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 27th January 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 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 F. R. Cockerell.
The Hon'ble J. F. D. Inglis.
The Hon'ble D. Cowie.
The Hon'ble W. Robinson, C. S. I.

CORONERS' BILL.

The Hon'ble MR. STEPHEN moved that the final report of the Select Committee on the Bill to consolidate the laws relating to Coroners be taken into consideration. He did not know that this Bill was of any special importance, but he would take the opportunity of saying, and he thought the Council would like to hear, something of the progress of the scheme of consolidation of which this Bill formed a part and of which it supplied an illustration. The Bill repealed four Acts and consolidated them into one, and in that way effected a considerable simplification of the law. But besides this it codified or converted into express propositions a considerable body of law which at present existed in a loose, ill-ascertained condition; and had to be discovered by reference to English text-books. The Coroners of the presidency towns were appointed under 33 Geo. III, c. 52, s. 157, which (with much verbiage) gave them the same jurisdiction within those towns as Coroners in England had. The effect of this was to introduce into the presidencies the English law relating to Coroners. Now the English law relating to Coroners was one of the most curiously antiquated, and in some points he would say the worst, parts of the whole body of

the English law. A Coroner, as those who were conversant with the matter knew, was one of the most ancient of English legal officers. His jurisdiction was based on a Statute which was passed about six hundred years ago, namely, in the fourth year of the reign of Edward I; though Coroners existed at a much earlier date. At all events they possessed under the Statute of Edward I, and otherwise, powers which they had been discharging in England ever since. Some of these powers were of a very singular nature. One was, that it was the duty of the Coroner to find what were called deodands; and it was singular that, although some years ago deodands were abolished in England, they had legal existence at the present time in this country. The law about deodands was something so strange that one hardly knew how to discuss the matter. The theory of the law of deodands seemed to be that the thing which caused a man's death was more or less a cursed thing; but whatever the reason might be, the rule was that the matter, property, or chattel, which was the immediate cause of accidental death, was to be forfeited to the Crown. There were many other very remarkable rules on the subject of deodands, which prevailed in England up to the year 1847, one of which rules was (though there seemed to be some doubt on this point) that if a man fell from a boat or vessel in fresh water, the vessel and its cargo might be forfeited as a deodand. He did not know how far that was law, or whether the rule had ever been acted upon. This was one of the curious antiquities connected with the law of Coroners. But there was another, which was very characteristic of the strange manner in which legal reforms were carried on in England. The Coroner had to return an inquisition, which had to be drawn up with the strictness of an indictment. Now the strictness of indictments under the English law of former times was one of its greatest scandals; to a certain extent it had been reformed. The way in which this reform was effected was by giving a long list of technical defects, and providing that no one of them should vitiate the indictment. This method had been applied to the case of Coroners' inquisitions, and had been introduced into this country, where at this moment it was law. Act IV of 1848 enacted that a Coroner's inquisition was not to be quashed by the omission of certain forms of words given in the Statute, such as "with force and arms," "against the peace," "against the form of the Statute," and a string of others which filled a page, all of which were not to be objections to inquisitions taken. What was left was bad enough, because, although you might make these mistakes, there were a great variety of others which you might not make. In particular the Coroner was bound to describe the whole matter and the whole way in which the person came by his death in a manner which seemed to MR. STEPHEN extremely absurd.

For instance, the proper way of saying that a man was killed by a railway accident was as follows, first "the jurors aforesaid upon their oaths aforesaid say that a certain locomotive steam-engine numbered , with a certain tender attached thereto and worked therewith, and also with divers, to wit, ten carriages used for the conveyance of passengers for hire on a certain railway called the Railway, and which said carriages were then attached and fastened together and to the tender and were then propelled by the said locomotive steam-engine, were moving and travelling along the said railway." Having made this statement "the jurors aforesaid, on their oaths aforesaid," took breath—as well they might—and then proceeded to swear in an equally cumbrous manner that whilst all this was going on "a certain other locomotive steam-engine numbered , with a certain other tender attached," &c., "and also with divers, to wit, five other carriages," &c., &c., "were also going along the railway." They then stated that the dead man was sitting in one of the second set of carriages. Then that "the said first mentioned locomotive steam-engine, tender and carriages" going on, &c., and "the said secondly mentioned locomotive," &c., "being then so respectively moving and travelling upon the said railway in different and opposite directions came into sudden, violent and forcible contact and collision by means whereof the said R. F. then received divers mortal wounds, bruises and concussions, of which said mortal wounds, bruises and concussions the said R. F. then instantly died."

