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ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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 Thursday, the 12th September 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble Sir John Strachey, K. C. S. I.
The Hon'ble Sir Richard Temple, K. C. S. I.
Major-General the Hon'ble H. W. Norman, C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble R. E. Egerton.

ACT X OF 1859 AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the further amendment of Act X of 1859 (*to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.*) He had several motions to make in the same matter, and it would be convenient to make a single speech introductory to the whole. When he moved for leave to introduce the Bill, he had explained the nature of the difficulty that had arisen, the necessity for some legislation, and the general object at which it should aim. He had now to explain, first, the necessity for the haste with which it was proposed to pass the Bill, and, secondly, what exactly was proposed.

With regard to the first point, the facts stood thus: A certain course of practice had prevailed for a long period with respect to suits affecting revenue and rent throughout the North-Western Provinces. He had stated on a previous occasion that the practice had been prevalent since the passing of Act X of 1859. Mr. Bayley had informed him that the practice was much older than the Act; in fact, that the Act had supervened on the practice, instead of the practice growing up under the Act. It had been found that some portions of that practice were not authorised by law, and that as to others, it was doubtful whether they were authorised or not. Certainly, one of these doubts, though not yet the subject of decision, was formidable. Now, in the case of rent and

revenue law, an enormous number of private titles and private transactions depended upon the validity of the proceedings. The North-Western Provinces Government had stated that 600,000 decisions might be shaken by the recent ruling of the High Court. There would doubtless be more in the Central Provinces. But it would be idle to dwell on the numbers in a case like this. It was clear that the comfort and stability of a great number of families depended upon the authority of the Courts, and that a general disturbance of that authority would lead to great social confusion. Many a man who had a judgment against him in the Original Court would be glad enough to take his chance of trying the question over again in another Court, and would, therefore, appeal from the decision, and upset it on the ground that it was *coram non judice.*

On the previous occasion MR. HOBHOUSE had adverted to the possibility of this danger, and the consequent necessity for the Legislature to move as fast as it possibly could, in order to avert the danger. What had been put hypothetically turned out to be a fact. The High Court of the North-Western Provinces had followed the judicious course of postponing the appeals pending before it, in expectation that the Legislature would act. But it was not to be expected that the Court could pursue that course for any great length of time; and certain District Judges had found that in the performance of their duty they could not avoid giving judgment in the cases before them. They of course had only to declare the law, and they must follow the ruling of the High Court. The result was that a number of original decisions had been overturned, and more might be so every day. That was the reason for acting with the utmost speed of which the Council was capable.

There was doubtless much danger of error when laws were passed in a great hurry, and especially when their conduct was committed to a person unfamiliar with the subject-matter. But we had done all we could to avoid mistakes, and in some respects the circumstances had been very favourable. In the first place, we had communicated with the lawyers, before or by whom the discussion of the Act had taken place. Chief Justice Stuart himself was absent, but he had written promising such assistance as he could give, and referring to Mr. Justice Pearson and Mr. Jardine, the Government Advocate, who were fortunately present in Simla. Mr. Justice Pearson, who was one of the Judges who decided the case, and was also an experienced revenue officer, had supplied some useful criticisms on matters of detail, and Mr. Jardine had sent in a full and lucid statement of the legal difficulties, together with suggestions as to the best mode of remedying them—suggestions which entered largely into the composition of the Bill. It was impossible to have a Select Committee regularly appointed, because the Bill had not been introduced; but a meeting had

been held at Sir John Strachey's house, at which Mr. Bayley, Mr. Egerton, and Mr. Jardine attended, and the various points raised were carefully considered.

To pass to the next point, MR. HOBHOUSE would explain what it was proposed to do. When we were told that a course of practice was illegal, the first question to ask was, in what did the illegality consist? Was it something that led to tyranny or injustice, or violated any broad principle of law? Or was it merely something that was done in good faith and for the common good, but was found to lack the requisite legal authority? We must know precisely what the law was, and why it was so, before we got the proper starting-point for legislation, or knew in what direction to legislate.

