Tuesday, September 6, 1870

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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 Simla on Tuesday, the 6th September 1870.

PRESENT:

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.
His Highness the Hon'ble Sarámade Rájáhae Hindustán Ráj Rájendra Srí Maháráját Dhiráj Siváí Rám Singh Bahádur of Jaypúr, G.C.S.I.

OUDH TALUQDARS' RELIEF BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Taluqdárs in Oudh be taken into consideration. He said that the Report described the alterations which it was proposed to make in the Bill. He need not refer to them in detail, because, for the most part, they left the main features of the Bill unchanged. There were, however, a few points which required notice.

An important alteration had been made in section three. As the Bill originally stood, no limit of time was prescribed within which the provisions of the Bill might be made applicable. Since, however, this measure was avowedly of an altogether exceptional character, it seemed right to restrict its operation within such limits as were compatible with the object which it was intended to effect. It was proposed to limit to twelve months after the passing of the Act

the time within which applications must be made. The result would be, if this alteration were approved by the Council, that, although the Government would be prepared to help the Taluqdárs out of their present difficulties by these exceptional measures, it would not continue to do so permanently. If any Taluqdár omitted to avail himself of the opportunity offered to him, or if after the term stated in the Bill had elapsed, he chose to involve his estate in embarrassment, he would have no right to expect that the Government would again interfere to save him from the consequences of his own folly.

When the Bill was introduced he (MR. STRACHEY) said that it would be a question for consideration whether authority might not be given to the Executive Government to extend the provisions of the Bill under certain circumstances for the relief of estates of great and ancient families in other parts of the country.

Representations had been made by more than one Local Government urging the expediency of this course; but, on full consideration of the question, the Government did not think that any such general extension of the provisions of this measure would be expedient.

It had always been stated that this Bill was introduced for political reasons of an altogether exceptional character, and those reasons were recognised by the late Viceroy, Lord Lawrence, at the last meeting of the Legislative Council at which he was present, as justifying the special interference of the Government.

He (MR. STRACHEY) did not deny that strong political reasons for similar interference might exist in some cases in other provinces, and on more than one occasion lately the Government had endeavoured to assist the heads of ancient families, to whom the people looked up as their natural heads, with the object of relieving them from their difficulties. A law, however, which might be applied generally or arbitrarily at the will of the Executive Government to save landholders from the consequences of their own improvidence, would hardly be justifiable.

The economical results of such a general measure might be very mischievous indeed: it was, perhaps, hardly too much to say that the value of landed property throughout the country might be affected by the passing of such a law. The security, for instance, of mortgagees would be diminished, if at the will of the Executive Government the mortgagee might at any time be compelled to give up his interest, to receive his money, and seek some other investment.

Even as regards Oudh the economical objections to the present Bill could not be denied, but the political reasons which had been held to justify it were altogether peculiar.

He (MR. STRACHEY) asked the Council to remember the origin of the tenure on which the Taluqdárs of Oudh held their estates. They did not hold them by ancient ancestral right. Their rights were entirely created by the British Government itself, and they were held by the free gift of the British Government alone. All rights of property which the Taluqdárs formerly possessed in the land were confiscated by the famous proclamation of Lord Canning in 1858 as a punishment for their rebellion, and every right of property which these Taluqdárs now possessed, they derived from the free gift of Lord Canning's government.

It was the avowed policy of that Government to recreate in Oudh a great aristocracy holding its estates by a tenure of English type unknown to the Hindú or Muhammadan Law, or to the ancient custom of Oudh itself.

The Law of Primogeniture, in a form unknown in any part of India, was established, and the rights of all other parties in the soil were either swept away, or were to be held in entire subordination of the Taluqdárs.

Every Taluqdár received unrestricted powers of disposing of his estate as he pleased. These powers were at variance in their nature both with Hindú law and custom, and with the customs of Oudh itself, and they were practically more extensive than those possessed by almost any great landholder in England itself.

Sir Charles Wingfield, who might be considered, to a certain extent, as the originator of the policy followed after the mutinies in Oudh, strongly protested against giving the Taluqdárs these unlimited powers of disposing of their estates. These powers went very far beyond what he desired, and he predicted (and there was certainly no man living who had a better right to speak upon the subject) that the almost inevitable result of removing the checks imposed by Hindú law and custom on the disposal of ancestral property, would be the ultimate ruin of the families which the British Government desired to maintain. The government of Lord Canning, however, insisted on placing the Taluqdárs in this altogether exceptional position.

The promises made by that Government had to be fulfilled, and they were strictly and scrupulously fulfilled by the government of Lord Lawrence, which,

by the passing of Act I of 1869, gave the force of law to all the engagements which had been entered into with the Taluqdárs. Whether these engagements were wise, time alone could shew; and this was not now a question for discussion.

