

Wednesday, October 28, 1868

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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 Simla on Wednesday, the 28th October 1868.

PRESENT :

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

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

The Hon'ble G. N. Taylor.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble Colonel H. W. Norman, C.B.

The Hon'ble F. R. Cockerell.

The Hon'ble Sir George Couper, Bart., C.B.

EVIDENCE BILL.

The Hon'ble Mr. MAINE moved for leave to introduce a Bill to define and amend the Law of Evidence. He said it would probably be sufficient to state that the Bill embodied the draft rules of law which the Indian Law Commissioners had recently prepared on the subject of evidence. There was probably no subject on which a codified law was more wanted in India, and the Commissioners had fully stated in the report which had been circulated to Hon'ble Members, the reasons for all the changes which the Bill proposed to introduce. If he got leave to introduce the Bill, he proposed to ask His Excellency the President to suspend the rules for the conduct of business, and, on their suspension, to introduce the Bill with a view to its publication in the *Gazette*. There was no use in now dilating to any length on the technical subjects comprised in the Bill.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then asked the President to suspend the Rules for the conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. MAINE then introduced the Bill.

GENERAL STAMP BILL.

The Hon'ble Mr. COCKERELL moved for leave to introduce a Bill for imposing Stamp Duties on certain instruments. He said that the Stamp Law was, previous to 1860, spread over various Regulations of the Codes of the three Presidencies, each Presidency having its distinct law on the subject. By Act XXXVI of that year, the subject-matter of those Regulations, together with several new provisions in regard to Stamp Duties, taken from the English Statutes, was reduced into one enactment applicable to the whole of India. The want of any systematic arrangement of details which so strongly characterized the existing Stamp Law—for Act X of 1862 was a mere reproduction, with a few unimportant additions of Act XXXVI of 1860—and which created so much difficulty in ascertaining its requirements, was probably due to this attempted fusion of the substance of the Regulations with the provisions of the English law.

As experience of the working of the consolidated Stamp Act was gained, its marked defect in this respect became so generally admitted and reprehended, that the Government of India, with a view to future legislation on the subject, in a letter of the 30th April 1867, addressed to the several Local Governments from the Financial Department, communicated the following remarks and instructions:—

“3. The Stamp Act (X of 1862) and Schedule A of that Act especially are said generally to be defective in this particular, namely that their provisions are so wanting in clearness and proper arrangement, that the public is unable to understand either wholly, or only after much research, what the duties are that, in the execution of documents, the law requires them to pay.

“4. The object, therefore, of the proposed amendment of the Act is, without any material sacrifice of revenue, so to express and re-arrange the Act and its Schedules as that the public may see at a glance what the duties are which the law requires them to pay.

“5. The best way of attaining to this object would seem to be to appoint local Committees in every large town or chief station of a district, and to direct such Committees to consider and report upon every section or article of the Act which seems to them to require amendment.”

Accordingly, Committees were appointed in all the principal towns of British India to consider and report on the question of the amendment of the Stamp Law of India, and all officers who had had experience of the working of the law were requested to express their opinion on the subject.

On two points the general conclusions of the Committees and officers consulted might be said to be unanimous:—

1st.—That the Stamp Law must be entirely re-constructed on a simpler and more popular plan, so as to render its provisions intelligible to the community whose ordinary transactions were so materially affected by it.

2nd.—That if criminal penalties were to be maintained as a necessary means of protecting the revenue, the power of impounding documents not bearing a proper stamp, which had been vested in Collectors in the Bengal Presidency by Regulation X of 1829, must be revived and conferred on all public officers.

The objections to Act X in regard to the the want of clearness in its provisions had more especial reference to Schedule A. The arrangement of its subject-matter in English alphabetical order, it was urged, was manifestly unsuited to the circumstances of the case; whilst the complicated description of the various instruments liable to Stamp Duty, unaided by any attempt at interpretation, and the circumlocutory expression of the proper stamp to be borne by many of those instruments, were extremely perplexing to the person seeking to ascertain what the law required of him.

When it was considered that the provisions of the law before they could be generally acted on must be translated into several vernacular languages in which the alphabetical indicator became necessarily lost, the chaotic confusion which an arrangement of the contents of the schedule in English alphabetical order must present to the Native mind, might well be conceived. And the difficulty of ascertaining the requirements of the law was greatly enhanced by the circuitous mode of expression of the proper Stamp Duty chargeable on any instrument. As an instance of this, Mr. COCKRELL would take the case of a person wishing to execute an instrument of reconveyance of mortgaged property. After finding, it might be presumed, with some difficulty, the specification of that instrument in the schedule, he learnt that the proper stamp was the same as that for an "Assignment." The same search under difficulties must be gone through to find "Assignment," and on finding it he was informed that if his instrument was "not of the nature specified under the head of Conveyance or Settlement nor specially exempted," but comprised the assignment of "any interest secured by an original deed, instrument or writing on a stamp of value less than Rs. 8," it must bear "the same stamp as the original instrument, and in any other case a stamp of the value of Rs. 8."

