

Tuesday, July 19, 1870

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

**VOL 9**

**Jan to Dec**

**1870**

**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.*

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The Council met at Simla on Tuesday, the 19th July 1870.

P R E S E N T :

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P.,  
G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

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.

The Hon'ble F. R. COCKERELL.

COINAGE AND MINT BILL.

The Hon'ble MR. STEPHEN introduced the Bill to consolidate and amend the law relating to Coinage and the Mint, and moved that it be referred to a Select Committee with instructions to report in a month. He said that one object of the Bill was to consolidate the five Regulations and Acts relating to coinage and the mint. No alteration had been made in the substance of the existing law, with the exception of the introduction of a section by which power was given to public servants to deface light-weight, counterfeit and called-in coin. His hon'ble friend, Sir R. Temple, would, MR. STEPHEN hoped, consent to serve on the Select Committee, and would thus have an opportunity, if he thought fit, of suggesting any alterations which might be desirable from a financial point of view.

The Motion was put and agreed to.

## LOCAL ACTS CONFIRMATION BILL.

The Hon'ble Mr. STEPHEN also moved for leave to introduce a Bill to confirm certain laws affecting European British subjects. He said that in introducing the Bill he would trespass on the time of the Council for a few moments, as the subject was one of very general importance and interest.

The Council would be aware that the High Court at Bombay had lately held that the local Legislature of Bombay had no power to pass Acts by which European British subjects were subjected to criminal punishment. A European British subject had committed some trifling offence against a local law for which he was fined one rupee. The High Court held that the local Legislature was not competent to pass an Act inflicting such a penalty; that the conviction must be quashed and the fine repaid. The steps by which they arrived at this conclusion were these: The Indian Councils' Act which created the local Legislatures, restrained them from affecting the jurisdiction of the High Court. The High Courts had exclusive jurisdiction in criminal matters over Europeans. Therefore, every Act of the local Legislatures which inflicted criminal punishments on Europeans affected the jurisdictions of the High Courts, and was illegal. Upon each of these points the High Court entered upon an elaborate examination of all relevant authorities and principles, and they arrived at length at the conclusion above stated. Mr. STEPHEN thought that they had a perfect right to do so, and he and the Government generally wished to treat their decision with the utmost respect. He, however, could not help saying that the subject was one on which other Courts might arrive at a different conclusion. He had seen careful and elaborate opinions by two of the most eminent lawyers in India, the effect of which was that the Local Governments had the right to pass Acts of the class in question, inasmuch as they did not affect the jurisdiction of the High Courts, but merely conferred concurrent jurisdiction upon the local Courts, and that there was no ground for the opinion that the jurisdiction of the High Courts was exclusive.

Mr. STEPHEN's own opinion was that the point of law was one on which difference of opinion might naturally prevail, inasmuch as it had in all probability escaped the attention of Parliament when the Indian Councils' Act was before them. The matter might probably come before the High Courts at Calcutta and Madras, and if they should take a different view from the High Court of Bombay, the result would be unseemly and highly inconvenient. If, on the other hand, the other High Courts were to concur with the High Court of Bombay, the result would be calamitous, as (amongst others) the Police Acts,

the Municipal Acts, and the Gaol Acts, would become a dead letter as regards Europeans. He (Mr. STEPHEN) could not regard such a consequence without dismay. Considering that Calcutta and Bombay had each a large sea-faring European population, amongst whom order was preserved principally by the operation of the Police Acts, the consequence of repealing those Acts would be nothing less than disastrous.

Under these circumstances Mr. STEPHEN thought it was the clear duty of the Government to interfere. They could not increase the powers conferred by Parliament on the local Legislatures. They could, however, confirm their Acts retrospectively, and give them the same validity as they would have had if they had been passed by the Governor General in Council.

As the Government had no intention of interfering with the privileges of European British subjects, care would be taken to draw the Bill in such a manner as not to subject them to any judicial officer who would not otherwise have jurisdiction over them. Its effect would be to make them punishable for the same offences for which Natives would be punishable under local Acts, but only by the Justices of the Peace who would have jurisdiction over them in respect of offences against the general criminal law.

The Bill would of course contain a clause indemnifying Magistrates who had acted under the Acts intended to be confirmed.

The Motion was put and agreed to.