The result of all that had been done was, that a great experiment was being tried in Oudh, and it was the duty of the Government, which by its own acts had created the existing state of things, to give that experiment every fair chance, and to endeavour to remove all removeable difficulties which might interfere with the possibilities of its success.

This was the object and justification of the present Bill.

It had been ascertained beyond doubt that many of the Taluqdárs of Oudh were so deeply in debt, and their estates were now subjected to such heavy incumbrances, that it was impossible for them to perform their functions as landholders, and that unless some relief was given to them their estates would, sooner or later, be lost to them and pass into the hands of money-lenders and strangers. Thus the political objects with which the system now existing in Oudh was created by the government of Lord Canning would be defeated.

This Bill, if it became law, would give the Taluqdárs of Oudh a chance of recovering and maintaining their position.

The experience that had been gained by the Act of 1862, passed by the Bombay Legislature for the relief of the Taluqdárs of Ahmedabad, on which the present Bill was founded, showed, as he (MR. STRACHEY) had explained on former occasions, that, without any sacrifice of the just rights of creditors, we might hope to free the estates of the Oudh Taluqdárs from their present heavy incumbrances.

The Hon'ble MR. COCKERELL said that, although he had joined the other Member of the Select Committee in recommending the adoption of the amended Bill by the Council, he was far from thinking it as perfect a measure as, even consistently with its political object, it might be; and, in reference to what had fallen from his Hon'ble friend the Mover in regard to its extension to other places, he (MR. COCKERELL) thought we did well to confine its operation to the territories within which, on special political considerations, it was originally designed to have effect.

The great defect of the Bill, as seemed to him, was its want of any provision for the due protection of the interests of the creditors of the indebted Taluqdárs whose estates might be brought under its provisions.

It was doubtless essential to the attainment of the object of this legislation that the action of the civil courts should be barred as was provided by section four of the Bill, and, perhaps, even the enforced surrender by the mortgagee in possession required by section seventeen could not in that view be avoided; but he (MR. COCKERELL) was of opinion that it was not necessary to hand the creditors over to the tender mercies of the manager (tempered only by the control of the Chief Commissioner) so unreservedly as was done by section eleven.

It seemed to him that the creditors, whose ordinary remedy for the assertion of their rights was wholly barred by the combined operation of sections four and twenty-three, and especially the mortgagees who might be deprived of the possession of the property mortgaged to them, were equitably entitled to the protection of some stipulations in regard to the liquidation of their admitted claims by the manager. As the Bill stood, there was no guarantee that the liquidators would be guided by such considerations, in regard to conditions of interest on the loans to the Taluqdárs, priority of lien on their property and other matters, as would be taken into account in the adjudication of the creditors' claims by the civil court; or that the dispossessed mortgagee who had secured himself in his transactions with the Taluqdár, would be in any better position as regards the recovery of his loan than the other creditors who had no such security.

It had been suggested that the omissions of the Bill in this respect could and would be remedied by the rules to be framed under section twenty. He (MR. COCKERELL) confessed he should have preferred to see the required protection directly secured by the Bill itself.

He did not propose, however, to move any amendment in this sense, but he had thought it right to draw the attention of the Council to the subject, in the hope of eliciting from the Hon'ble mover of the Bill a public declaration that it was the intention of the Chief Executive Government to insist upon the rules to be made under section twenty being so framed as to secure as much protection to the interests of the creditors as was compatible with the political objects of this legislation.

The Hon'ble MR. STEPHEN said that there would be no serious practical difficulty in making rules to carry out Mr. Cockerell's object. It certainly

was not the wish of Government to put mortgagees and other secured creditors in a position worse than that which they would have held if the Bill were not passed. But if the Government or the Select Committee had embodied all these rules in the Bill, the measure would necessarily have become elaborate and even cumbrous. The Bill, to a great extent, would have become an Insolvency Bill, and the rules contained in it would, he (MR. STEPHEN) feared, have some times been unintelligible to those who would have to work the present measure. The Local Government would make the necessary rules with a practical regard to the necessities of the case, and before these rules came into force, they would be carefully scrutinized by the Legislative Department.

The Hon'ble MR. STRACHEY wished to add only a few words to what had been said by his Hon'ble friend, Mr. Stephen; and he need say nothing further as to the reasons for which it seemed desirable to leave to the Chief Commissioner and to the Government to provide by rules for all matters of detail which will arise in carrying out the provisions of this Bill.

He was extremely glad that his Hon'ble friend, Mr. Cockerell, had referred prominently to this very important part of the question.

