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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 Saturday, the 19th July 1862.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.

Major-General the Hon'ble Sir R. Napier, K. C. B.

The Hon'ble H. B. Harington.

The Hon'ble W. Grey.

The Hon'ble C. J. Erskine.

The Hon'ble W. S. Fitzwilliam.

The Hon'ble D. Cowie.

HIGH COURT.

The Honourable MR. HARRINGTON moved for leave to bring in a Bill to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain Sections of Act VIII of 1859 in the said High Court. He said that the principal object of the Bill, as Honourable Members would have observed from the copies of the Bill in their hands, was—firstly, to make temporary provision for the levy of Court Fees in the business coming before that part of the High Court of Judicature recently established at Calcutta under Her Majesty's Letters Patent, which represented the late Supreme Court of Judicature at Fort William in Bengal, thus continuing for a time the practice in respect to the payment of Fees which obtained in that Court; and, secondly, for taking Judicial Stamps in accordance with Section XXX of Act X of the current year in that part of the High Court which represented the late Court of Sudder Dewanny and Nizamut Adawlut for the Lower Provinces of Bengal.

The Act of Parliament passed last year, under which the Letters Patent constituting a High Court of Judicature at Calcutta were issued, contained a provision for the settlement of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of the High Court; but it was open to question whether, under this provision, Fees could be levied which, although paid to

officers of the Court, were not to be allowed to the officers, receiving them, but were intended to be carried to the credit of Government. By an arrangement made between the Government and the late Supreme Court, certain officers of that Court, who were previously paid by Fees, were remunerated for their services by fixed salaries instead of by Fees, and the Fees received by them were accounted for to Government, and formed into a General Fund, out of which the salaries of the officers were paid. It was considered desirable to continue this arrangement, for a time at least, not only as respects certain of the officers attached to the late Supreme Court who had been appointed to the High Court, pending a revision of the entire ministerial establishment of the Court, but also in regard to other officers who might be appointed to the High Court while the present Bill remained in force.

In the late Sudder Court for the Lower Provinces of Bengal, Stamp Duties were chargeable under Section XXX of Act X of 1862 on all instruments and writings of the kinds specified as requiring Stamps in Schedule B annexed to the Act, but Courts established by Royal Charter, which it was unnecessary for him to say was the character of the High Court, as representing both the late Supreme and the late Sudder Court, were excepted by express words from the operation of the Section, and some provision of law was therefore required to enable the High Court to continue, as a temporary arrangement, to levy Stamp Duties in cases coming before it in which they would have been leviable had they come before the late Sudder Court. Whether it would be right to maintain the distinction contained in this Bill, according to which Court Fees would be taken in some portion of the business coming before the High Court, and Stamp Duties would be charged on other business coming before the Court, or whether a uniform system in the form either of Court Fees or of Stamp Duties should not be introduced throughout the Court, were questions deserving of consideration. The Government would consult the Honourable and learned Judges of the High Court on the subject, and on receiving the opinion of the Court, they would propose such legislation as might appear proper. One of the reasons for giving a temporary character to the present Bill, which it was proposed should remain in force for a period of only six months, was that these questions might be fully considered before any permanent measure was proposed for adoption. Another reason was, that it was not thought proper to pass any permanent law introducing great and important changes in the practice of the High Court without a previous publication, for the usual period, of the Bill proposing such alterations, and without giving every Honourable Member of the Council full time to consider the same. These remarks applied also to the remaining provisions of the Bill as printed.

The first of these provisions proposed to suspend the operation in the High Court of certain Sections of the Code of Civil Procedure, which prescribed, by a series of rules, the manner in which the judgments and orders of the Courts of Civil Judicature were to be recorded. There could be no doubt that the observance of these rules imposed considerable labor on the Judges, and were attended with an expenditure of time which, looking to the very heavy arrears of business pending before the High Court, the Judges of that Court could ill afford to give to the task. The Sections in question were well adapted to, and were very suitable for, the Mofussil Courts. But they were not equally well adapted to the High Court, and there could not be the same necessity for their strict observance in that Court. The Royal Commissioners, who were the original framers of the Code of Civil Procedure, exempted the judgments of the High Court from the operation of these Sections, and the legislature of this country which passed the Code into law, never intended that it should apply in its entirety to the High Courts. Indeed he might say that it was always contemplated in this country, that a separate Code of Civil Procedure would be prepared for the High Courts whenever they should be established. What was now proposed was that, pending further legislation, the Judges of the High Court should record their judgments and orders in such manner as that Court should by rules to be framed by them direct.

