

*Friday,
18th September, 1903*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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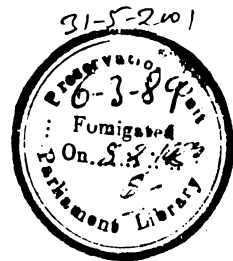
ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

1903

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 18th September, 1903.

P R E S E N T :

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir C. M. Rivaz, K.C.S.I., Lieutenant-Governor of the Punjab.

The Hon'ble Mr. T. Raleigh, C.S.I.

The Hon'ble Sir E. F.G. Law, K.C.M.G., C.S.I.

The Hon'ble Major-General Sir E. R. Elles, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Sir C. L. Tupper, K.C.I.E., C.S.I.

CASE OF THE KING-EMPEROR *V.* BAIN.

Before the business of the Council was proceeded with, the Hon'ble SIR DENZIL IBBETSON made the following remarks :

" My Lord, before we enter upon the business of the day, I desire, with Your Lordship's permission, to say a few words in connection with the criminal case of the *King-Emperor v. Bain* which has recently been before the High Court at Calcutta, and which has attracted much public attention. I do not propose in any way to discuss the merits of the case. But it is evident from what has appeared in the public Press that there is much misapprehension as to the facts, some of which are within the knowledge of Government alone ; and, as it seems desirable that this misapprehension should be removed, I propose briefly to trace the history of the proceedings.

" Towards the end of last December Mr. Bain, who was the Assistant Manager of a tea-garden in Cachar, was charged before the Deputy Commissioner of that district with the culpable homicide of one of his coolies named Lalsa.

[*Sir Denzil Ibbetson.*] [18TH SEPTEMBER, 1903.]

The Deputy Commissioner held the usual inquiry, which resulted in his committing Mr. Bain to the Sessions Court. He was tried in February last by the Sessions Judge of Cachar and a jury composed of five Europeans, of whom four at least appear to have been planters of the district. It was alleged by the prosecution that Lalsa and two women, who were respectively his wife and niece, having absconded and been caught, Mr. Bain had with his own hands flogged Lalsa with a stirrup-leather, so that he collapsed and presently died; and that he had also caused the two women to be beaten. On these allegations the accused was charged, in respect of Lalsa with the offence of culpable homicide not amounting to murder and of voluntarily causing grievous hurt, and in respect of the women with abetting the offence of voluntarily causing hurt. The charge of culpable homicide, however, was not pressed at the trial. For the defence it was denied that Mr. Bain had either beaten Lalsa or caused the women to be beaten, and it was asserted that the charges were the result of a conspiracy. The jury, after hearing the evidence and being duly charged by the Judge, returned a unanimous verdict. They acquitted Mr. Bain of abetting hurt to the women. As regards Lalsa, they acquitted the accused on the charges of culpable homicide and grievous hurt, but they found him guilty of causing simple hurt; and the Sessions Judge, accepting this verdict, sentenced Mr. Bain to six months' simple imprisonment. This was on the 20th February. No appeal was made against this sentence, and Mr. Bain was removed for his term of imprisonment to Calcutta.

"The proceedings in the case had been reported to the Government of India by telegram in accordance with standing orders which have been in operation since 1897; and, on receiving intimation of the result of the trial, that Government, on the 27th February, telegraphed for a copy of the judgment. The order containing the findings and sentence was despatched on the 4th of March, but the heads of the Judge's charge to the jury did not reach the Government of India until the 30th March. These papers were considered by the Departments concerned. They regarded as conclusive the unanimous finding of the jury upon the matters of fact which were in issue, namely, that Mr. Bain had beaten Lalsa, but had not caused the women to be beaten, supported as this finding was by the Judge's recorded opinion that the evidence on the former point was very strong, both direct and circumstantial, that the evidence on the latter point, while fairly strong, was far weaker than that on the former, and that the statement for the defence was improbable and absolutely unsupported by any evidence. In the absence of the record, they saw no reason to question the

[18TH SEPTEMBER, 1903.] [*Sir Denzil Ibbetson.*]

acquittal on the charge of grievous hurt. But they regarded the sentence of six months' simple imprisonment as inadequate to the offence of which the accused had been found guilty; and they felt a special responsibility for the due protection from injury or ill-treatment of persons who are employed upon the Assam tea-gardens under legislation which the Government of India have themselves enacted, and the operation of which they are in consequence under a peculiar obligation to safeguard from injustice or abuse. They proposed, therefore, to address the Chief Commissioner on the subject.

"The concurrence of the Viceroy, who was then on tour, having been obtained, the Chief Commissioner was addressed in a letter dated the 28th April. The views of the Government of India were explained to him, and he was asked to send for and examine the record, and, if he thought proper, to move the High Court to enhance the sentence. In the event of his considering it inadvisable to adopt this course, he was asked to send the record to the Government of India and to state the considerations which had led him to that conclusion. The Chief Commissioner's reply reached the Government of India on the 25th May. He was of opinion that the offence demanded a severer sentence than that which had been passed, and that the term of imprisonment might have been extended, or the imprisonment might have been with hard labour. But, regarded as a deterrent, he thought the sentence adequate, and on general grounds of expediency he was disinclined to apply for its enhancement. He therefore forwarded the record in the case.

