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**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

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1877.

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 Wednesday, the 4th October 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I.,
presiding.

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur 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.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

The Hon'ble the Mahārājá Sir Dig Bijay Singh Bahádur, K.C.S.I., of
Balrámpur.

NEW MEMBER.

The Hon'ble the Mahārājá SIR DIG BIJAY SINGH BAHADUR took his seat as an Additional Member.

OUDH LAWS BILL.

The Hon'ble MR. HOBHOUSE said that he had now to present the final Report of the Select Committee on the Bill to declare what laws are in force in Oudh. He also proposed, when he had presented the Report, to move that it be taken into consideration; and indeed there were two Reports before the Council, one of which was presented in July last, and which went no further than the presentation. It would therefore be both those Reports that he should ask the Council to take into consideration. He had no right to make such a motion with respect to the latter Report, if any Member of the Council desired to have it for a longer time in his hands; but in fact the alterations made in it were very slight, and he did not therefore think that any inconvenience would

arise from the circumstance that it had only recently been put in the hands of Members of Council. There was also on the list of business a notice of motion in his name that the Bill as amended be passed, but he did not propose to make any such motion as that on the present occasion. He thought it more desirable to leave that to the next meeting of the Council, when he trusted that the more bulky measure in the hands of his hon'ble friend Mr. Inglis would also be allowed to pass, as it was desirable that the two measures, which had been kept in parallel courses, should be passed on the same day.

Before moving that the Report be taken into consideration, it would be convenient that he should recapitulate very briefly that which he had before stated to the Council at greater length, namely, the circumstances which had brought about that state of the law which justified and required a measure of this kind; and it was the more desirable to do so because he had found that the scope and objects of this Bill had been in some quarters misunderstood, and because there were gentlemen whose opinions were entitled to great weight who thought that Bills of this kind were not very artistical productions. But after what had already passed in the Council with respect to the Panjáb Laws, the Oudh Laws, and the Central Provinces Laws, he thought he might condense what he had to say now into a very few sentences.

Upon the annexation of Oudh the Government of India acted in their usual way by introducing laws into the new Provinces by the sole action of the Executive power. What they did was to enjoin the adaptation of Panjáb law, not absolutely, but under certain modifications not specified or specified in no more definite way than by reference to the peculiar necessities and customs of Oudh.

This operation was effected by a letter written from the Government of India in the Foreign Department to the Chief Commissioner of Oudh on the 4th of February 1856.

When he introduced this Bill he quoted from that letter at very considerable length, and he might now read only a short extract from it. Speaking of the Panjáb Civil Code the Government said:—

“ But it will not escape your observation that in the preparation of the rules under notice, much attention has been given to the *Lex loci*, and that specially in matters relating to inheritance, marriage, divorce and adultery, adoption, wills, legacies and partitions, as well as in all commercial transactions, a due regard to local usage has been enjoined. It cannot of course be supposed that the *Lex loci* or local custom in Provinces differing so widely as the Panjáb

and Oudh is in all, or even in many, respects identical ; and it follows that those provisions of the rules which rest on the *Lex loci* in the Panjáb, cannot with any propriety, or without risk of injurious failure, be extended to the Province of Oudh.

“ While, then, the Governor General in Council directs your attention to his collection of principles of law as calculated to afford material assistance in the absence of any better or more appropriate treatise, he refrains from requiring the strict observance of them until it can be ascertained how far they are applicable to the peculiarities of the Province and the customs of its people.”

Well then, there was a mode suggested for ascertaining those peculiarities and customs, but either enquiry was never begun, or if begun, it was broken off in consequence of the troubles which soon afterwards ensued. In point of fact there had been no such enquiry, and the law of Oudh had rested from that time to this upon the basis of the Foreign Office letter.

Of course it would be observed that these incomplete operations caused great uncertainty in the law of Oudh. The Panjáb law itself was only an adaptation of Bengal law to the wants of the Panjáb. In the first instance the adaptation was as vague and indefinite as the adaptation of the Panjáb law to Oudh, and it was gradually defined more and more by orders of Government and by judicial decisions. The Oudh law, therefore, had all the uncertainty which attached to the Panjáb law, *plus* the uncertainty which was created by the necessity of adapting Panjáb law to the peculiar customs of Oudh. It was, in fact, the spirit of the Bengal Regulations ; and it was doubly distilled, first in its progress from Bengal to the Panjáb, and secondly in its progress from the Panjáb to Oudh ; and it was doubly rectified, first by Panjáb custom, and secondly by Oudh custom.

