

Friday, March 19, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

1869

P L

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 10th March 1869.

P R E S E N T :

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

Major General the Hon'ble Sir H. M. Durand, C. D., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

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

The Hon'ble F. R. Cookerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I. of
Balrámpúr.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the procedure of the High Court of Judicature for the North-Western Provinces be taken into consideration. He said that this Bill related only to technical matters of no general importance. The High Court of the North-Western Provinces had an ordinary jurisdiction for the trial of European subjects, and an extraordinary jurisdiction for the trial of others than Europeans. Whenever an European and a Native were charged together, the European was tried under the ordinary, and the Native under the extraordinary, jurisdiction of the Court; but both could not be tried together as they could in England. By this Bill they could now be tried together; but as a European would be entitled to demand to be tried by a jury, the majority of whom were his own countrymen, the Native might object, and then the two men would have to be tried separately as at present. The Bill as originally introduced contained only two sections to this effect, but since then the Government of the

North-Western Provinces had asked the Council to set at rest a few doubts of small importance which had arisen. In cases where a petition was presented or an application made which the Court directed should be verified by affidavit, a doubt had arisen whether a person making a false verification would be liable to be punished for perjury. Another doubt was whether the Court had power to award costs when any petition, application or motion came before it in the exercise of any of its jurisdictions, and accordingly two more sections had been included in the Bill in order to do away with those doubts.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS' (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART said, in moving that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay be taken into consideration, he had the honour to offer a few remarks on the alterations made by the Select Committee. Those were all stated at length in the report of the Committee, and there were very few of them which called for any observation on his part. With reference to section 12, the Committee had adopted the proposal made by his Hon'ble friend Mr. Maine, and had arranged that the appointment of a Joint Judge, when once sanctioned, should remain valid, and that the Government of Bombay might remove such Judge from one district to another so long as that sanction remained in force. MR. SHAW STEWART had a small verbal amendment to propose which would make the intention clearer.

As regards the twenty-second section, he was glad to say that the Committee had adopted the recommendation of the Government of Bombay, and had retained the power of appointing Subordinate Judges in that Government. He entirely concurred in the opinion of the Hon'ble Sir Richard Temple, and thought that the power was one which ought to remain vested in the Government, and that it was not a power which ought to be entirely made over to the High Court. MR. SHAW STEWART agreed also with the opinion of the Bombay High Court of 1864, as opposed to that of the present High Court, and he was very glad that the Committee had recommended that the Bill should remain in this form. The power of prescribing tests of qualification for the office of Subordinate Judge was vested in the High Court, and certainly gave that Court a very considerable control over the admission of candidates, and that, he thought, was quite sufficient for the purpose.

The Bombay Government had acceded to the suggestion of the Committee that all appeals from the decisions of Subordinate and Assistant Judges in suits the subject-matter of which exceeded rupees 5,000 in amount, should lie direct to the High Court. That was the law in Bengal, and he felt assured that the appeal on the facts in cases of that amount should lie to the highest possible Court. After some demur the Bombay Government had at length acceded to the view of the Select Committee, and it had been carried out in the Bill.

The Bombay Government had also, with reference to section 24 of the Bill, acceded to the suggestion that Subordinate Judges of the First Class should try cases without any pecuniary limit as to amount. They had at first proposed a limit of rupees 10,000, but when the strong opinion of the Committee was represented to the Government of Bombay, they had acceded to the alteration recommended. Subordinate Judges of the First Class, it was now hoped, would be of a character quite competent to deal with any cases brought before them.

With reference to the tenth paragraph of the report of the Select Committee, he thought it scarcely necessary to state the reasons which had led the Committee to reject those three sections of the draft Bill which the High Court desired the retention of, but which the Government considered unnecessary and obsolete: the subject was carefully considered, and the Committee agreed to strike those sections out of the Bill.

