limits of jurisdiction which it assigned to each class of Courts, was not adapted to the proposed change of system ; hence fresh legislation had become necessary.

The Bill which, if the permission of the Council was accorded, he desired to introduce, was drawn mainly on the lines of the Bengal Civil Courts Act of 1871, with one or two important exceptions designed to meet the special circumstances of the Oudh Province.

He would, for the present, reserve any detailed account of those exceptions and the reasons for them, as falling properly within the explanation which he would have to submit to the Council when introducing the Bill.

The Motion was put and agreed to.

PANJÁB ADDITIONAL FINANCIAL COMMISSIONER'S BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to provide for the appointment in the Panjáb of an Additional Financial Commissioner.

He said that the Financial Commissioner of the Panjáb had applied to Government for the assistance of an officer, to be appointed for a limited period, to help him in clearing off the arrears of work which had accumulated in his office during the incumbency of his predecessor, the late much-regretted Mr. Gore Ouseley.

The Panjáb Land-Revenue Act, 1871, however, only provided for the appointment of one Financial Commissioner, and appeared to contemplate that all the duties which it assigned to the Financial Commissioner should be performed by that one officer in person. Further, it might be a question whether the functions of the Financial Commissioner under certain other enactments could be devolved upon any other officer. Hence the necessity for legislation.

The present Bill would authorize the Local Government, with the previous sanction of the Governor General in Council, to appoint an Additional Financial

Commissioner to perform such portion of the work of the Financial Commissioner, under any enactment for the time being in force, as that officer might choose to assign to him.

The Motion was put and agreed to.

MR. STOKES then introduced the Bill. The Legislative Department had been so recently instructed to prepare it that there had been no time to print it and to circulate it in the usual way to Hon'ble Members. It had, however, been carefully settled in consultation with the Hon'ble Members (Sir A. Arbuthnot and Mr. Rivers Thompson) who were respectively in charge of the Home and Revenue Departments; and his hon'ble friend the Financial Member (*frugi dicatur*, as Horace would say) would be glad to hear that the Bill was only a temporary measure, and would expire on the 30th September, 1879. He (MR. STOKES) would now read the Bill to the Council:—

“ A BILL

TO

Provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

“Whereas it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows:—

Preamble.

Short title.

Commencement.

“1. This Act may be called ‘The Panjáb Additional Financial Commissioner’s Act, 1879’: and it shall come into force at once.

“2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

“Every person so appointed shall hold his office during the pleasure of the Governor General in Council:

“Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

“3. Every Additional Financial Commissioner, appointed under section two, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor, from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter pending before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time to time, transfer to him for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

Business transferred by Financial Commissioner to be disposed of by Additional Financial Commissioner.

“The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him.”

Power to withdraw cases so transferred.

The Hon'ble MR. STOKES applied to the President to suspend the Rules for the Conduct of Business. The matter was one of great urgency ; the arrears in the office of the Financial Commissioner were exceedingly large, and the public interest required that not a day should be lost in clearing them off.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

TRADE-MARKS BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill for the registration of Trade-marks. He said that this Bill had been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies had called the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which had been held by the High Court of Bombay not to apply to India), and stated that it seemed desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

The Bill was nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seemed desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts was merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England, and thus to give the Indian Courts the guidance of the decisions of the English tribunals on the corresponding provisions of the English enactment.

The Motion was put and agreed to.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20. He said that section 20 of the Cantonments Act (XXII of 1864) declared that breaches of the Cantonment rules should be triable by the Cantonment Magistrate where there was such an officer, and empowered the Local Government to invest any other person with power to try such breaches. The section then declared that the Magistrate of the District should have no control over the Cantonment Magistrate or any other person so invested. Now, in a case tried some months ago by an officer specially invested under section 20 with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt (which, if MR. STOKES might venture to say so, was perfectly well founded) as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurred as to the need of such a power, and the present Bill had been drafted to provide it.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

PLEADERS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble MR. Colvin be added to the Select Committee on the Bill to amend the Pleadings, Mukhtárs and Revenue Agents Act, 1865.

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. THOMPSON moved that the Hon'ble Messrs. Cockerell and Colvin be added to the Select Committee on the Bill to appoint Commissioners for the Port of Rangoon.

The Motion was put and agreed to.

N. W. P. LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

ODDH LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN also presented the Report of the Select Committee on the Bill to amend the Oudh Land-Revenue Act, 1876.

The Council adjourned to Wednesday, the 21st May, 1879.

SIMLA;
The 7th May, 1879. }

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.