Now the difficulties raised by that state of things had been rather increased than diminished by the action of the Legislature, or rather he should say, by the interpretation which had been put upon the action of the Legislature. Doubts came to be felt about the power of the Executive Government to enact law by its own sole authority, and those doubts found expression in an Act of Parliament—our Councils Act of 1861. That Act recited the doubts that had been felt, and in order to allay them provided that no law should be invalid by reason that the formalities required by the previous Councils Acts were not observed. That enactment had been construed in such a way that it was held to have stereotyped and solidified into law numerous expressions of the Executive Government made in a very casual way—in fact,

every kind of expression whenever and however made to which a legislative character could be attributed.

That was the state of things upon which this Bill was brought to bear. There was a mass of Regulations, all applicable so far as the spirit of them went to the Province of Oudh, but of each of which no man could say how far it was to be applicable, and how far it was not. And there was a mass of Executive orders, of which no man could say beforehand which of them bore a legislative character, and which of them would be held not to bear a legislative character; and there were a number of judicial decisions which had done very good service in defining that uncertain region of the law, but which were liable to be overturned or modified by fresh judicial decisions.

Those were the difficulties that the Oudh Administration had to contend with, and, as regarded the quality of the difficulties, he thought it was impossible to exaggerate it; the quantity had been gradually reduced from time to time by legislation, and was now very largely reduced. Such measures for instance as the Penal Code and the Civil Procedure Code had occupied large tracts of legal territory, and to that extent had displaced the vague law which rested upon the Foreign Office letter of 1856, and substituted for it the more definite expressions of their own. If indeed that were not so, if that area of uncertain matter had not been very largely narrowed by the enactments mentioned, the time would not be ripe for such a measure as this. But it was because the area of uncertain matter had been so very much narrowed that we were now able to deal with the subject and declare the whole basis of the law. There was still indeed a considerable margin of that uncertain matter the nature of which he had described, and it was a marvel to him that so small an amount of practical embarrassment had been felt in consequence of it. Those only knew the full extent of the difficulty who had to administer the affairs of Oudh, and he thought it was a matter reflecting the highest credit upon the Local Administration there, Executive and Judicial, that they had kept those difficulties to so great an extent to themselves, and that other people, on the whole, knew so little about them.

He had explained to the Council, when he presented the first Report of the Committee in last July, what the principles of this Bill were; that its main object was to get rid of that mass of floating and uncertain matter which consisted partly of the Bengal Regulations which had been made applicable to Oudh in

bulk, and partly of those Executive orders which had no definite character affixed to them, and of which it might be argued one way or another that they were either purely Executive or had a legislative character.

The way in which it was done was to take some of the Regulations and some of the orders and embody them in the Bill, and then by a general sweeping clause to repeal all those which were not embodied in the Bill. Now it was curious that among the landholders of Oudh there should have been a great misapprehension as to the scope and objects of this Bill. He found that in a memorial presented by them to the Chief Commissioner of Oudh, they expressed alarm at the great quantity of new law that was being extended to Oudh; in fact, they referred to a speech of his (Mr. HOBHOUSE's) which was made when the Bill was introduced in 1873, in which he said that he had ascertained that there were no less than 247 Regulations and Acts applying to Oudh; principally Regulations the spirit of which had been extended to Oudh in bulk by the Foreign Office letter. He then explained, and on a reperusal of the Report he found that his language was as clear as he could make it, the mode in which the Bill proposed to deal with the matter, and which he had just mentioned to the Council. Well upon that, the British Indian Association of Oudh expressed themselves as follows:—

“In regard to the extension to Oudh of the laws in general in force within British India as stated in section 3 of the Bill, and of which the number stated by the Hon'ble Mr. Hobhouse is 247, not only the taluqdars but every other class of the native community in Oudh having any sort of right, connexion or interest in the soil, have been filled with dismay towards the safety of their rights and pledges, and feel apprehensive that they have been suddenly crushed under the burden of 247 laws, to pass through which would be a difficult task, should they attempt to refer to any law for the protection of their rights.