A more complex process could hardly be conceived. The person intending to execute the instrument in question must, to ascertain what duty he had to pay, examine no less than four different denominations of instruments specified in the schedule, and if the instrument was in the nature of a conveyance, as, if he held actual possession of the property mortgaged, it certainly would be, he must be left to presume that he had to pay the same duty as would be charged on an instrument of conveyance.

The present Bill aimed at the removal of these anomalies. It had been framed in general accordance with the recommendations of the Committees and officers above referred to. It was a complete reconstruction of the law relating to Stamp Duties. All instruments liable to be stamped were classed according to the amount of duty with which they were chargeable, and, as far as possible, instruments involving similar obligations had been subjected to the same rate of Stamp Duty. The description of instrument which each denomination specified in the schedules was intended to include was explained by a full interpretation clause, and provision was made for the careful translation of the law, under the immediate direction of each Local Government, into the principal vernacular languages of the territories subject to its control.

The most important change in the existing law contemplated by the Bill was in regard to the procedure for the enforcement of penalties.

Under Act X of 1862, the Collector and the Civil Courts were empowered to levy fiscal penalties on instruments not bearing a proper stamp which might be brought before them, and criminal penalties might be adjudged by the Magistrate on prosecution by the Collector. Unless, however, the fact of any instrument having been executed on unstamped or insufficiently stamped paper, transpired in any proceeding before the Collector, no sufficient grounds for prosecuting criminally infringements of the stamp law were obtainable, and consequently, as a matter of fact, such prosecutions were rarely attempted. All public officers, as well as Civil Courts and Collectors, were prohibited by the existing law from receiving in evidence, or otherwise acting on, any documents which might come before them not bearing the proper stamp. When such documents were produced before the Collector or in the Civil Courts, they could be validated by the payment of the penalties above referred to; in all other cases they must be rejected. But the law contained no provision for otherwise vindicating its infringement.

Under all excise laws, the article made liable to the payment of duty was, when such duty was not paid, declared to be contraband and liable to be seized

for the enforcement of the penalties attached to evasion of duty, and such course was deemed justifiable as necessary for the protection of the revenue. The Bill provided for the application of this principle to the case of unstamped or insufficiently stamped instruments. It empowered Civil and Criminal Courts to impound such instruments and send them to the Collector for the prosecution of the offenders, where such course might seem to be necessary for the protection of the revenue, and it placed an absolute obligation upon all registering and other public officers to impound and send to the Collector every instrument not bearing a proper stamp which might be brought before them.

The present scale of Stamp Duties on bonds and conveyances had been generally objected to on the ground of the inequality of the taxation resulting from its irregular gradations of increase of duty, for example, a bond for Rs. 300 required a stamp of Rs. 2 only, but a bond for Rs. 305 must bear a stamp of Rs. 4. Instances of this kind were to be found throughout the present scale of duties chargeable on bonds and conveyances. Under it the percentage of Stamp Duty varied from $1\frac{1}{3}$ to $\frac{1}{5}$ in the case of bonds, and from 2 to $\frac{7}{5}$ in the case of conveyances. The revenue also suffered under this system, for the bond for Rs. 305 was divisible into two bonds of Rs. 200 and Rs. 105, and the aggregate duty chargeable under the scale for such instruments was Rs. 2 only. So, again, a bond for Rs. 11,000 was subject to a Stamp Duty of Rs. 60; but by dividing the amount and executing separate bonds for Rs. 10,000 and 1,000 the aggregate duty payable was reduced from Rs. 60 to Rs. 41 and the revenue lost Rs. 19 by the transaction.

The Bill proposed to substitute a scale more in accordance with the English system, but without adopting the English rates, which were unsuited to the circumstances of this country in which the mass of transactions coming under the operation of the stamp law involved small amounts. The scale provided for an uniform percentage of one-half on the maximum amount of each gradation in the case of bonds, and double that rate for conveyances.

The result of this equalization of the Stamp Duty charges was a reduction of the existing rates on bonds below Rs. 10,000 and of those on conveyances for any amount not exceeding Rs. 15,000, and an increase of such rates in all other cases. On the whole it was probable that the revenue would lose more than it would gain by the proposed alteration of the scale of duties chargeable on these instruments; but looking to the degree of security against evasion of stamp duties through ignorance or fraud which the provisions of the Bill were calculated to afford, Mr. COCKERELL

confidently anticipated that if the Bill became law, whilst it would certainly in many ways be more advantageous and acceptable to the taxpayer than the law which it superseded, it would also prove a financial success.

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL asked the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble Mr. COCKERELL then introduced the Bill.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN asked the President's leave to postpone the Motion, of which he had given notice, that the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Indian Forces be referred to a Select Committee.

Leave was granted.

IMPROVEMENT OF LAND (N. W. PROVINCES) BILL.