For this purpose, on the previous occassion, he had examined the only materials in his hands, the judgments of the High Court, and from them drew the conclusion that there was no objection to the course of practice on the ground of practical injustice, but that the objection was only on the ground that the practice did not consist with the expressions used in the Act. Finding, then, that the difficulty went no deeper than words, it seemed clear enough that the duty of the Legislature was to alter the words and give the authority of law to the actual dealings of mankind. He was glad to find that that interpretation was substantially correct. Chief Justice Stuart had written to him in this sense: "By all means legalize the existing practice. I have openly said ever since the judgment was delivered that this ought to be done."

Mr. Justice Pearson spoke in the same sense; and, in point of fact, we found that the High Court had been postponing this class of business, in order that the law might be settled and the amount of confusion lessened. The Government of the North-Western Provinces had suggested the same theory; and so far all parties were agreed.

Then the question arose, should we do anything else? The Government of the North-Western Provinces had sent up a draft containing several other clauses, which introduced some alteration in the existing practice. Those clauses were stated to form part of a more comprehensive scheme for altering the arrangements of Act X of 1859, on which a Committee appointed by that Government was now, and had been for some time, employed, and they would not have been proposed at the present time, or in a fragmentary shape, if it had not been for the difficulty occasioned by the discovery of irregularity. On the whole, therefore, MR. HOBHOUSE conceived it more prudent, legislating as the Council was upon a pressing emergency, and to cover specific defects, not to travel beyond that object, but to confine itself to the one aim of giving legal

authority to actual transactions. There was danger of error anyhow, but the more topics they embraced, the more that danger would be increased.

It only remained to explain what were the difficulties that had to be dealt with. There were three sections in the Act which bore on the case—sections one hundred and fifty, one hundred and sixty-two, and one hundred and sixty-five. The regular Judges appointed by the Act were Collectors of Districts. Section one hundred and fifty provided that Deputy Collectors might exercise the powers of Collectors either in cases referred to them by Collectors, or if they were placed in charge of a sub-division of a district, then without such reference. By section one hundred and sixty-two suits were to be preferred in the revenue office either of the district or of a sub-division, as the case might be; and by section one hundred and sixty-five it was provided that Assistants to Collectors should not exercise powers under the Act, unless invested by Government with the powers of Deputy Collectors, in which case they might exercise the powers assigned by the Act to Deputy Collectors. The actual course of practice, so far as it had been explained, was as follows: The Local Government was in the habit of formally investing Assistant Collectors and Magistrates, and also Tahsíldárs, who were not such Assistants, with the powers of Deputy Collectors for the purposes of the Act. These officers were placed by the Collectors in charge of the local sub-divisions called tahsíls, of one or more of them, as the case might be, and this distribution of local work was varied from time to time. The officers held their Courts in such places as were found convenient, sometimes in tents, and they took cognizance of suits arising within the localities assigned to them, and also of such suits as might be referred to them. That was the way in which nearly, if not quite, the whole of the original suits were heard and decided. To this practice, four objections were raised,—*First*, it was said these localities, parcelled out from time to time among the various officers, were not the sub-divisions contemplated by the Act, and not being so, there was no jurisdiction given by the Act to the officers in question. *Secondly*, it was said that there was no power residing in the Local Government to invest any body with a portion only of the powers of Deputy Collectors. If they wanted to give any body the jurisdiction of a Deputy Collector under the Act, they must give him the whole powers, and with them the status and responsibility of a Deputy Collector. *Thirdly*, it was said that under section one hundred and sixty-five it was only Assistants to Collectors who might exercise the powers of Deputy Collectors, and that these Tahsíldárs, whom the Government had appointed to act as Deputy Collectors, were not Assistants, and could not legally so act. *Fourthly*, it was said that the tent or other place in which the itinerant Judge conducted the business, was not that revenue office in which the Act said that suits should be preferred. It was

on the first objection alone that the decision of the High Court proceeded. But in course of the discussion the others were mentioned, and one of them at least, namely, the fourth, received some degree of judicial countenance. The object of the present Bill was to cover all defects arising out of these four objections. It had been thought better to describe the practice in general terms of wide extent, without attempting to go into the minutiæ, and also, in wide terms, to render legal those acts which had been done, or should be done, in accordance with the practice. He was afraid the Bill would still require amendment in some points, and its precise wording and effect would be better considered with the amendments. For the present he had said enough to serve as an introduction to the Bill, and as ground for asking for the suspension of the rules.

