

Friday, February 24, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

Jan to Mar

1871

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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 Friday, the 24th February 1871.

PRESENT :

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

The Hon'ble John Strachey.

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

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáhác Hindústán Ráj Rájendra Srí Mahárájú-
dhiráj Sivái Rám Sing Bahádur, of Jaypúr, G. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

INDIAN CONTRACT LAW BILL.

The Hon'ble MR. STEPHEN moved that the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership be re-committed. He wished to make a few observations on the condition of this measure. The Statement of Objects and Reasons was dated so far back as July 1867, so that the Bill having been received from England as drawn up by the Indian Law Commissioners some time before, had now been four years, in one shape or another, under the consideration of the Indian Government and the Secretary of State, respectively.

He had to make two remarks on this subject; first, he wished to explain how the delay arose; and secondly, he wished to point out why it was necessary

that the Bill should be re-committed, which would involve some additional delay before the matter was finally disposed of.

The Bill was published with its Statement of Objects and Reasons in July 1867. It was forwarded in the usual way to the Local Governments for their opinions, and the receipt of these opinions occupied a considerable time throughout the year 1868. There were certain provisions in the Bill which gave rise to considerable discussion and some difference of opinion between those who were responsible for the Bill in this country and those who framed the Bill in England. Much time was lost in this discussion and in the reference of the matter to the Secretary of State; and when MR. STEPHEN came out here, about a year and a quarter ago, he found that the Bill was still before the Committee. The Committee continued their investigation of the subject during the early part of the year 1870; and after mature deliberation they agreed to a report which was transmitted to the Secretary of State. The Bill was further considered at Home, and the answer on the subject to which the report of the Select Committee referred was not received till a very short time ago. That explained how the delay with regard to the present Bill had arisen. He thought, however, that it was now expedient to proceed with the Bill. If it were passed into law, it would greatly shorten and simplify one of the most important parts of the law.

He now came to the question, which might naturally be asked, why should there be more delay in the passing of this Bill? There were several obvious answers to that. It might be sufficient to mention one which was conclusive in itself. Many of the members of the Select Committee which originally sat on the Bill had either left or were on the point of leaving the Council. Of course, the Committee which he hoped would finally discuss the matter would be composed in part of the remaining members of the former Committee, but still it would be impossible that the Bill could be passed without giving those who would be responsible for it an opportunity of fully considering its provisions. The opportunity might be taken of making alterations, not so much in substance, as in arrangement and definition.

We were now not very far from the time when the Government would have to leave Calcutta, and it was too late to pass the Bill into law before its return to Calcutta. The necessary alterations would be maturely considered in the course of the summer, and the Bill might be finally disposed of in the winter. He hoped that it would not be necessary to trouble the Local Governments for further opinions on this Bill, inasmuch as the opinions already

received would fill a considerable volume, and provided ample materials for the full consideration of the subject.

The Motion was put and agreed to.

PENSIONS BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to consolidate and amend the law relating to Pensions. He said that there was on the Statute-book at the present time a considerable number of Regulations and Acts relating to this subject. These enactments contained much that was now obsolete, and much in the nature of administrative rules and instructions as to the mode of disbursing pensions, which would be more conveniently and appropriately left to be put in operation by means of executive orders.

The leading principle of the main provisions of the law was, that as the bestowal of pensions and similar allowances was an act of grace or State policy on the part of the ruling power, the Government reserved to itself the determination of all questions affecting the grant or continuance of these allowances; and the cognizance of claims relating thereto by the Courts of Judicature was, as between the grantor and grantee, absolutely barred.

This principle governed the law which applied specifically to the Regulation Provinces of the Bengal and Madras Presidencies, and which was also practically in force in the Non-Regulation Provinces. In some parts of the Bombay Presidency also, namely, the Dekhan, Khandeish and Southern Mahratta Divisions, claims against the Government in the matter of pensionary grants and allowances were declared to be not within the cognizance of the ordinary Courts of Judicature; but in other parts of that Presidency, in the absence of any such legal restrictions, the Courts had assumed a jurisdiction expressly denied to them throughout the rest of British India.

It was thought that this state of things should not be allowed to continue, and that it was expedient to assimilate the law as regards this portion of the Bombay Presidency to that which prevailed in all other parts of the Empire. There were no exceptional circumstances which called for the exercise by the Civil Courts, in any particular province or provinces, of a jurisdiction which, under the operation of a principle of universal application, was not accorded to them elsewhere.

The opportunity, moreover, for rectifying the omission to extend to the Bombay Presidency generally the provisions of the law regarding pensions had now arrived, the law on this subject having been specifically referred to in this

Council as one of the branches of the general scheme of consolidation which was now in progress.

The object of the present Bill, therefore, was to re-enact, in a consolidated form, the operative provisions of the law in regard to the grant of pensions and similar allowances, and to apply the consolidated enactments to the whole of British India.

The Motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. COCKERELL asked leave to postpone the presentation of the report of the Select Committee on the Bill for the Registration of Assurances.

Leave was granted.

The Council adjourned to Friday, the 3rd March 1871.

CALCUTTA,
The 24th February 1871. }

WHITLEY STOKES,
Secy. to the Govt. of India.