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ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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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 15th August 1872.

PRESENT:

The Hon'ble Sir John Strachey, K. C. 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 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.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

The PRESIDENT moved for leave to introduce a Bill to consolidate and amend the law relating to Irrigation, Navigation, and Drainage in Northern India. He said that the reasons for this motion could be explained in a few words. Nearly a year ago, the Panjáb Canal and Drainage Act came into operation. It contained sections providing that, under certain circumstances and conditions, water-rates might be imposed on lands which, although irrigable, were not irrigated. These provisions had been disapproved by the Secretary of State, and although he had not disallowed the Act, since his objections only extended to these five or six sections, it was his wish that these sections should be repealed. SIR J. STRACHEY thought it would be convenient to reserve for a future stage of the Bill any remarks which he might wish to make in regard to the general principle on which the provisions in question had been based. He would now only say for himself personally, that, while he believed that principle to be thoroughly sound, he thought that every one must admit that the particular provisions, which the Council was invited to repeal, were unworkable in practice. He should therefore see with very little regret their disappearance from the statute-book. He would say nothing further now regarding their merits or demerits.

It would be convenient to take this opportunity of re-enacting the rest of the law, to which no objection had been made by the Secretary of State, and

of making it applicable not only to the Panjáb, but to other parts of Northern India. This would be in complete accordance with the wishes of the Lieutenant-Governor of the North-Western Provinces, and with the views of the Secretary of State. Although a few slight modifications of the Act might be desirable, SIR J. STRACHEY believed that, when the sections to which he had referred were omitted, there would remain no differences of opinion on any question of much importance; and he hoped that the Council would find that the amendment and extension of the Act would be little more than a formal matter, requiring little or no further discussion.

The Motion was put and agreed to.

ACT X OF 1859 AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill for the further amendment of Act No. X of 1859 (*to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal*). He said that the object of this Bill was to remedy a practical inconvenience of great magnitude arising from the recent discovery that a course of practice pursued under Act X of 1859 was not in accordance with law. MR. HOBHOUSE gave the Council credit for knowing much better than himself the scope of the Act; how it governed in the North-Western Provinces and in part of the Lower Provinces all questions relating to rent, and incidentally established a registry of title, so that a vast number of private rights were ascertained and defined under it. It was hardly an exaggeration to say that it was one of the most important Acts in the statute-book relating to property, and that if the proceedings under it were not well founded in law, innumerable titles would be disturbed.

The present question arose in this way. The Act committed judicial power to the Collectors of Districts, and then, by section one hundred and fifty, it provided that all the powers vested in the Collector by the preceding sections might be exercised by any Deputy Collector "placed in charge of any Sub-Division of a District." What was the practice previous to the Act, MR. HOBHOUSE had not enquired. But since its passing, it had been the constant practice for the Collectors to assign specified tracts of country to the Deputy Collectors. These tracts were naturally considered 'Sub-divisions' within the meaning of the Act, and the Deputy Collectors exercised jurisdiction accordingly. That practice had gone on continuously up to the present time. Recently, however, on an appeal from the decision of a Deputy Collector, it had occurred to the appellant to take an exception to his jurisdiction, on the ground that the tract within which he administered the law, was not technically a sub-division. The High Court took this view, and declared the decision null and void. The

principle of this judgment must affect all similar cases, and, in fact, vitiated nearly the whole practice under the Act. Here was obviously a *dignus vindice nodus* in cutting which the Legislature was bound to intervene. The case had two aspects,—one as regards the past, the other as regards the future. As regards the past, there could be no question, that it was the duty of the Legislature to legalise a consistent and uniform course of practice followed in perfect good faith, of which nobody complained, and on the legality of which numberless titles to property depended. As regarded the future, the matter was, at the first blush, not quite so clear, because there existed the decision of the highest Court of appeal in the Province, to the effect that the existing practice was illegal. It was hardly necessary to say that he (MR. HOBHOUSE) being a man whose whole working life had been spent in courts of justice, entertained great respect for their proceedings. He did not consider it by any means a matter of course for a Legislature to interfere with judicial declarations of law, merely because some of their consequences might be inconvenient. And if he found that the Judges objected to a particular practice, because it violated some general legal principle, or because it was productive of injustice, or even because it was a clear departure from the meaning of the Act, and set up some different system from that intended by the Act, he would think it right to hesitate much, and to be very clearly convinced of the necessity of the case, before legislating in a sense opposed to the opinion of the Judges.

With these feelings he thought it his duty to look very carefully into the judgments, and he confessed to feeling some disappointment and much relief. It was disappointing to find no full or clear statement of the reasons which led the Court to so grave a judicial act as the upsetting of a constant and uniform practice not at variance with the popular or grammatical meaning of the words used by the Act. It was, however, a relief to find that the Judges did not dissent from the practice for any of the grave reasons before adverted to; but that they would have been quite content to uphold it if they had thought that the wording of the Act permitted them to do so. The Council ought to be satisfied on this point, and, therefore, he would refer to the judgments rather more in detail. But he wished to premise that it was no part of his business or of his intention to criticise the judgments from any legal point of view, or to examine whether they were right or wrong. He examined them for the purpose of drawing from them such instruction as could be got.

The Chief Justice, after shortly stating the nature of the case, said—

"In a general way, of course, every tahsíldárí, every pargana, any táluka, a munsifí, a thánáship, a mauzá, may be said to be a sub-division of a District. A cluster of mauzás farmed by the Collector at his discretion might likewise be called a sub-division."