The Hon'ble MR. HOBHOUSE then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that in section one, line one, after "all" the words "Deputy Collectors and all" be inserted, and that in the last line of the same section for the words "within the meaning of the same Acts" the words "in such charge" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that in section two, line nine, for the words and figures "Act No. X of 1859" the words and figures "Acts No. X of 1859 and No. XIV of 1863" be substituted.

And that in line ten for the words "made or act" the words "or act heretofore or hereafter made or" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that after section two the following sections be inserted:

"3. The Local Government, or any officers empowered by the Local Government in this behalf, may, from time to time, by order, define and adjust the local area over which the persons exercising the powers of Deputy Collectors in charge of sub-divisions of districts shall exercise their jurisdiction.

"Such local areas shall be deemed to be sub-divisions of districts within the meaning of the said Act No. X of 1859.

"4. In this Act and Acts Nos. X of 1859 and XIV of 1863 'Collector' includes also a Deputy Commissioner and every person in the chief revenue charge of any district."

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

The Motion was put and agreed to.

BOMBAY REGULATION XIII OF 1827, SECTION 34, CLAUSE 9, REPEALING BILL.

The Hon'ble Mr. HOBHOUSE presented the Report of the Select Committee on the Bill to repeal Bombay Regulation XIII of 1827, section 34, clause 9.

RE-IMPORTATION OF GOODS (BURMA) BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill for regulating the re-importation into British territory of goods cleared at Rangoon for the territory of the King of Ava.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. EGERTON introduced the Bill to consolidate and amend the law for the appointment of Municipal Commitees in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in a month. He said that the reasons which made a Bill necessary on this subject had been previously stated. The Bill as now introduced would receive such modifications in form and substance as might be considered necessary in discussion in Committee. It was important that His Honour the Lieutenant-Governor of the Panjáb should have an opportunity of expressing his opinion on the subject in Committee while the Council was at Simla.

The Hon'ble SIR JOHN STRACHEY said that some points connected with the Municipal Law of the North-Western Provinces (Act VI of 1868) were now under consideration; and as the differences between that Act and the Municipal Law in force in the Panjáb, Oudh and the Central Provinces were but trifling, it seemed desirable to replace Acts VI of 1868 and XV of 1867 by a general consolidation measure extending to the whole of Northern India. The various Local Governments had been addressed on this subject, and their replies, when received, would be laid before the Committee, to which the present Bill would doubtless be referred.

Major-General the Hon'ble H. W. NORMAN said that he only desired to offer one or two remarks at this stage of the Bill.

No doubt it was very desirable to encourage a system of municipal government in towns in India; but, having regard to the great objection there was to anything like excessive or unnecessary taxation, he would be glad if the Committee could see their way to place a limit on the amount of municipal taxes that should under any circumstances be levied, by fixing a percentage on the income or property taxed which should never be exceeded. Considering the poverty of the bulk of the people, it was far better to do without some desirable improvements than to create hardship and discontent by excessive taxation. He had been informed that in one place—not in the Panjáb—a municipal tax was levied on people too poor to be touched by the income-tax at a rate exceeding the highest income-tax ever yet levied.

He was aware that section eight of the Bill required all taxes to be confirmed by the Local Government before they were levied, and he had the strongest confidence that His Honour the Lieutenant-Governor of the Panjáb would decline to confirm any taxation that was not of a moderate character. The Government of India also could prohibit any tax; but that Government was distant from many places, and had much on its hands; and as the Bill was before this legislature, and would probably, if it became law, be extended to other parts of India, he thought it well that the Select Committee should consider whether the amount of municipal taxation could not by law be absolutely fixed within certain limits.

Another point that he (Major-General NORMAN) hoped would be considered was, whether works of mere ornament should ever be constructed out of the proceeds of municipal taxation. He believed it could not be denied that in some places such works had been so constructed. The official element was very strong in municipal committees, and he believed that the poorer classes were often very inadequately represented. Now, the officials and the richer Natives laboured under a strong temptation to endeavour to ornament the town in or near which they resided, and were well able to bear the extra taxation necessary for that purpose; but he was quite convinced that the people were in general far too poor to be with propriety taxed for such objects, which should be left to the voluntary public spirit of those who had means.