“It is not improper also to observe that it would be a hardship to the people of Oudh to be subjected to the laws which were in force in other Provinces at the time when the Province of Oudh was not under the administration of the British Government, and in regard to which the people of Oudh have had no opportunity by the kindness of Government to offer their views and remarks prior to their enactment.

“It would be right to admit that the people of other Provinces, to suit whose rights the laws were framed, and from time to time modified according to the expediency of the occasion, either on the motion of Government, or on the representation of the public, have had ample opportunity to be thoroughly acquainted with the provisions of every law, their modifications and alterations, and to refresh their memories by their practice and experience; and that if all these various laws, which the honourable Members of the Legislative Council, after a laborious search of some years, have been able to collate with considerable difficulty, were enforced on the people of Oudh so far as they might be applicable to them, it would occupy

them at least some years to understand and commit them to memory, and so long as they are not acquainted with their provisions and consequences, the people would be justified in feeling alarmed on being subjected to them."

No doubt it would take a long time to sit down and commit to memory the 247 Acts and Regulations, none of which under this Bill were newly applied to Oudh, but which antecedently to this Bill had been applied to Oudh ever since its annexation; and he for one should be very sorry if he were told that he must do it within the term of his natural life. But there stood the fact that the Regulations in question were actually applied to Oudh at this moment, and had been working there ever since 1856, and the various Acts had been working there from the time of their enactment, and that there was besides a mass of orders of which any one might be brought forward at any moment, and it was in the breast of a District Judge or Judicial Commissioner to say whether it was law in Oudh or not. And there stood the other fact that we had selected a few of those Regulations—just eleven in number—and that we had selected a few Executive orders, that we had introduced into them such modifications as had been found by experience or by actual decisions to be suitable in Oudh, that we declared those to be law in Oudh, and that all the other mass of Regulations and orders which might now be brought forward and sprung upon the Oudh people as law, we repealed. It was as curious an inversion of meaning as he had ever come across. A Bill which was intended to relieve the Oudh people from a cloud of law which was hanging over them, had been thought to be a Bill which suddenly saddled them with 247 Acts and Regulations not now applying to Oudh. Now he hoped and believed that the matter had been fully explained to them, and that the dismay which those gentlemen had felt—and very naturally felt according to their interpretation of the Bill—had been entirely dissipated, and that they would be satisfied that this measure would clear away a great incubus of possible law from them, instead of saddling them with a body of new law.

He had lately seen another criticism written by a gentleman, whose name he did not know, but who professed at all events to have paid great attention to those matters, and who told us that Bill No. II, which was presented to the Council last July, was the merest skeleton of Bill No. I, because some chapters had been knocked out from Bill No. I. Now he (Mr. Hobhouse) had explained to the Council what was eliminated from Bill No. I, and why. It was quite true that from Part III of Bill No. I there were some omissions. Some chapters, as for instance that relating to the Court of Wards, were omitted as a mere matter of arrangement, because

they had been transferred to the Revenue Bill. Others, such as that relating to Minority, were omitted, because since the introduction of Bill No. I, we had passed a general law on the subject. Others, such as those regarding Insolvency and Treasure Trove, were omitted, because since the introduction of Bill No. I, laws had been introduced into this Council on the subject, and were now pending before it. And another, namely that dealing with Cantonments, had been omitted merely because it was found inexpedient to alter the terms of the existing Regulation which applied to Oudh until the Military authorities had had more time to consider, with reference to the other Cantonments of the country, how they would desire them to be altered. Therefore, to say that the alteration in that part of the Bill, though the omissions made it shorter, reduced it to a skeleton of itself, was to evince an entire misapprehension of the scope and purpose of the measure. He had always told the Council, and he said again, that the pith and marrow of the Bill rested in the first two Parts and in the schedules appropriate to those Parts. If he were to strike out every other section in the Bill, making appropriate alterations in the schedules, the Bill would still remain, in substance and effect, nearly the same as it was when it was introduced. In fact there had not been a great deal of discussion on this Bill; and so far as itself was concerned, the Council might have passed it a few months after its introduction. The reason why it was delayed so long before the Council was that it was coupled with another measure—the Revenue Bill; on that Bill discussions had arisen that had occupied a considerable time; it was desirable that the whole mass of Oudh laws should be declared to be law at one and the same time; and therefore this Bill had been awaiting the issue of discussions on the Revenue Bill.