The next provision of the Bill related to the appeals which were to be allowed from decisions passed by the High Court, in the exercise of its ordinary original civil jurisdiction. The only appeals allowed from the decisions of the late Supreme Court were to Her Majesty in Council. But as the High Court was constituted, decisions passed by a bench consisting of one or more Judges of the Court, not being a majority of the full number of Judges, in the exercise of the ordinary original civil jurisdiction of the Court, would lie to another bench of the Court. Under the Code, ninety days would be allowed for preferring such appeals, which was obviously too long a time. In fixing ninety days as the period within which appeals should be preferred to the Sudder Courts, the framers of the Code were obliged to have regard not only to the parts of the country within the jurisdiction of the Sudder Courts in the neighbourhood of the place where the sittings of the Courts were held, but also to the more remote parts, and for such parts the time allowed was not too long. But the appeals coming within the Section of the Bill to which he was now referring, would be made in cases arising within the immediate vicinity of the High Court, and as these appeals would be very much in the nature of applications for a new trial, it did not seem necessary that a very long time should be allowed for preferring them. It was proposed to allow the High

Court to fix the time by rule. The rule so framed might probably with advantage be embodied in any Bill hereafter introduced to amend the Code of Civil Procedure. Meanwhile, it would be right that the rule adopted by the Court should be published in the Gazette for general information.

The next Section was intended for the High Courts which might be established within the next months at Madras and Bombay. Then followed a Section giving retrospective effect to the Act, which seemed necessary in respect to any Fees or Stamp Duties levied since the establishment of the Court on the 1st of the present month.

The concluding Section provided that the Act should remain in force until the 1st January 1863. This would give time for the consideration of any further legislation relating to the High Court, not only on the points mentioned in the Bill, but also on other points in respect of which some legislation might intermediately be shown to be necessary.

MR. HARRINGTON went on to say that, since the Bill was printed and circulated, he had been asked to introduce three more Sections. The first related to what were called warrants of attorney to confess judgment, and cognovits. He was informed there were many such instruments in existence upon which judgments had not yet been signed. They gave power to confess judgment, or to allow judgment to go by default, only in the late Supreme Court, and a question might arise, and indeed he believed had already arisen, whether this power extended to that part of the High Court which represented the late Supreme Court. The Section was intended to remove all doubt upon the point, and to prevent what would be a fraudulent defence in order to escape from what was taken as a security for money lent, being set up.

The next new Section had reference to the costs of suits decided by the High Court in the exercise of its ordinary original civil jurisdiction, after judgment had been given. By a Section in the Code of Civil Procedure, the amount of costs with other particulars was required to be entered in the decree, and the decree could not be signed by the Court, much less executed, until the costs had been entered in it. But the costs of suits in the late Supreme Court were always taxed by an officer appointed for the purpose. This often occupied some time, and if the decree could not be enforced until the costs had been taxed, it would give judgment-debtors an opportunity of making away with their property, of which they would not be slow to avail themselves. The Section gave power to the Judges of the High Court on the application of judgment-creditors to enforce decrees passed by the Court in the exercise of its original jurisdiction, with the exception of so much of the

decree as related to the costs of suit, although the amount of the costs should not have been ascertained by taxation or entered in the decree.

The remaining new Section related to the legal Practitioners of the High Court. They were of three classes, the Advocates, Pleaders or Vakeels, and the Attorneys-at-law, who might also be Vakeels. By the Code of Civil Procedure, many acts would require to be done by Advocates or Barristers, which in the late Supreme Court were performed by Attorneys. This would add greatly to the expenses of litigation, and the object of the Section was to allow Attorneys to do all such acts in the High Court, as they had been in the habit of doing in the late Supreme Court. They would continue to appear and act, but would not be allowed to plead.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON then applied to His Excellency the President to suspend the Rules for the Conduct of Business, which related to the introduction and passing of a Bill, with a view to enable him to move that the Bill, with the amendments referred to, be passed.

His Excellency THE PRESIDENT declared the Rules in question to be suspended.

The Honourable MR. HARRINGTON then introduced the Bill, and moved by way of amendment that the three following new Sections be inserted after Section VI. :—

“(1) *Judgment may be signed in the said High Court upon every warrant of Attorney and ‘cognovit actionem’ upon which a judgment might have been signed in the said late Supreme Court if such Court had not been abolished, and every such judgment may be signed, enrolled and enforced in and by the said High Court in the same manner, and in the same manner only, as it might have been in the said Supreme Court.*

“(2) *Whenever it shall appear necessary to a Judge of the said High Court that a decree made in the exercise of the ordinary original civil jurisdiction of the said Court ought to be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Judge may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs, that the same may be executed as soon as the amount thereof shall be ascertained by taxation.*

"(3) *Whenever any thing is directed by the said Act VIII of 1859 to be done by or through a pleader, the said High Court or any Judge thereof in the exercise of the ordinary original civil jurisdiction of the said Court may authorize such act to be done by or through an Attorney-at-law of the Court. Provided that no Attorney shall be authorized under the provisions of this Section to plead in the said Court or in any Division for any person.*"

The Motion was put and agreed to.

The Honourable MR. HARRINGTON then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned.

A. G. MACPHERSON,
Offg. Depy. Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 19th July, 1862.