"The matter was again considered by the Departments concerned. For reasons already stated, they were not disposed to accept the Chief Commissioner's conclusions as regards an application for enhancement. And upon a careful examination of the complete record, which was now for the first time in their possession, they thought it most desirable that the charge of grievous hurt should, if the Law Officers of Government advised such a step, be further investigated. In order to enable Government to arrive at a decision on this point, they proposed accordingly to consult the Advocate General. A doubtful point of fact was cleared up by a telegraphic reference to Assam, and on the 10th June the Solicitor to Government was addressed. The doubts which the Government of India entertained were explained, and he was directed to consult the Hon'ble the Advocate General as to whether, in his opinion, it was desirable to file an appeal against the acquittal on the charge of grievous hurt, and also whether, either in connection with such an appeal or

[Sir Denzil Ibbetson.] [18TH SEPTEMBER, 1903.]

independently of it, he would recommend an application for the enhancement of the sentence.

"The Advocate General's opinion reached the Government of India on the 17th of June. Since any summary of it might be the subject of misrepresentation, I propose to quote it in full :—

'I have perused the copy of the depositions on the trial and the notes of charge and other papers. Where the trial is by a jury, an appeal will lie, even at the instance of Government, on a matter of law only, and in this case an appeal will only lie if the Judge has misdirected the jury by failing properly to explain to them the law on the subject of grievous hurt. As to this the notes of charge are very meagre; and he may possibly have made good in his full charge certain deficiencies appearing on the notes. He lays down in the notes as one of the important questions of fact "(b) if so, did the beating amount to grievous hurt"; and upon this he says "evidence as to (b) somewhat doubtful, since this depends upon direct evidence which is weak as to detail." I think he is in error and has misdirected the jury here, because it does not depend on the direct evidence alone, but on the direct evidence coupled with all the medical evidence, which is most material. He again refers to this question in the latter part of the notes as follows :—" (b) If they believe the man was beaten for the best part of an hour, they should convict under section 325." In this I also think he misdirected the jury, for he in effect told them that if they should not find that the man was beaten for the best part of an hour, they should not convict him under section 325; whereas he ought to have told them that the actual duration of the beating was immaterial upon this question, and he ought to have explained to them the law as to what constituted grievous hurt under the eighth head of section 320. But the High Court may think that he may have supplemented in his full charge the defects in the notes; and, if the appeal against the acquittal fails, the Court would have no power upon the appeal to enhance the sentence on the conviction for simple hurt. Still the High Court has, in the case of *Mehter Ali v. Empress*, I. L. R. 11 Cal. 530, in dismissing the appeal, directed as a Court of Revision that the sentence should be enhanced. I am therefore of opinion that it will be desirable to file an appeal in the High Court against the acquittal under section 325, and to add to the petition of appeal a prayer that, in case the Court should hold that there were no sufficient grounds for the appeal, the Court should, in the exercise of its revisional jurisdiction, enhance the punishment on the conviction for simple hurt.'

"Acting upon this advice, which was the sole opinion received, the Government of India directed the Chief Commissioner of Assam to instruct the Law Officers of Government to file an appeal against the acquittal on the charge of causing grievous hurt to Lalsa, and in the alternative to move the High Court, in the exercise of its revisional jurisdiction, to enhance the sentence on the conviction

[18TH SEPTEMBER, 1903.] [Sir Denzil Ibbetson; the President.]

for simple hurt. The Government of India have not before them the memorandum of appeal which was actually presented; but they understand that it contained an additional plea of misdirection by the Sessions Judge on the charge of abetting the beating of the two women, and an appeal against the acquittal on that charge also. The appeal came before a Divisional Bench of the High Court, consisting of Mr. Justice Banerjee and Mr. Justice Handley, on the 6th July, and after a prolonged argument, in which both sides were represented by counsel, by whom both the law and the facts were fully discussed, the Bench held, in an elaborate decision which was delivered on 11th August by Mr. Justice Banerjee, that material misdirection was established in regard to both charges, namely grievous hurt to Lalsa, and abetment of hurt to the women. They therefore set aside the verdicts of acquittal on both these charges; and, since the same misdirection must be held to have vitiated the verdict of conviction on the charge of simple hurt to Lalsa, which relates to the same matter, they set aside that verdict also, and directed a fresh trial upon all three charges. On the application and for the convenience of the accused, the re-trial was ordered to be held, not in Cachar, but on the Original Side of the High Court in Calcutta.

