

Tuesday, June 21, 1870

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

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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.*

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The Council met at Simla on Tuesday, the 21st June 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.

**MADRAS DISTRICT MUNSIFS' BILL.**

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to consolidate and amend the laws relating to District Munsifs in the Madras Presidency. He said that the primary object of the proposal to legislate in this matter was the extension of the pecuniary jurisdiction of the District Munsifs from one thousand rupees, to which amount it was limited under the existing law, to two thousand five hundred rupees. The pecuniary limit of the jurisdiction exercised by the corresponding class of Civil Courts was, in the Bengal Presidency, one thousand, and in Bombay, five thousand rupees.

The proposed increase was not proportionately greater than that recently accorded to the Bengal Munsifs by Act XVI of 1868.

It was advocated by the High Court and approved generally by the Judges of the principal Civil Courts in the Madras Presidency.

Moreover, looking to the fact that the pecuniary jurisdiction of the District Munsifs of Madras had undergone no change since 1833, and that, during the

period that had since elapsed, there, as elsewhere, the character of this class of Courts had vastly improved, the propriety of the extension now contemplated could not be doubted.

It was also proposed to consolidate the law relating to District Munsifs, now spread over several local enactments, and this part of the scheme had necessitated the reference to this Council of what was in itself, as the title of the Bill imported, a purely local measure; for the process of consolidation involved the re-casting of some of the provisions of existing enactments affecting the jurisdiction of the High Court, and thus placed the proposed legislation beyond the competency of the local legislature.

The Bill which had been prepared by the Madras Government, dealt solely with the law relating to District Munsifs. As it was necessary to refer the proposed legislation to this Council, he (MR. COCKERELL) thought that the scope of the Bill might have been advantageously enlarged by extending the work of consolidation to the entire law relating to the constitution and jurisdiction of all the Civil Courts of the Madras Presidency, subordinate to the High Court.

A consolidated enactment of this kind, in reference to the Civil Courts of the Bombay Presidency, was passed by this Council last year. The expediency of applying a similar measure to the Madras Presidency, now that the opportunity for it had arisen, appeared to be so obvious as to need no argument. If the Bill was eventually referred to a Committee, he (MR. COCKERELL) would certainly advocate its extension in the direction which he had just suggested.

The Motion was put and agreed to.

#### CUSTOMS DUTIES EXEMPTION BILL.

The Hon'ble SIR R. TEMPLE moved for leave to introduce a Bill to enable the Government of India to exempt goods from customs duties. He said that large quantities of piece goods and other merchandize were imported into British India and soon after exported to foreign territory.

In order to encourage the use of our ports as *entrepôts*, and for other reasons, it was convenient that the Government of India should have the power to exempt wholly or in part from export duty goods which had paid import duty.

But to authorize such exemptions in the face of the Indian Customs Duties' Act, and of the declaration in section one hundred and thirty-seven of the Consolidated Customs' Act (VI of 1863), he (SIR R. TEMPLE) was advised that legislation was necessary.

The Motion was put and agreed to.

### BANK OF BENGAL DIRECTORS' BILL.

The Hon'ble SIR R. TEMPLE also moved for leave to introduce a Bill to enable the Directors of the Bank of Bengal to act by a quorum. He said that the Act for regulating the Bank of Bengal, No. IV of 1862, declared that the business of the Bank should be managed by nine Directors, but did not expressly authorize such business to be managed by a less number. A doubt had accordingly been raised as to whether the nine Directors could legally act by a quorum. The object of this Bill was to remove that doubt, and to validate acts which might be deemed invalid by reason of their having been done by less than the whole number of Directors.

The Motion was put and agreed to.

### COURT FEES ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to correct two clerical errors in the Court Fees Act.

He said that the first and most important of these errors occurred in section fifteen, the words "plaint or memorandum of appeal" having been inserted in the seventh line in place of "application."

That the latter word was intended to be used was clear from the context, for the word "other" in the following line of the same section was only intelligible on the hypothesis that the clause had primary reference to some special "application." So obvious was this, that the clause might perhaps have been safely left as it stood to the construction which the Courts would put upon it, but for the circumstance that a literal acceptance of the words erroneously inserted would entail a not inconsiderable loss of revenue.