He was quite sure that the objects definitely specified in section eleven of the Bill were sufficient to absorb all municipal funds that could be levied without hardship, and he hoped that the Committee would be able to substitute something more definite for the words "and for purposes of local

improvement," which were so vague as to leave a loop-hole for over-zealous municipalities to construct ornamental works which could not be classed under the head of works of general utility.

In other respects, he thought the Bill unobjectionable.

His Honour the LIEUTENANT-GOVERNOR said that he entirely concurred in the opinion expressed by General Norman as to the necessity for maintaining an effective check on the growth of municipal and local taxation, but that the real question at issue was whether such check were better placed in the hands of the Executive Government (meaning by this not the Local Government, but the Local Government controlled and directed by the Government of India), or whether it would be more likely to be operative if stereotyped in a legislative statute. His Honour was strongly of opinion that the former course was preferable. The science, if so it could be called, of municipal taxation was in its infancy. The resources available were as yet most imperfectly known, and the manner in which they could be best applied to defray the increasing public wants of urban communities must, for a long time to come, remain a question only to be solved by experiment.

There was no difference of opinion between his honourable friend and himself concerning the object in view. The Executive Government was vitally interested in the judicious limitation of local taxation. It must accept all the odium of mistakes and abuses without sharing in the ways and means resulting. But continued peace and prosperity with increased population inevitably created new wants, new difficulties, new expenses. These could be met only by new taxation, and the problem was not how to fix this in perpetuity, but to impose it, as far as possible, in harmony with the wishes of the people. This, His Honour contended, could only be done experimentally. It was only within the last few years that octroi duties had, with the sanction of the Government of India, come to form the bulk of municipal resources in Northern India. Theoretically, they were open to many objections; in practice, deviations had constantly to be made from the system regulating such duties in Europe. They had been long and warmly pressed on local Administrations by the leading inhabitants of towns; they had been reluctantly allowed by the supreme authority. His Honour was under no obligation to defend them in the abstract, but cited their general adoption as an instance of the inexpediency of the futility of forecasting according to preconceived ideas the future circumstances of a changing society. Neither the Council nor the Executive Government could *a priori* select, adjust or limit, with any reasonable chance of success, municipal taxes. Experiment and discussion were essentially necessary to a right determination of their amount and incidence in so many different places

under circumstances so various. His Honour concluded by expressing his agreement with General Norman's objections to the expenditure of municipal funds on useless or superfluous ornamentation.

His Excellency the PRESIDENT said that the question raised by General Norman as to whether there should be any general limit to the amount of municipal taxation was one of great importance. There was much force, also, in the view of His Honour the Lieutenant-Governor that a check on excessive taxation might be applied quite as effectually by the Executive Government as by the Legislature. One objection to mentioning a maximum limit in a Municipal Act was that, according to His Excellency's experience, the Municipal authorities exhibited in such cases an almost irresistible tendency to go fully up to the limit so prescribed. There was, however, much to be said on both sides, and the matter would doubtless be considered by the Committee. Another point, as to the articles on which an octroi should be leviable, was also deserving of consideration.

The Hon'ble SIR RICHARD TEMPLE said that there would be the greatest difficulty in making any legislative provision to meet General Norman's views as to forbidding expenditure of the municipal funds for ornamental purposes. In many obvious cases it would be impossible to say when utility ended and ornament commenced.

The Motion was put and agreed to.

The following Select Committee was named—

On the Bill to consolidate and amend the law for the appointment of Municipal Committees in the Panjáb :—His Honour the Lieutenant-Governor, the Hon'ble Sir J. Strachey, the Hon'ble Sir R. Temple, Major-General the Hon'ble H. W. Norman, the Hon'ble Mr. Hobhouse, and the Mover.

The Council then adjourned to the 26th September 1872.

SIMLA;
The 12th September 1872.

WHITLEY STOKES,
Secretary to the Government of India.