Since the Bill was published, it was represented by one of the Native newspapers at Bombay that an important omission had been made by which certain provisions of the Bombay Regulations which forbade the interference of the Civil Courts in caste questions had been repealed, and they asked if the Bombay Government was prepared to let the Civil Courts of that Presidency interfere in caste questions. The Government thereupon telegraphed to Mr. SHAW STEWART that that section of the old Regulations should be saved, and it had therefore been exempted from appeal.

He thought that he had now noticed all the important alterations in the law which had been made.

The Hon'ble Mr. MAINE said that, when the Bill was before the Council the last time, he had expressed certain difficulties which he felt as to the disposal of patronage relating to Subordinate Judges. He had reason to believe that the Bombay Government had done him the honour to consider his argument, but that it remained of the same opinion. Under those circumstances, the Bill

being essentially a Bombay measure, which, upon principle, should have come before the Local Council, MR. MAINE would not press his objection further.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said the first amendment to which he would refer was that in section 38. This amendment was not included in the draft Bill prepared by the Select Committee, because at the time they made their report, the final instructions of the Government of Bombay had not been received. He might mention that, in the Bengal Act passed last year, Subordinate Judges were vested with the power of appointing and nominating all ministerial officers in their Courts, subject to the approval of the District Judge. He had represented to the Bombay Government that it was the opinion of the Committee that, as the position of the Subordinate Judges was about to be materially improved, that power ought to be conceded to them; and the Government had so far conceded as to allow Subordinate Judges to appoint such ministerial officers of their Courts whose salaries did not exceed ten rupees per month, and to give them the power of fining, suspending or dismissing any ministerial officer who was guilty of any misconduct or neglect in the performance of his duties. He was very glad that the Bombay Government had made that concession, and he would therefore move :—

1. That, in section 38, the word "fined" be inserted before the word "suspended" in line 3.

2. That the following clauses be added to the same section —

"Provided that the Judge of every Subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office. Every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto, shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being."

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved the following verbal amendments which had occurred to some Members of the Committee since the report had been presented :—

1. That in section 1, for the words "to Sind or any other of such territories," the following be substituted, "to any other of the territories under such Government in which the said Code is not in force, or to Sind."

2. That in section 12, clause 2, line 5, after the word "force," the following words be inserted, "appoint a successor to such Joint Judge in case his office becomes vacant, or"

3. That, in section 19, clause 1, for "the limits of which part may be determined and altered from time to time by such notification," the following be substituted, "and may by like notification from time to time determine and alter the limits of such part."

4. That in section 41, for "Court of Civil Justice," the words "Civil Court" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART also moved the following amendment in section 40 :—

That in section 40, line 2, for the words "with the previous sanction," the following be substituted, "under the general control"

The Bombay Government, by section 40, desired to take the authority of appointing a clerk of the Court to any Civil Court, but they had omitted any mention of the necessity of the sanction of the Governor General of India in Council to such appointment. The Select Committee considered that that sanction should be required by the law, but by inadvertence, the expression "previous sanction" had been used, which would necessitate the previous sanction of the Governor General of India in Council to every appointment of a clerk of the Court : it was therefore found necessary to omit the words "previous sanction," and substitute the words "general control," which was consistent with the expression used in section 14.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the Bill, as amended by the Select Committee together with the amendments now adopted, be passed, and said that he had received that morning a telegram from the Government of Bombay, stating that all the alterations made by the Select Committee met with their approval.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL said that, since the report of the Select Committee on the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, had been presented to the Council, a rather important communication had been received from the Bombay Government in regard to the effect of section 2. He had hoped that the object of the Bombay

Government might be met by an amendment which he had prepared and included in a notice of amendments circulated; but he believed that his Hon'ble colleague on the Select Committee on this Bill was doubtful whether that object would be sufficiently attained by the amendment proposed.

MR. COCKERELL had also since received a communication from high authority containing several suggestions for further alterations in the Bill, which could be much more satisfactorily dealt with in Committee than by a series of amendments in Council. He would therefore propose that the Bill be recommitted, and that the Hon'ble Mr. Strachey be added to the Select Committee.

The Motion was put and agreed to.

EXPROPRIATION BILL.