He thought, as to the points to which he had alluded, there could be no possible difference of opinion. To sacrifice the legitimate claims of honest creditors for the purpose of saving the Taluqdárs of Oudh from the consequences of their own folly and improvidence, would be, he thought, not only morally and economically but politically wrong. The objects of this measure were political, and it might safely be asserted that the British Government could never gain politically by adopting measures involving wholesale and deliberate injustice to honest men. It would be the duty of the Local Government in framing rules under section twenty of the Bill, and in supervising the operation of all the measures that were adopted, to take every possible care that the just rights of creditors were respected.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved the following amendment:—

That the following words be added to clause four of section twelve:—

"and any mortgagee dispossessed under section seventeen shall be reinstated, unless his claim under the mortgage has been satisfied."

He said that this addition was desirable owing to the introduction of a clause in section twelve, providing for the restoration of the Taluqdár to his property if, within six months, the Chief Commissioner thought that the provisions of the Act should not continue to apply thereto. Thereupon all barred proceedings and debts would be revived; and it was only just that dispossessed mortgagees should be restored to their former position.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN asked leave to postpone his Motions regarding the Bill to amend the Penal Code.

Leave was granted.

COINAGE AND MINT BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Coinage and the Mint be taken into consideration.

He said that this was emphatically a measure of consolidation. Its object was the improvement of the law, and not the settlement of any of the delicate questions which were connected with the state of the currency. On these questions the Bill committed the Government to nothing, and he (MR. STEPHEN) believed that the Government saw no immediate necessity for entering upon their consideration. He made this statement, because he had seen in the public papers statements which showed that the measure had been misunderstood, and that it was supposed to be something more than it really was, a part of the general scheme of consolidation to which he had so often referred. Had it been a financial or currency measure, it would have been introduced by his Hon'ble friend, Sir R. Temple, who was the proper person to deal with such subjects. Though, however, the measure was a juridical and not a financial one, it had the sanction and approval of the Financial Department, and the opportunity had been taken of making a few alterations in the law which the experience of that Department recommended. Still, with the exception of the clauses relating to the

destruction of light-weight, counterfeit, and called-in coin, the Bill was little but a re-arrangement, in twenty-eight sections, of the law now scattered through four Regulations and two Acts.

The changes made by the Select Committee might be shortly stated.

As money could only be made exact within a certain limit of error, the Committee had followed the example of the recent English Act (33 Vic., cap. 10), and introduced clauses providing that the "remedy," or permissible deviation from standard weight and fineness, for gold and silver coins, should be as follows:—

	Remedy in weight.	*Remedy in fineness.*
Gold Mohur	$\frac{2}{1,000}$	$\frac{2}{1,000}$
½ ditto.		
¼ ditto.		
Double ditto.		
Rupee.	$\frac{5}{1,000}$	$\frac{2}{1,000}$
½ ditto.		
¼ ditto	$\frac{7}{1,000}$	$\frac{3}{1,000}$
⅛ ditto	$\frac{10}{10,000}$	

The remedy for all copper coins would be one-fortieth in weight.

In section nine the clauses relating to the receipt of mohurs and sovereigns in payment of Government demands had been omitted. This matter was, the Committee thought, better left to the Executive.

Part VII had been restricted to silver coin: the power to cut light-weight, counterfeit, and called-in coins was confined to such officers as Government would appoint in this behalf; and such power would be exercised subject to rules prescribed by the Government of India. Coins so cut which were counterfeit or had been reduced in weight otherwise than by reasonable wearing, would be returned. But genuine coins so cut, which had lost more than two per cent. in weight, or had been called in, would be received at the rate of one rupee per tola. These alterations rendered unnecessary the section regarding the decision of disputes by a Magistrate.

In Part VIII clauses had been introduced requiring the Mint Master to receive all bullion fit for coinage which might be brought to the Mint in

certain quantities, and imposing a charge for melting or cutting of one-fourth per mille on gold, and of one per mille on silver bullion.

Where bullion so brought was withdrawn, the Committee had provided that the withdrawal should be within twenty-four hours after receiving the Assay Master's report, and on payment of a fee prescribed by the Government of India.

Section nineteen, as to the additional duty for coining half and quarter rupees, had been struck out. It would, if enacted, have injured the poorer classes by preventing the free issue of small coin without extra charge.

The Committee had empowered the Governor General in Council to make rules as to the staff and management of the Mint, and also (by notification in the *Gazette*) to diminish the amount of remedy allowed, to call in coins, to prescribe rules for the guidance of officers authorised to cut or break coin, to establish mints at any places in British India other than Calcutta and Bombay, to abolish both or either of the mints at those towns, and to regulate any matters relating to coinage and the mint not provided for by the Bill.