"The case came on for trial on 31st August before Mr. Justice Sale, who, before the special jury had been empanelled or any evidence proffered, made certain observations on the case, the substance of which has appeared in public print. At the conclusion of Mr. Justice Sale's remarks the Advocate General, feeling that he had no option but to withdraw from the prosecution after what the learned Judge had said, and acting in the exercise of the discretion conferred upon him by section 333 of the Criminal Procedure Code, entered a *nolle prosequi* on all the charges. The Judge thereupon directed that Mr. Bain should be discharged and that the discharge should amount to an acquittal on all charges, and the proceedings in Court terminated.

"Such is a bare statement of the facts as known to the Government of India. No instructions, official or unofficial, were issued, and no steps were taken by them, other than those which have been mentioned in this statement. The course of action adopted has been in accordance with the recognized departmental procedure, with the view of their responsibility entertained by the Government, and with the recommendations of their constitutional adviser in legal matters."

His Excellency THE PRESIDENT said:—"In connection with one remark that has fallen from my Hon'ble Colleague Sir Denzil Ibbetson, I should like to

[*The President.*]

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remove a further misapprehension that appears to prevail. I have noticed frequent references, some even on public occasions, to orders that are believed or alleged to have been issued at a recent date by the Government of India in connection with cases between Europeans and Natives. These orders are variously supposed to relate to the reporting of these cases to Government and to the administration of criminal justice. As regards the latter, I may say at once that no orders have been issued of any sort whatsoever, official or unofficial, public or private and any statement or belief to the contrary is without foundation. The matter does not fall within the scope of the Executive Government. As regards the reporting of cases, the Hon'ble Sir Denzil Ibbetson referred in his statement to the orders of 1897, and it is upon this point that I desire to add a word. It was found by Lord Elgin's Government that very often they only learned of important occurrences in different parts of India from the newspapers, and that the official accounts of the same incidents did not reach them till months after they had taken place. This was due to the failure of Local Governments to report or to the great delay in doing so. Accordingly, on 24th August, 1897, Lord Elgin's Government issued orders to the Local Governments requiring them to issue instructions to their local officers to send to the Government of India duplicates of the telegrams in which they reported matters of importance to the Local Government or Administration, and among the matters of importance which were specifically mentioned in the orders were 'all collisions between Europeans of all classes and Natives.' During the first fortnight that I was in India, *vis.*, in January, 1899, it was represented to me by the Home Department that these orders had not been altogether successful, because the Local Governments did not like their local officers reporting to the Government of India over their heads—a proceeding which seemed to them both to impugn and to divide their own responsibility. We felt that these objections were reasonable, and accordingly one of my first acts was to authorise the issue of a letter, dated 23rd January, 1899, saying that we withdrew the orders about local officers reporting to us direct, and that we left to the Local Governments the duty of repeating to us the telegrams which they had received from them. Two years and a half later it was reported to us that the terms of Lord Elgin's orders of August, 1897, which referred to all collisions, were being so interpreted as to send up to the Government of India a number of absolutely trivial cases, the reporting of which wasted time and trouble, and was alleged to cause irritation. On looking into the case there seemed to be some foundation for

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these complaints, and accordingly in July, 1901, I authorised the issue of orders from the Military Department, modifying the orders of 1897, and laying down that we did not require reports of unconfirmed assaults or of assaults of a positively insignificant character. These orders, which related to soldiers, were repeated in November, 1901, in a letter to the Local Governments, making the same modification in the case of civilians.

"How useful the new orders were in both cases has been shown by subsequent experience. The number of civil and military references decreased in the year 1902 by close upon three-fourths as compared with the corresponding figures for 1900 and 1901.

"It would thus appear that the orders have now attained a form which is free from the objections that attached to their original shape, and that answers the purpose for which they were devised. The necessity of receiving prompt information on matters that may develop a serious aspect, which was the principle upon which Lord Elgin's Government insisted, has been and must be maintained, but the rules have been freed from the drawbacks that were found to have arisen from their too strict interpretation in practice. These are the only Government orders that exist on the subject."

INDIAN EXTRADITION BILL.

The Hon'ble MR. RALEIGH presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble SIR DENZIL IBBETSON presented the Report of the Select Committee on the Bill to make better provision for the organization and administration of municipalities in the Central Provinces. He said that the alterations which the Select Committee had made were set forth in the Report, and none of them were of such a nature as to call for any remark from him.

LEPERS (AMENDMENT) BILL.

The Hon'ble MR. RALEIGH moved that the Bill further to amend the Lepers Act, 1898, be taken into consideration. He said that the objects of the

[*Mr. Raleigh.*] [18TH SEPTEMBER, 1903.]

Bill were explained in his introductory statement and that no criticism had been received.

The motion was put and agreed to.

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

The motion was put and agreed to.

The Council adjourned to Friday, the 23rd October, 1903.

SIMLA;
The 18th September, 1903. }

J. M. MACPHERSON,
*Secretary to the Government of India,
Legislative Department.*