The Hon'ble MR. STRACHEY introduced the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility. He said that, when he asked leave to introduce the Bill three or four months ago, he explained the state of the existing law and the reasons for which legislation to amend it appeared necessary. He did not propose to trouble the Council again at any length with what he said before. The reasons for which an amendment of the law was necessary might really be summed up in a few words. They were, that the existing system by which the value of the land required for public purposes was determined by three arbitrators, whose award was absolutely final—for there was practically no appeal under any circumstances—had been found to lead to consequences which were altogether preposterous, and which often involved a waste of public money which was really scandalous. When he moved for leave to introduce the Bill, he gave a few illustrations of cases that had actually occurred in the Northern Provinces of India, and he thought he would not be taking up the time of the Council improperly if he repeated some of the main facts of one of those cases, for it really showed better than any argument could show the real necessity of an alteration of the law. One of the cases to which he had referred occurred not long ago in one of the stations in Northern India. A piece of land required for a public purpose, which the owner himself had distinctly declared was almost valueless, and which the Collector had valued at rupees 75, was declared by the award of the arbitrators to be worth rupees 47,400. For another piece of ground belonging to the same owner, for which the owner had asked rupees 24,000, the arbitrators awarded rupees 30,200. For the loss of leases, for which the owner had asked rupees 7000, the arbitrators awarded him rupees 71,200. In this case, if the Government had paid every farthing which the owner himself had ever asked the authorities to pay, he would have received rupees 31,000 ;

whilst the arbitrators awarded him rupees 1,01,400. The arbitrators refused to give any reason for the award they had made, and the Government was obliged to pay the sum awarded. A reference on the subject was made to the Advocate General, who gave it as his opinion that the public money had been absolutely thrown away, but he said that, in the existing state of the law, there was no remedy.

In another case the Advocate General had strongly urged a total change in the law, and said that the law in its practical working had led to something like robbery of the public money. Really no language could be too strong for the occasion : and MR. STRACHEY thought he might say that no one could defend the existing law or deny the necessity of its amendment.

The principles borne in mind in framing the proposed Bill were that, while every possible protection ought to be given to private rights of property, and while there ought to be no room even for suspicion that the Government could exercise any arbitrary power which would enable it to infringe the just rights of individuals, at the same time an independent and impartial tribunal ought to be constituted for the settlement of all disputed questions as to the value of property required to be taken for public purposes. The Bill proposed to entrust to selected Judicial Officers the duty of determining all questions which arose between the owner and the Government. If the Collector and the persons interested agreed as to the amount to be paid, there would of course be no difficulty ; but if the parties did not agree, the matter would be referred to the determination of a Judge. It was proposed that the Court should, in the first instance, cause a notice to be served on all persons interested in the land, requiring them to state the sum which they were willing to accept, and whether they would prefer that the matter should be determined by the Judge alone, or by the Judge with the assistance of assessors. If the parties determined to leave the matter to the determination of the Judge alone, the Judge would decide the question, and his decision would be final ; but if the parties preferred that the case should be heard by the Judge with the assistance of assessors, each party would nominate an assessor ; the two assessors would then nominate a third assessor, and the Judge and the assessors would proceed in open Court to determine the amount to be paid for the land. If the assessors and the Judge differed as to the amount of compensation that was properly payable, the Judge's decision would prevail if he agreed (but only then) with the majority of the assessors ; but if the Judge differed from the majority, an appeal would lie to the High Court, whose decision would be final. MR. STRACHEY thought that, by a system of that kind, all the advantages of the

system actually in force would be preserved. If the parties desired that their interests should be protected by the presence of assessors, that would be done; but instead of being altogether irresponsible as they now were, the assessors would deliberate and act in consultation with the Judge, and the whole of the proceedings would go on in open Court. Instead of the system under which no reasons whatever were assigned for any conclusions, however extraordinary, we should have the great advantage of publicity, and when the valuation of property was made, all parties interested would know exactly the grounds of the determination arrived at. In cases of real difficulty and dispute the High Court would be the ultimate Judge—a tribunal in whose perfect independence he need not say that every section of the public had at all times absolute confidence.