The Hon'ble Mr. STRACHEY in moving for leave to introduce a Bill to facilitate the improvement of land in the North-Western Provinces, said that he would explain briefly the circumstances which had rendered legislation necessary. The High Court at Agra had decided some time ago that, by the general law of the North-Western Provinces, a tenant, even though he possessed a right of occupancy, was liable to ejection if he dug a *kachcha* well or planted trees without his landlord's previous consent. Although the High Court felt that it could come to no other conclusion, it was clear from the terms of its decision that it entertained grave doubts as to the reasonableness of the law which it was administering, and he had recently been able to satisfy himself of the correctness of this opinion, having had the advantage of discussing the question with the learned Chief Justice of the High Court, who was now in Simla. There could be no doubt of the hardship caused by the present state of the law. For, consider what a *kachcha* well very frequently was in the North-Western Provinces—a mere hole in the ground, a few feet deep, made at the cost of a few rupees, and without which it would be impossible to obtain any crop. Surely it was unreasonable and impolitic that a tenant with a right of occupancy should be liable to ejection, liable to forfeiture of his property, for a useful and,

indeed, indispensable act, which by no means implied or asserted a proprietary right in the land. Similar remarks might be made as to planting trees, and Mr. STRACHEY had recently heard of cases of extreme hardship, where the penalty of ejection had been incurred by tenants having rights of occupancy, who had re-planted mango groves which had been on the ground from time immemorial, and which had either gone to decay, or been blown down by a storm.

Under these circumstances, the Government of the North-Western Provinces were of opinion that legislation was necessary, and the present Bill was accordingly prepared; and it was thought desirable to take this opportunity of assimilating the law of the North-Western Provinces, as regarded tenants' improvements, to the laws on that subject now in force in Oudh and the Panjáb. There was, however, one distinction. While the provisions as to improvements contained in the Acts which had recently been passed for Oudh and the Panjáb were intended merely for the protection of the tenants, it was thought proper in the present Bill to insert corresponding clauses for the protection of the landlord. Accordingly, while the Bill provided that no tenant should be liable to have his lease cancelled or to be ejected merely on account of improvements made by him, and expressly empowered him to make improvements on the land in his occupation, and to claim compensation for such improvements on the determination of his tenancy, or (if he had a right of occupancy) when his landlord sued to eject him, or to enhance his rent, the Bill, on the other hand, empowered the landlord to obtain compensation from a tenant who failed to cultivate his land in a husbandlike manner, and expressly declared that no improvements made by a tenant should be deemed to raise any presumption of his ownership. As to planting trees, the Bill declared that no tenant, not having a right of occupancy, should be entitled, without the landlord's previous consent, to plant any timber trees on the land in his occupation, but that a tenant having a right of occupancy might plant such trees without his landlord's consent. The Bill, however, declared that the rent payable by such tenant for the land so planted, should not be liable to be reduced below the rent which would be payable for such land if it were used for agricultural purposes, and that the rent should be liable to enhancement in the same manner as if the land had continued to be so used.

Following a suggestion of the High Court of the North-Western Provinces, the Bill also provided that where a landlord successfully sued to eject a tenant for bad cultivation, or for planting trees without permission, the

Court need not necessarily inflict the penalty of ejection, but might instead award to the plaintiff proper pecuniary compensation.

As to the manner in which compensation for tenants' improvements might be claimed and awarded, the provisions of the Bill were identical in principle with those contained in the Oudh Rent Act and in the Panjáb Tenancy Act. Such differences in detail as had been introduced would be found to be in favour of the landlord. The Bill had been generally approved by the Lieutenant Governor, with one exception. That exception was certainly of importance. The Bill, like the Acts which had been recently passed for Oudh and for the Panjáb, provided that the tenant should be entitled to compensation for improvements made by him within the thirty years next before the date of the determination of his tenancy, or the institution of a suit to eject him, or to enhance his rent. This provision was based on the assumption that the tenant would probably have reaped the full benefit of improvements made before the commencement of that term of years. His Honour the Lieutenant Governor, however, was, (Mr. STRACHEY believed), in favour of omitting this limitation. It was thought desirable, since the principle in question had lately been recognized by the legislature on two separate occasions, for the present, at any rate, to let the Bill stand as it was in this respect. The matter would be discussed by the Select Committee, and the Council would have the advantage of considering the views which His Honour would doubtless express on the subject after the publication of the Bill.

The Motion was put and agreed to.

The Hon'ble Mr. STRACHEY then asked the President to suspend the Rules for the Conduct of Business, in order that the Bill might be introduced and published in the *Gazette*.

The PRESIDENT declared the Rules suspended.

The Hon'ble Mr. STRACHEY then introduced the Bill.

The Council then adjourned to Wednesday, the 4th of November 1868.

WHITLEY STOKES.

*Asst. Secy. to the Govt. of India,
Home Department (Legislative).*

SIMLA,

The 28th October 1868. }