#### BENGAL REGULATIONS REPEAL BILL.

The Hon'ble Mr. COCKERELL moved for leave to introduce a Bill to repeal certain obsolete Regulations of the Bengal Code. He said that the proposed measure was another step towards the execution of the scheme recently laid before the Council by his hon'ble and learned friend Mr. STEPHEN for the consolidation of the existing law. There was certainly no part of the Indian Statutes to which the consolidating process could be more advantageously applied than the Regulations of the Bengal Code. Though not embracing any great variety of subjects—for, excluding revenue matters and punishments for heinous offences, the Regulations could not be said to contain much substantive law,—yet their numerical strength and bulk were excessive. It had been frequently asserted that there was at the present time a tendency to over-legislation. If this could be said with any reason in regard to our modern legislation, what must be said of the legislation of the

Regulation era? That period extended—at least as regards extant Regulations—from 1793 to 1833. In 1834 there were on the Statute-book 561 Regulations, excluding those which had been rescinded previous to that time, and also the Regulations of the Madras and Bombay Codes. If we contrasted those figures with the nett result of the legislation which had taken place from that year up to the present time, a period almost corresponding in length with that in which the Regulations were enacted, we should find that, notwithstanding the vast extent of territory which had been added to the British dominions in India since the period just referred to, and the obviously increased requirements of a more advanced state of civilization, the total number of the unrepealed Acts of the Governor General in Council enacted from 1834 up to the present time, was considerably less than the number of Regulations which were in force in 1834.

It was true that in this comparison he (MR. COCKERELL) had not taken into account the enactments of the different local Legislatures, but, on the other hand, he had excluded the Regulations of the Madras and Bombay Codes. He had simply contrasted the nett result of the legislation of the Governor General in Council for all India during the last thirty-six years, with that of the legislation during the previous forty years for the Bengal Presidency only.

Since 1834 considerable progress had been made in reducing the number of the Bengal Regulations. For a large portion of them, the three great Codes,—the Civil Procedure Code, the Indian Penal Code, and the Criminal Procedure Code,—had been substituted. A still larger number had been extinguished as obsolete, or practically useless, by the repealing Act (No. VIII of 1868), and many others had been absorbed in such consolidating enactments as the Rent Law, the Consolidated Customs' Act, the Abkari Act, the Registration Act, the Stamp Acts, &c. With all these reductions, however, the aggregate of unrepealed Bengal Regulations was still no less than 224—a number equal to, in fact exactly corresponding with, the number of the extant *general* Acts of the Governor General in Council. Of this number, about 62 might eventually be extinguished or absorbed on the passage through this Council of three Bills now before it, namely, the Bill for declaring the local extent of the general Regulations and Acts, the Jails' Bill, and the Coinage Bill. There would still remain 162 Regulations; and the object of the Bill, which he now asked leave to introduce, was to remove by express repeal so much of these enactments as had become obsolete or was unfit for retention as no longer necessary to meet the requirements of the present time, and thus to clear the way for condensing and reducing into the smallest practicable compass as much of the residue of these Regulations as was capable of being re-abridged by consolidation.

This project did not commend itself to approval solely on the ground of the advantage to be derived from the reduction of the *number* of the existing operative Regulations. Much as there was to admire in many of these Regulations as regards their comprehensive and perspicuous style and the benevolent intentions expressed on the preambles, which generally contained a sort of Statement of Objects and Reasons by which their framers were actuated, it must, he (MR. COCKERELL) thought, be admitted that the terseness of expression and scientific arrangement of matter which marked modern drafting were more suited to the practical age in which we lived than the diffuse language and unconnected sequences in which the substance of the Regulations was expressed and arranged. The Bill would provide for the absolute repeal of 43 Regulations, besides the partial repeal of 95 others. The number of Regulations or parts of Regulations thus left might be about 119, which would be classed as follows:—

Relating to Land Revenue	...	...	...	...	57
Ditto	Civil Judicature	...	...	...	12
Ditto	Constitution and Jurisdiction of Courts	...	...	...	6
Ditto	Police, including police functions and responsibilities of landholders	...	...	...	9
Ditto	Pensions	...	...	...	7
Ditto	Personal obligations of the Members of the Covenanted Civil Service	...	...	...	4
Ditto	Native officers	...	...	...	4
Ditto	Rájá of Benares	...	...	...	3
Ditto	Nawáb Názim	...	...	...	3
Ditto	Miscellaneous Revenue and Customs	...	...	...	3

and eleven others relating to different subjects which it was perhaps unnecessary to detail here.