It remained—and this was really the most important part of the Bill—to declare, as far as practicable, the general principles by which the Courts were to be guided in making valuations of property in disputed cases. Those principles were laid down in sections 46 to 48 of the Bill. With His Excellency the President's permission, MR. STRACHEY would read those sections to the Council, as they distinctly explained the principles laid down :—

“ 46. In determining the amount of compensation to be awarded for property acquired under this Act, the Judge alone, or the Judge and assessors (as the case may be) shall take into consideration—

First, the price which the property would be likely to fetch if sold then and there by public auction ;

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such property from his other property ; and

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immovable, in any other manner, or his earnings.

“ 47. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition ;

Secondly, any disinclination of the person interested to part with the property acquired ;

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by, or in consequence of, the execution of the proposed work ;

Fifthly, any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon, or which would be likely to accrue to such value if the work were executed on any other property ; or

Sixthly, any outlay or improvements on the property acquired, made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

“48. When the person interested has made a claim to compensation, pursuant to the notice mentioned in section ten, the amount awarded shall not in his case exceed the amount so claimed, or be less than the amount tendered by the Collector under section twelve.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded shall not be less than, and may exceed, the amount so tendered.”

He thought there was no doubt that the great abuses which had occurred in the application of the present law had arisen, not so much from any deliberate fraud (although he was afraid there had been a good deal of that too), as from the absence of any distinct statement of the principles on which cases of this kind ought to be disposed of. Some of the principles which had been laid down in the sections which he had just read were so very obvious that really it might seem hardly necessary to put them into the law; but it had been observed from actual experience that they were absolutely necessary. There were other principles which would no doubt require very careful consideration. They appeared to him to be fair as they stood, but he was very far from asserting it as his own opinion, and still less on behalf of the Government, that they were not susceptible of improvement and alteration. The questions involved were very difficult and important questions, and he thought they could not be too carefully considered. He did not now propose to ask the assent of the Council to any of the principles laid down in the Bill, nor did he propose now to ask that the Bill should be referred to a Select Committee. All that he now proposed was that the Bill should be published, in the hope that we might thus obtain the benefit of the fullest public criticism, and also with the object of obtaining the views of the various Local Governments and Administrations and of their most experienced officers on the subject. He wished to repeat what he had said on a former occasion that in this matter the Executive Government had really no interest whatever other than the interests of the public; it had no wish to receive any powers of any kind beyond those which it exercised under the existing law. In consequence of the necessity of meeting pressing public demands, it became sometimes necessary to interfere with private rights of property, but he need hardly say that the Government ought to desire, not only that those rights

should be most completely protected against every sort of arbitrary proceeding, but that the law, if it erred, should rather err in the direction of being too tender and too considerate to private interests, than in the opposite direction.

When he asked for leave to introduce the Bill some months ago, he had hoped that it might be possible to proceed at once with the work of legislating on the subject, for the work was really very urgent ; but pressure of other public business had unfortunately caused delay in the introduction of the Bill. This was much to be regretted, for it could not be denied that the mere fact of a Bill of this kind being under the consideration of the Council had a strong tendency to retard the construction of many works of public utility throughout the country. But this, although very unfortunate, was really unavoidable. He only wished further to repeat what he had said before, and on which he had laid great stress, that the Government attached great importance to obtaining the greatest possible amount of public criticism on this Bill. The Bill was one which obviously demanded the fullest consideration and discussion, and it would not be right to think of passing such a measure until the Council had before it the most complete information and the best opinions that could be obtained.

The Hon'ble SIR RICHARD TEMPLE said, as the object with which this Bill was introduced apparently demanded it, he trusted he might be permitted to make a few very brief observations on the subject. Beyond doubt there had been a great amount of public money wasted in the manner explained by his Hon'ble friend Mr. Strachey. The importance of that waste might be clearly understood by any one who would take the trouble to consult the financial statements annually submitted to this Council, which showed that hundreds of thousands of pounds sterling had been and still were being paid for land taken up by the State for railway purposes.