It seemed to him that to say that the man was killed by a railway accident would be as good and more intelligible.

The law as to *felo de se* was another part of the law relating to Coroners. In England, a *felo de se* forfeited his goods, and the Coroner's jury had to find whether a man who killed himself was *felo de se* or not. It had been held that forfeiture for suicide did not exist in this country, but Coroners' juries still found whether or not a man committed *felo de se*. This practice would be abolished by the Bill. In addition to these, Coroners had a variety of jurisdictions which were no longer required: they had to enquire into treasure-trove and wrecks, to seize fugitives' goods, and the like. In fact, there was a good deal of doubt about the question of the several jurisdictions of the Coroner which were established. In order to do that, the Bill had expressly taken away all jurisdiction from Coroners except what was given by the Bill, and it put into simple rules the jurisdiction which they were to exercise: it took away and abolished the whole of the law of England on the subject, and gave the form of inquisition to be found in cases of death. It was nearly as simple as the forms which would be used in com-

mon conversation; for instance, if a man was drowned in the Hughli the inquisition would state that his "death was caused on or about the day of 1871 by falling out of a boat into the river Hughli whereby he was drowned."

The effect would be that Coroners in the presidency towns would not have to look beyond the four corners of this Bill to know their duties: they would not have to buy "Jervis on Coroners:" so that the Bill would be equivalent to that book and to the three or four Acts of Parliament and Acts of the Indian legislature, which explained and modified the English law relating to Coroners.

That was the nature of the Bill which he now asked the Council to consider. He wished to take the opportunity of saying a few words on the general subject of the consolidation of the law of which this measure formed a part, because he had noticed that remarks had been made about over-legislation and the undue haste of the Legislative Department. He wished to point out what the real state of the case was. The work of the Legislative Department had been for a considerable length of time substantially directed, not to increasing the law, but simply to repealing the existing law, to putting it into order, and to expressing it in a clear and unmistakeable form. Though that involved the passing of a considerable number of enactments, the effect was very much to shorten, instead of increasing, the law. He would only say with regard to that, that if any one would look at the law of this country before this process was undertaken, he would come to the conclusion that, if it had not been undertaken, and very efficiently carried on for a good many years past, it would have been almost impossible to administer justice, especially when you had a large number of Courts and Judges who were not professionally familiar with law. For instance "Beaufort's Digest," the standard book on Indian Criminal Law before the Penal Code was enacted, consisted of three closely printed quarto volumes. Mr. Mayne's Penal Code, you would find, embodied the substance of those volumes in a comparatively small octavo, rather loosely printed. Mr. Clarke's edition of the old Bengal Regulations, printed seventeen years ago, consisted of two thick quarto volumes containing 1,763 pages. The Bengal Regulations still remaining unrepealed would go easily into a moderate octavo volume.

In order to give the Council ocular demonstration of this, he had brought down two sets of books, and would ask the Council to look at them. This set contained Mr. Theobald's edition of the Legislative Acts of the Governor General in Council. The first five volumes contained the Acts from 1834 to 1867 still unrepealed at the end of 1867; and the other three volumes contained the Acts for 1868, 1869 and 1870: so that the whole of the Acts of the Legislative

Council filled five thick volumes and three smaller volumes. The other day Mr. Fagan had published an edition of the Acts which were unrepealed at the end of 1870, so that his work included almost the whole unrepealed portion of the law. It consisted of three octavo volumes about the same size as Mr. Theobald's, though the page was rather fuller. Thus the Acts now went into three volumes, while in Theobald's edition they filled five thick volumes, *plus* three smaller volumes. The effect of the measures of the last few years was apparent, more in the repealing of old, than in the making of new laws. The result was very much to lessen the labour and to diminish the total amount of the law with which any person had to acquaint himself. The process of reduction was still going on, and he hoped after a certain time that these three volumes would be brought down to a still smaller compass.