The Council would therefore see that the tracts assigned to Deputy Collectors fell within the grammatical and popular meaning of the word "Sub-division." The Chief Justice then stated:

"The question is whether the sub-division spoken of in the Act in such a sub-division adopted by a Collector for the purpose of distributing the business of the districts among his subordinates in a convenient manner, and liable to be changed from time to time at his discretion, or is a permanent sub-division which has been established and placed under the charge of a separate officer, by the authority of the Government, as for instance Pilibhít in the Bareli District, or Kirwí in the Bánda District."

That was a very clear statement of the question, and then come the reasons which guided the judgment of the Court. They were expressed in these few words:—"*The latter appears to be the sub-division contemplated by law.*"

Mr. Justice Pearson concurred with the Chief Justice, and mentioned two subsequent Acts, one being the new Code of Criminal Procedure, which had not yet come into operation, as throwing light upon the meaning of the word 'sub-division' in Act X of 1859.

The Council would perceive from the tenor of these judgments that the practice did not violate any legal principle, that it did not work any practical injustice, and that it was not in disregard of any alternative system clearly contemplated by the Act. The reasons which controlled the Court appeared to have been solely of a technical kind, leading it to the conclusion that the word 'sub-division' was not an apt word to express the particular tracts which had been committed to the Deputy Collectors.

The case, then, was one which was relieved of all difficulties in point of substance, and in which the Legislature might, so far as any judicial objection was concerned, feel itself free to follow whatever course was dictated by convenience. What course, then, was most convenient? Clearly to support the existing practice and to allow people to transact their business in the way to which they were accustomed. Mr. Hobhouse proposed, therefore, to introduce a Bill, the primary object of which would be to declare that actual sub-divisions were legal sub-divisions, and that the popular and grammatical import of the word, and that which had hitherto been accepted, was its true and legal import. He anticipated no disapproval of this course from the Judges. On the contrary, he hoped they would give their best assistance in making the law clear and in preventing the recurrence of such a disaster as had happened to Act X of 1859.

The Government of the North-Western Provinces had suggested some other alterations of detail in the Act which he would not then discuss, as the Bill must be referred to a Select Committee. As regarded time, he hoped

there would be no necessity for pressing on the Bill out of due course. But it was impossible to tell what might happen. Sometimes an unexpected decision of this kind, affecting multitudes of private properties, produced a sudden and rank crop of litigation; and if such proved to be the case in the present instance, it might be the duty of the Legislature to act with the utmost speed of which it was capable.

The Motion was put and agreed to.

SEPOY LUNATICS' BILL.

Major-General the Hon'ble H. W. NORMAN presented the report of the Select Committee on the Bill to provide for the admission of Native Military Lunatics into Asylums.

CODE OF CRIMINAL PROCEDURE POSTPONEMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to postpone the commencement of Act No. X of 1872 (*for regulating the procedure of the Courts of Criminal Judicature*). He said that on moving for leave to introduce the Bill, he had assigned reasons which he need not now repeat. Since then it had so happened that through a devious path, that of the Financial Department, some fresh proof of the expediency of a little delay had been given. It appeared that the Government Translator in Bombay petitioned for larger allowances, the reason being the enormous pressure of work created by the three Acts which had necessitated the employment of an extra number of skilled hands. Of these Acts the Criminal Procedure Code was particularly specified as being onerous; and it was stated that with all extra assistance the work could only just be done in time. Now if the translations were only just done in time, it was pretty clear that they could not be read or digested by the Native judges and practitioners in due time.

The Hon'ble MR. HOBHOUSE then applied to the President to suspend the Rules for the Conduct of Business, observing that from the nature of the Bill it was obvious that, to be useful, it must become law before the 1st September next, and that it would be convenient to allow a margin for public notice.

The PRESIDENT declared the Rules suspended.

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

The Motion was put and agreed to.

EVIDENCE ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872. He said that the object of this Bill was to

amend some defects to which attention had been called by the Legislative Department, and which were owing to a very common incident attending the passing of new Acts, namely, the total repeal of prior Acts of which it was intended to re-enact large portions, and the omission of some of those portions from the new Act. He would only mention in detail the most important point. This related to the power of administering an oath. Act I of 1872 repealed the whole of Act XV of 1852. One of the sections of the Act of 1852 contained the authority on which most of the High Courts in India and Commissioners, Arbitrators, and other persons acting in suits depending before them, administered oaths to witnesses. By an accident the section had not been re-enacted. MR. HOBHOUSE had no such knowledge of the Indian Statute-book as would enable him to say of his own authority that such a power to administer oaths did not somewhere exist. But the Secretary had assured him that he could not find any such, so far at least as regarded Commissioners and Arbitrators, and MR. HOBHOUSE thought that the Council might rely on this assurance. If such a power of administering oaths to witnesses was suspended for a single day, it might cause great disturbance of the course of justice. And even if doubt hung over such a point, it might be very embarrassing.

The opportunity had been taken to make corrections of few other errors, being clerical, or typographical, or mere slips in drafting, but he would not now enlarge upon them, as the Bill, he hoped, would be published with a full statement of Objects and Reasons, and would, he trusted, be referred to a Select Committee.

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

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the definition of 'Coin' contained in the Indian Penal Code.

The following Select Committee was named :

On the Bill to amend the Indian Evidence Act, 1872.—The Hon'ble Sir John Strachey, the Hon'ble Messrs. Bayley and Egerton and the Mover.

The Council then adjourned till the 29th August 1872.

SIMLA,
The 15th August 1872.

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