Lands for railway purposes were given to the Railway Companies almost free of cost, or at a very little cost, in the interior of the country. The real cost was when the railway approached larger central stations, and it was owing to this great abuse in the awarding of compensation for lands taken for public purposes that the cost of land for railways became so high. He himself could corroborate the Hon'ble Mr. Strachey in all that he had said regarding the flagrant cases brought to notice. He had known similar cases in provinces of which he had conducted the administration. He could also corroborate what had been said to the effect that the mischief had been caused, not by the fraudulent conduct or gross neglect on the part of the arbi-

trators, but from the want of any express definition of the principles on which the valuations should be made. For the Council would see that land entirely unproductive would suddenly acquire a high value as a railway approached the neighbourhood; and the arbitrators were called on to decide on the value of the land at the very moment when the property was undergoing a rapid and violent transition, and unless some fixed principles of valuation were laid down, it was quite impossible that the arbitrators could come to any proper conclusion. Unless, therefore, some proper check were imposed, and unless some intelligible and fair principles were laid down for the guidance of the arbitrators, it would be quite impossible to prevent that waste of public money, flagrant instances of which had been given to the Council. He was sanguine that, under a better system for ascertaining the amount of compensation to be paid for lands needed for public purposes, a fair decision would be arrived at, and there would not be so gross a waste of public money as had occurred under the existing mode of arbitration.

The Hon'ble MR. COWIE said, he would venture, with His Excellency's permission, to express a hope that this Bill would not be proceeded with until the Council resumed its sittings again in Calcutta. The Bill was a very important one, and he thought the subject should be well considered by the Council at large before it came up for passing.

The Hon'ble MR. STRACHEY said that, with reference to what had fallen from the Hon'ble Mr. Cowie, he would, with His Excellency's permission, say that he did not think that the Council or the public were likely to suspect him of any desire to avoid that public criticism, on the importance of which he himself had just laid so much stress. But in regard to the future progress of legislation on this subject, he thought that on reflection his Hon'ble friend would see that it was impossible for him, on behalf of the Government, to give any such pledge as to the time at which this measure should be proceeded with as that which the Hon'ble Member appeared to desire. The advantages of discussing measures of great importance in full Council were obvious, and MR. STRACHEY was sure that they were not likely to be denied or forgotten by His Excellency's Government. But at the same time he thought it clear that it would be extremely objectionable if the Executive Government were to place on the legislative liberty of this Council any restrictions which were not contemplated by the law, and which would be opposed to the intentions declared by Parliament itself at the time when this Council was constituted.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL said, in presenting the report of the Select Committee on the Bill for imposing Stamp duties on certain instruments, he had stated that, as the Bill had undergone very considerable alteration, it was the desire of the Committee that it should be published before it was further proceeded with. The Bill had since been published, but the publication had been so recent that for any practical purposes it was considered that that publication would be of no advantage if he were to move at this time that the Bill should be passed. It seemed desirable that the results of the publication of the Bill should be known; that the different Local Governments and public bodies should have time to say what they had to say on the alterations proposed by the Committee. He had little doubt himself, judging from the general tone of the communications in regard to the Bill as originally drawn which had been received, that the amended Bill would be generally approved of; but at the same time the object of the publication would be defeated were he (MR. COCKERELL) to proceed with the motion now before him. His only object in putting down that motion in the List of Business before the Council was to give an opportunity to any of his Hon'ble colleagues on the Select Committee who might wish to make any remarks in regard to the various alterations contained in the amended Bill. He thought, however, that as the Committee had been unanimous in the recommendations made, there would probably be very little to be said on the subject until sufficient time should have elapsed for the communication of suggestions or opinions from different quarters. He would therefore ask leave to postpone the motions which stood in the paper with regard to this Bill.

Leave was granted.

The Council adjourned *sine die*.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl.

for making Laws and Regulations.

CALCUTTA,

The 19th March 1869. }