He wished at the same time to make another statement with regard to this process of consolidation. He thought that persons not practically acquainted with the law were liable to fall into a very serious error on the subject, an error which might be shared in by many lawyers who had not turned their attention to that direction. It was supposed that, when a law was once made, it ought to last for a hundred years and never get out of repair, and should then be as good as new. It seemed to him that you might as well build a railway to Lahore and expect that it would not require repairs. It was true that the wear and tear, so to speak, of a law were not so rapid as the wear and tear of a public work. But wear and tear there always were and always would be, for the wit of man could not devise any law which would be complete and last for ever, although each successive re-statement of the law would make it clearer and plainer. It must be remembered that there were a vast number of transactions arising under each law, and a considerable number of clever people constantly engaged in criticizing and picking holes in its provisions. And when once you had got holes picked, they were sure to be picked larger and larger until you had got a great mass of cases on the Statute which would make it more complicated than before. The only way to prevent this was by continually keeping the law in repair, just as you kept any other work in repair. You had to keep looking to find where the defects were and what questions had arisen: to repeal one law and make a new one. In that way you might get things into a smaller compass still. But to suppose that it was in the power of any person or any set of persons to put the law of a great country into a small compass, and say that that was the law and that it was never to be altered, was to make a very great mistake indeed, and they would be utterly disappointed in any such expectation. However small the compass might be into which the law

was brought, the law would still have to be continually subjected to revision and re-enactment, and that would go on exactly in the same manner as at present. If the law was to be kept in a reasonable form, it would be necessary to have a special department of persons continually working upon it, just as you require to have a sufficient number of plate-layers on a line of railway. He thought the public at large was not sufficiently aware of that fact.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PRISONERS' BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill to consolidate the law relating to Prisoners committed by a Court be taken into consideration. He said that the degree of credit, on the score of usefulness, to which this Bill was entitled as a part of the scheme on which his hon'ble and learned friend (Mr. Stephen) had just dilated would be best understood by a reference to the schedule, from which it would be seen that the Bill purported to reduce to one Act the entire provisions of no less than eight different enactments as well as portions of two others.

The only alteration in the substance of the existing law contemplated by the amended Bill was in regard to the constitution of the tribunal by which persons must be convicted and sentenced for certain offences in Native States, in order to admit of their imprisonment within British territory.

As the law now stood, the British officer who was a member of such tribunal must be duly authorized to act in that capacity by the Native Prince or State. As a matter of fact, however, in the case of many of these mixed Courts, the British officer was not, and from various causes could not be, so authorized.

To bring the law therefore into accordance with the existing practice, the words "or by the Governor General in Council" had been introduced into the last clause of the nineteenth section.

The other proposed changes were merely verbal.

In Part V, the application of sections 30 and 31 had been made general by the omission of the words "not established by Royal Charter" which occurred in the original Bill immediately after the word "Court." This amendment

effectuated the fusion of the provisions of the Bill, in regard to the removal of prisoners from one prison to another, with the corresponding provisions of the Criminal Procedure Code. The Bill was thus rendered more complete as a consolidation measure, and the Code was relieved of matter foreign to its natural scope and object.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Chapman be added to the Select Committee on the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Motion was put and agreed to.

INDIAN CONTRACT LAW BILL.

The Hon'ble MR. STEPHEN also moved that the Hon'ble Messrs. Robinson and Inglis be added to the Select Committee on the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

The Motion was put and agreed to.

CRIMINAL TRIBES' BILL.

The Hon'ble MR. STEPHEN then moved that the Hon'ble Mr. Robinson be added to the Select Committee on the Bill for the registration of Criminal Tribes and Eunuchs.

The Motion was put and agreed to.

The Council adjourned to Friday, the 10th February 1871.

CALCUTTA,
The 27th January 1871.

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

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