It would be seen that the majority of these Regulations related to land revenue. There was, he (MR. COCKERELL) believed, at the present time, a scheme under preparation in England for the consolidation of the entire revenue law of the North-Western Provinces. This work, which presumably included all the matters contained in the Regulations just referred to, would probably at no distant date become the subject of legislation by this Council. This projected Revenue Code was intended for application to the North-Western Provinces only, whereas many of these Revenue Regulations were in operation in both divisions of the Bengal Presidency. But if the Code was adopted by this Council, and superseded the existing revenue Regulations in the North-Western Provinces, the local Legislature of Bengal proper might be expected to undertake a similar consolidation of the revenue law applicable to those

Provinces, and in this way the entire body of Regulations relating to revenue might be eventually extinguished.

The twelve Regulations relating to civil judicature could be conveniently absorbed in the amendment of the Civil Procedure Code whenever we were in a position to proceed with that long-projected measure. As regards the Regulations relating to (1) the Constitution and Jurisdiction of the Courts, (2) Police, (3) Pensions, (4) the personal obligations of Members of the Covenanted Civil Service, (5) Ministerial and other Native officers, he (MR. COCKERELL) hoped, as soon as the present Bill was sufficiently matured to clear the way for further action, to bring forward consolidating enactments on each of these subjects.

If these measures should be eventually adopted by the Council, the Bengal Regulations would be reduced thereby to the narrowest possible limits; and MR. COCKERELL ventured to say that a most useful work, both as regards the convenience of the public and the lessening of the labours of those who had to administer the law, would have been achieved.

The Hon'ble MR. STEPHEN said that the Hon'ble Mr. Cockerell deserved the acknowledgments of the Council for the very great pains which he had taken and for the special knowledge which he had brought to bear on the preparation of his scheme. If the Bill now proposed were passed, the Regulations of Bengal would be brought to the desirable condition to which those of Madras had for some time been reduced, all the dead wood, so to speak, having been cut away. As the present number of Regulations would never be increased, one difficulty in the way of their consolidation would be absent. He hoped that the Government would soon be able to publish all the extant Bengal Regulations in one compact and well-arranged volume.

The Motion was put and agreed to.

#### HINDU WILLS' BILL.

The Hon'ble MR. STEPHEN moved that the further report of the Select Committee on the Hindú Wills' Bill be taken into consideration. He said that, with regard to the provisions of the Bill, he had nothing to add to what he had said at their last meeting in Calcutta. It had been thought desirable to let the Bill stand over in order to give the Government of Bengal and all persons interested in the measure ample opportunity of expressing their views thereon. No communications on the subject had reached the Legislative

Department since the 22nd of March last: the Council had waited quite long enough; and it would be wrong to postpone the passage of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN also moved that in section two, line 16, and in section three, last line, for 'May' the word 'September' be substituted.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL moved that in section two, line 13, after 'shall,' the following words be inserted:—

'notwithstanding anything contained in section three hundred and thirty-one of the said Act;'

He said that this amendment was rendered desirable by the provision of section three hundred and thirty-one of the Succession Act, which barred the application of the Act to the very persons to whom this Bill was intended to apply.

The Hon'ble MR. COCKERELL also moved that after section three, the following section be inserted:—

'4. On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal;'

and that the numbers of the subsequent sections be altered.

He said that the portion of the Bengal Regulation (V of 1799) which it was proposed to repeal, prohibited any interference on the part of the Civil Court with an Executor acting under a will. This provision would appear to extend to the grant of probates which would be thereby stopped. It might be said that the application of the Succession Act superseded the provision of the Regulation referred to; but the second section of the Succession Act restricted its operation to cases to which no other law for the time being in force was applicable. The proposed repeal was therefore desirable to avoid any difficulty to which this conflict of the provisions of the two enactments might give rise.

The Hon'ble MR. STEPHEN expressed his approval of Mr. Cockerell's Motions, which were then put and agreed to.



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

The Hon'ble MR. COCKERELL said, that as his official duties had been chiefly in connection with the Lower Provinces of Bengal, to which this Bill was intended to apply, he wished to take this opportunity of expressing his great satisfaction in the course taken by his hon'ble and learned friend, the mover of the Bill, in regard to its passage through this Council. Under the strong conviction that, as the practice of disposing of property by will was greatly on the increase amongst the Hindús of Lower Bengal, the restraints imposed by the Indian Succession Act were not only applicable to those territories, but that their application was urgently needed there, he (MR. COCKERELL) advocated in Committee the extension of the Bill to its present dimensions; and when, in April last, the passage of the Bill seemed likely to be indefinitely postponed on account of the strong objections raised on the subject of perpetuities, it was on the sole ground of expediency, to prevent delay in the application of the general provisions of the Bill for regulating the wills of Hindú testators, that he moved an amendment for the temporary exclusion of the clause containing the rule against perpetuities. He was now very glad that the amendment, which he should certainly not have moved could he have anticipated so early a solution of the question, had not been agreed to. He would not, however, take up the time of the Council by saying any more on the subject of that amendment—a subject which had been so ably and exhaustively dwelt upon by his hon'ble and learned friend Mr. Stephen on a former occasion. It was quite clear, as had been said by his learned friend, that we had waited long enough for any further representation on the part of the Local Government, or any refutation by the opponents of the measure of the arguments which had been set forth in support of the clause above referred to. He considered not only that we were fully justified in proceeding to pass the Bill, but that its early coming into operation was on every account most desirable; and he was confident that the results of its working would be such as to justify the extension of its provisions to Madras and other parts of the Empire.