Lastly, Bengal Regulation XIV of 1817 had been added to the schedule of repealed enactments.

The Hon'ble SIR R. TEMPLE desired to express, on behalf of the Financial Department, the obligation it was under to the Legislative Department for the care with which the present measure had been elaborated.

The Motion was put and agreed to.

CORONERS' BILL.

The Hon'ble MR. STEPHEN introduced the Bill to consolidate the laws relating to coroners, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this Bill was also a measure of consolidation, and would, if enacted, put an end to the separate existence of five enactments.

The Motion was put and agreed to.

PRISONS' BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to amend the law relating to prisons in the Panjáb, Oudh, the Central Provinces, and British Burma.

PRISONERS' BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his Motion for leave to introduce a Bill to consolidate and amend the law relating to prisoners.

Leave was granted.

LOCAL EXTENT BILL.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Strachey be added to the Select Committee on the Bill to declare and consolidate the law relating to the local extent of the general Regulations and Acts, and the local limits of the jurisdiction of the High Courts and chief controlling revenue authorities.

The Motion was put and agreed to.

MAULMAIN TIMBER DUTIES' BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to legalize the levy of duties on certain timber imported into Maulmain between July 1864 and August 1865. He said that duties on foreign timber imported into Maulmain by the Salween River, which flowed through the Tenasserim Division, had, since 1842, been levied at a place called Kado. Down to October 1864 these duties were supposed to be authorised by Act XXX of 1854, section seven, which provided that 'teak timber floated down any river in the Martaban *or Tenasserim* Divisions, should be charged with the same duty as that chargeable for the time being under section six on teak timber passing a river frontier custom-house,' *i. e.* (as appears from section six), a custom-house on either of the Rivers Irawádi and Sítang. But duties levied on timber passing down these two rivers were abolished by a notification in the Foreign Department made under Act IV of 1863, and dated the 4th June 1863. Thenceforward, therefore, the levy of duties on the Salween River was unauthorised. The change in the law as regards the Salween was, of course, unintentional, and had been, until quite recently, unknown both to the local authorities and the public. The present Bill was

intended to legalize the levy of these duties from the 1st July 1864 down to the 2nd August 1865, and to indemnify the officers concerned. For the duties levied before the former date the Limitation Act would provide, while those levied after 2nd August 1865 were legalized by Act VII of 1869.

The Motion was put and agreed to.

EVIDENCE BILL.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Strachey be added to the Select Committee on the Bill to define and amend the Law of Evidence. He said that the Motion afforded him an opportunity of saying a few words on a measure of the very highest importance. The Evidence Act was drafted by the Indian Law Commissioners, and sent out to this country two years ago. It was introduced by Mr. Maine, referred to a Committee, several of the members of which had now ceased to belong to the Council, and published in the *Gazette* for general information.

Objections of great weight had been taken to it by many of the most distinguished lawyers in India, and, no doubt, the subject was one which required the most careful handling. It was impossible to exaggerate the practical importance of the Bill, as it would regulate the most important part of the procedure of every court of justice throughout the Empire. Such a measure would, of course, require the most careful consideration in each of its parts, and it appeared to him (MR. STEPHEN) that the great question which the Committee would have to consider was, what was likely to be practically useful in the various courts, and, in particular, in the courts of the mofussil. The English Law of Evidence had been gradually constructed by the decisions of successive generations of Judges and by Acts of Parliament, and it assumed throughout that the court had the assistance of a highly-qualified bar, that the facts in dispute were decided by a jury, and that the Judge was to act as an umpire between two litigants, and not as an independent enquirer into facts. The result had been that the object of many of the rules of evidence was rather to bring the proceedings to a point than to aid enquiry into truth. It was not so much a guide to the Judge as a set of conditions imposed upon the parties. He (MR. STEPHEN) felt doubts whether such a system could be advantageously introduced into this country without great modifications.

At the same time it was necessary to take some steps. The law was in a state of great uncertainty. No one could say precisely how far the English

Law of Evidence did, and how far it did not, prevail in the mofussil, and the consequence was that the subject caused great difficulty and uncertainty. As a proof of this he (MR. STEPHEN) might observe that in Messrs. Cowell and Woodman's Indian Digest, which contained notes of cases decided in about eight years, the title 'Evidence' filled no less than twenty-three royal octavo pages in small print and double columns. There were probably from four to five hundred decisions noted upon the subject. This was the state of things for which the Committee would have, if possible, to provide a remedy. It was one which in justice to exceedingly hard-worked officials ought not to be permitted to continue.

The Motion was put and agreed to.

The following Select Committee was named:—on the Bill to consolidate the laws relating to Coroners, the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to the 20th September 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 6th September 1870.