

Tuesday, November 23, 1875

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.

1875.

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1876.

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 Government House on Tuesday, the 23rd November 1875.

PRESENT :

- Major-General the Hon'ble Sir H. W. Norman, K. C. B., *Senior Member of the Council, presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble T. C. Hope.
The Hon'ble D. Cowie.
The Hon'ble Rájá Narendra Krishna, Bahádur.

NEW MEMBERS.

The Hon'ble D. COWIE and the Hon'ble RÁJÁ NARENDRA KRISHNA, BAHÁDUR, took their seat as Additional Members.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble SIR DOUGLAS FORSYTH moved that the Report of the Select Committee on the Bill to declare and amend the law in force in the Central Provinces be taken into consideration. He said that this Bill, as now presented, was in substance the same as the Bill which was first presented to the Council. There had been no changes made excepting one or two verbal alterations. The Bill had been sent to the Chief Commissioner of the Central Provinces, who was of opinion that the Bill as put before the Committee exactly met the requirements of the province.

The Motion was put and agreed to.

The Hon'ble SIR DOUGLAS FORSYTH also moved that the Bill as amended be passed.

The Motion was put and agreed to.

SPECIFIC RELIEF BILL.

The Hon'ble Mr. HOBHOUSE moved for leave to introduce a Bill to define and amend the law relating to certain kinds of Relief. He said that the first thing he must do was to apologise to the Council for the want of explicitness in the wording of the motion. He understood that some of his hon'ble colleagues thought he was going to propose a Poor-law, and others that it had reference to the movement of troops. But that was not the case. This Bill had nothing to do with the relief of taluqdárs or other distressed members of the community, nor with the change of sentries, but was intended to deal with that which was well known to lawyers under the technical term of "relief," namely, the remedy which was granted by Courts of justice to suitors. The subject was of considerable complexity and intricacy of detail. But he should be able, he thought, in no great number of sentences, to explain to the Council what was the general nature of it, and the reason why they should pass a law on the subject.

The Council would recollect that there was now pending before them a Bill for the purpose of reforming the Code of Civil Procedure, and it was in connection with that Bill that Mr. HOBHOUSE asked leave to introduce the Bill he was now speaking about. The forms of decrees made by civil Courts of justice would be readily enough recognised as closely connected with the procedure of those Courts, though so far forth as those forms regulated the remedies which a suitor might obtain against his adversary, the subject was connected more with substantive law than procedure. Still, in framing the Code of Civil Procedure, we were constantly coming into contact with the kind of decree which had to be pronounced; indeed, there were some processes, such for instance as interlocutory injunctions, of which it was difficult to say whether they partook most of the nature of procedure or substantive law. Now the framers of the Code of Civil Procedure had confined themselves almost entirely to that which was procedure proper, or to that debatable ground to which he had been referring. But in two instances they had clearly overstepped the boundary, and had passed over into substantive law. These two instances were in section 15 of the Code, which dealt with declaratory decrees, and in section 192, the subject of which was the specific performance of contracts. In the Bill pending before the Council, it was proposed to repeal the whole existing Code excepting those two sections; and those were not dealt with by the Bill because it was intended to confine it to that which was properly procedure, and to keep our hands off substantive law. But it had always been intended, and he thought he had mentioned it before, to supersede the two sections in question by a fresh measure which would deal with the subject of them in a much more full and comprehensive manner.

Now, the remedies which were administered by civil Courts of justice might be divided into two great classes, those by which the suitor obtained the very thing to which he was entitled; and those by which he obtained, not that very thing, but compensation for the loss of it. The first branch was known as specific relief, and the second was known as, or at all events might be termed, compensatory relief. If A agreed to sell a house to his neighbour and then refused to perform his agreement, his neighbour might seek relief, either by compelling A to sell the house, or by making him pay damages for not selling the house; and so if A published a piratical copy of his neighbour's writings and invaded his copyright, his neighbour might seek either specific relief by restraining A from so doing, or compensatory relief by making A pay damages for the wrong inflicted by him. It was obvious that the first kind of relief did more exact and complete justice whenever it was applicable. But in the complicated transactions of life that kind of relief was often not applicable, and then more inconvenience and hardship were caused by attempts to carry the contract into effect according to its specific terms, than by the simpler and rougher method of giving compensation for the breach of it. The consequence was that there were very different considerations which regulated the exercise of jurisdiction by way of specific relief, whether in the performance of a contract or in the prevention of wrong, and the exercise of jurisdiction by the simpler and rougher method of giving relief by compensation.

In England that difference had been accentuated in a remarkable manner owing to historical causes. At a very early period in our history the Courts of Common Law refused to accommodate themselves to the growing wants of society, and declined to recognise a great number of transactions which sprung up more and more as society became richer and more civilized. The consequence was that large tracts of natural justice, so to speak, were left vacant and unprovided for, and they were occupied by the Chancellors who assumed the jurisdiction of compelling parties to do justice when the Courts of law refused to do so. Amongst other things, the Courts of law refused to give any remedy by way of specific performance or by way of prevention. If A contracted to sell a field, he could not be compelled by Common Law to do so, but he might be ordered to pay damages for not doing so; or if he encroached upon his neighbour's property, he could not be compelled by Common Law to abstain from doing so, though he might be ordered to pay damages for the wrong actually done. In fact, in all such cases, Courts of Common Law adhered to the rougher and simpler jurisdiction of compensatory relief. The result was that two important and extensive heads of Equity jurisdiction, in other words, the jurisdiction of the

Court of Chancery, became established; namely, the remedy by way of specific performance of contracts, and the remedy by way of injunction for preventing people from doing wrong.

In India we possessed the great advantage of having a single Court for the purpose of administering every kind of justice, by which we were enabled to get rid of many refinements and subtleties which beset this kind of jurisdiction as administered by the Court of Chancery. But still the inherent difference between the two great classes of relief remained, and there remained the fact that the former of these, namely, specific relief, though more exact, was more delicate and more difficult to administer, and that it required more skill and care on the part of the Judge, and that some guidance of the legislature would therefore be acceptable to him.

The Bill he asked leave to introduce did not deal with compensatory relief at all except incidentally and so far as it was either supplementary or alternative to specific relief. Its direct object would be specific relief, and mainly the two subjects he had mentioned, the remedy by way of specific performance, which rested entirely upon contract between the parties, and the remedy by way of injunction, which might rest upon contract or upon the right to have property protected from invasion.

It would be an additional inducement to the Council to accept legislation upon this subject when he reminded them that it formed part of the comprehensive plan which had been so ably laid down by his predecessor Mr. Stephen. He mentioned the matter in one of his latest speeches in Council on the passing of the Contract Act. They had not accomplished any large portion of that plan, because their hands had been quite full of business with reference to matters which were more pressing under the circumstances, or which appeared to them to be more pressing. But they had never lost sight of it, and the Bill for the amendment of the Civil Procedure was an attempt to accomplish one substantial portion of it, and the Bill he now asked leave to introduce was an attempt to accomplish another.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 7th December 1875.

CALCUTTA;
The 23rd November 1875. }

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.