The Hon'ble MR. STRACHEY said that he did not intend to occupy the time of the Council with any remarks upon the general question regarding which there had been, on former occasions, so much discussion. The admirable speeches of his Hon'ble friend, Mr. Stephen, had really left nothing to be said, and he was sure that every member of this Council, and every reasonable man outside its walls, would agree in thanking Mr. Stephen for the service which those speeches had done to the cause of truth and progress in this country. Those speeches had made it impossible that there should be any difference of

opinion in this Council, and had rendered it certain that the Legislature would not hesitate to refuse to take the retrograde step which had been urged upon it by a certain section of the community more distinguished for volubility than for wisdom.

There was only one point which MR. STRACHEY wished to notice, because he thought that it possessed some interest and importance, and it had not been referred to in the discussions which had taken place. The Council would remember the series of Executive and Legislative measures adopted, during the last two years of Lord Lawrence's Viceroyalty, with the object of settling the many vexed questions which had given rise to trouble and anxiety in Oudh. The last of those measures which, notwithstanding the part which he (MR. STRACHEY) had taken in originating them might, he hoped he might say, now be pronounced to have been successful,—the last of those measures was that which became law as Act I of 1863. It was intended to define the rights of the taluqdárs of Oudh in their estates, and to regulate their powers of bequest, gift and transfer. It was passed by the Legislature after the full and unreserved approval of the taluqdárs to all its provisions had been communicated to the Government by themselves. MR. STRACHEY would ask the Council to allow him to read the twelfth section of that Act.

“12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.”

Now this section was identical with the rule against perpetuities contained in section one hundred and one of the Indian Succession Act, regarding the introduction of which into the present Bill there had been so much discussion.

The high-spirited nobles of Oudh had showed, on many occasions, how well and intelligently they were able to look after their own interests. They had agreed to adopt the rule against perpetuities without (so far as MR. STRACHEY remembered) the slightest objection being even raised, although every portion of the Act had formed for nearly two years the subject of constant and careful discussion with the taluqdárs. This rule, therefore, which we had been told was a violation of Hindú law and Hindú usages, and Hindú ideas of propriety, had been freely adopted by one of the most important and influential

bodies of Hindús in India, and it had been for some time past the law to which two-thirds of the landed property of Oudh was subject.

But the Oudh law went further. MR. STRACHEY would not disguise his opinion that there was one blot upon the present Bill. It placed no check upon the power of bequest to religious uses, and MR. STRACHEY thought there was no country where such checks were more required than in this; for the prevention of the gross and shameful abuses which too often occurred. He did not share the opinion that there would have been anything objectionable in placing some check in Lower Bengal upon this power of bequest, and in illustration of his opinion he would again appeal to the law of Oudh. He would read to the Council section twenty of the Act which he had already quoted—

“ 20. No taluqdár or grantee, and no heir or legatee of a taluqdár or grantee, having a child, parent, brother, unmarried sister, or a nephew, being the naturally born son of a brother of such taluqdár or grantee, heir or legatee, shall have power to bequeath his estate or any part thereof or any interest therein exceeding in amount or value the sum of two thousand rupees to religious, or charitable uses, except by a Will executed not less than three months before his death, and registered within one month from the date of its execution.”

Unless we were to suppose that the Hindú taluqdárs of Oudh were more enlightened than the educated gentlemen of Bengal, MR. STRACHEY could not believe that a rule which the taluqdárs were willing to apply to their own property would have been looked on in Bengal as an interference with the religion of the people.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to Coinage and the Mint :—The Hon'ble Sir R. Temple, the Hon'ble Messrs. Strachey and Cockerell, and the Mover.

The Council then adjourned to the 2nd August 1870.

SIMLA,  
The 19th July 1870. }

WHITLEY STOKES,  
*Secy. to the Council of the Govr. Genl.  
for making Laws and Regulations.*