The provision of this fifteenth section found no place in previous enactments relating to Court Fees.

To discourage what was alleged to be a growing practice amongst the legal practitioners in the Civil Courts, viz., the presentation of applications for a review of judgment on frivolous or insufficient grounds, a special *ad valorem* fee was imposed on all applications for a review of judgment in lieu of the fixed fee chargeable on general applications to the Civil Courts, and which formerly obtained in the case of applications for review.

The provision of section fifteen was devised to prevent the enhanced fee working harshly in the case of well-grounded applications for review. It was intended thereby to recoup to the successful applicant the amount paid by him in respect of his application for review of judgment in excess of the fee chargeable on an ordinary application. The effect of the section as it stood, however, was to give back to such applicant, not the excess fee paid on the application, but nearly the fee paid on the institution of the plaint or appeal in relation to which his application for a review of judgment was successful, or about double the amount to which he was entitled.

The other error was to be found in Schedule I, No. 2, where the words "or memorandum of appeal" had been accidentally inserted. There was no appeal in suits for possession under the Limitation Act (XIV of 1859), such appeal being barred by Act XXIII of 1861, section 26. The words referred to, therefore, were mere surplusage, but they suggested an apparent inconsistency with other enactments, and it was therefore desirable that this opportunity should be taken to excise them.

The Hon'ble Mr. STEPHEN regretted that it should be necessary to put so trifling an Act on the Statute-Book. He thought the Executive Government should be empowered to correct such clerical errors by Notification in the *Gazette of India*.

The Motion was put and agreed to.

### OUDH TALUQDARS' RELIEF BILL.

The Hon'ble Mr. STRACHEY introduced a Bill to relieve from incumbrances the estates of taluqdars in Oudh, and moved that it be referred to a Select Committee with instructions to report in a month. He said that this Bill was introduced in fulfilment of the intention of the late Viceroy, and had been framed on the recommendation of the Chief Commissioner of Oudh, and at the request of the taluqdars themselves. Many of those

talúqdárs were deeply in debt, and their estates were subjected to incumbrances so heavy, that they could not perform their proper functions as landholders. The Government considered that, for political reasons, it was expedient to take measures to protect those estates and to prevent their falling into the hands of money-lenders. The Bill resembled an Act which was passed in 1862 by the Bombay legislature, and which had been worked with much success. The Bill proposed to empower the Chief Commissioner, on the application of any distressed taluqdár, and with the previous consent of the Government of India, to vest the management of the taluqdár's estate in a Government officer. Suits against the taluqdár would thereupon be barred, his person would be freed from arrest, and his immoveable property from attachment, and, during the continuance of the management, his right to encumber or alienate would cease. The manager would receive the rents and profits and pay thereout the Government revenue such annual sum as might be necessary to maintain the taluqdár and his family, and the costs of necessary repairs and improvements. The residue would be applied in defraying the costs of management and in settling the taluqdár's debts and liabilities. Provision was then made for ascertaining those debts and liabilities, and, on their discharge, the taluqdár would be restored to the possession of his estate. The rest of the Bill contained the clauses necessary to give effect to the foregoing provisions.

The Bill referred only to the taluqdárs of Oudh, but MR. STRACHEY thought that it deserved consideration whether it might not be expedient to insert a clause authorizing the Government, under special circumstances, to make the Act applicable to the encumbered estates of great landholders in other parts of the country.

His Excellency THE PRESIDENT asked whether it was sufficiently clear that, on the appointment of the manager, the management of the whole of the taluqdár's land would vest in him?

The Hon'ble MR. STEPHEN said that the second clause of section three provided that the Chief Commissioner might by order vest in the manager "the management of the immoveable property of or to which the taluqdár is then possessed or entitled in his own right," and he (MR. STEPHEN) thought that this clearly meant the whole of the taluqdár's immoveable property; but if there was any doubt the matter might be cleared up by the insertion of a word or two in Committee.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to relieve from encumbrances the estates of taluqdárs in Oudh :—The Hon'ble Messrs. Stephen, Ellis, and Cockerell, and the Mover.

The Council then adjourned to the 28th June 1870.

WHITLEY STOKES,

*Secy. to the Council of the Govr. Genl.*

*for making Laws and Regulations.*

SIMLA; }  
The 21st June 1870.