With respect to the character of Bills of this kind, he rather agreed with those critics who said that they were not very artistical productions. But his answer was that they were exceedingly useful. We had to deal with a very complicated and difficult state of things, and what we wanted first was to clear the ground. When we had cleared the ground, we might get a good basis for some scientific legislation in the future. He considered the Panjáb Laws Act a very bold and original measure. It was designed by his predecessor, Mr. Fitzjames Stephen, in order to meet a very exceptional state of circumstances, and he (MR. HOBHOUSE) had only been too happy to copy the model of that Act in dealing with the similar case of Oudh.

He would now just mention to the Council one or two of the principal alterations effected by the Committee since the month of July last. There

were none that he could call very important, and the Council would probably be of that opinion when they heard those which he would mention as the most important. He would only refer to three.

In section 20 of Bill No. III, which corresponded with section 21 of Bill No. II, it was provided that it should be the Chief Commissioner, instead of the Judicial Commissioner, who was to have a voice in consenting to the sale of ancestral property in land. That was a subject on which he had to speak to the Council at some length in connection with the Civil Procedure Code the other day, and he then explained to them that in Oudh there was a discretionary power given to the Executive authorities to put a veto upon the sale of land. Now the Judicial Commissioner occupied a slightly ambiguous position. He had considerable executive power over the Courts, but was mainly a judicial officer. He (MR. HOBHOUSE) did not consider that the discretion in question ought to be a judicial discretion. It was to be used by the Executive on considerations applicable to the political and social condition of the country, and it was therefore thought better, in concurrence with the advice of all the authorities in Oudh who had expressed an opinion on the subject, to commit it to an officer who was wholly disconnected with judicial duties.

In section 26, Bill No. III, it was provided that Revenue Agents in Oudh might practise in rent suits. That was a matter which was brought before the Council in the early part of this year with respect to the Revenue Agents of Bengal; and on the advice of the Lieutenant-Governor, the Council passed a short Act for the purpose of enabling Revenue Agents there to practise in rent suits. The same reasons applied in Oudh, the only difference being that in Bengal the law had been so changed as to prevent Revenue Agents from practising, and in point of fact they were not in a position to practise when the Act was passed; but in Oudh they were practising, only it was doubtful whether by strict law they were enabled to do so. The Judicial Commissioner was of opinion that it was for the benefit of clients that the Revenue Agents should practise in those rent suits, and the Committee proposed to make that point quite clear by authorizing those Agents to appear, plead and act in such suits.

In section 28 of Bill No. III was a provision which would be of more importance if it was not the intention to make it a part of the general law. It was to the effect that the Judicial Commissioner might, within a certain limited time, call up any decree or order made by any Court subordinate to him, and revise, alter or reverse that decree or order. That was the mode in which the same subject was treated in the draft of the Civil Procedure Code which

was now pending before the Council. And the reason was this, that where that power did not exist there might be conflicting laws in two different districts—adjoining districts perhaps—of the same Province, which could not be touched by any judicial process because there happened to be no appeal to the higher Court. Suppose for instance that a case occurred in which the District Judge or Commissioner had the final decision in his own hands, and that in Oudh two different Commissioners decided the same case two different ways. The Judicial Commissioner had no power whatever to set the matter right. Now the High Courts, wherever their jurisdiction extended, had powers for that purpose conferred upon them by their Charter, and it seemed very desirable that in all Provinces which had an independent judicial administration of their own, the same power should exist. Of course the mischief was one to which we were exposed in different Provinces of India where there was no common appellate superior excepting the Privy Council, and where the Legislature occasionally had to step in to make the law clear; but that was no reason why the same mischief should exist between different districts in the same Province which had a common appellate superior at hand ready to take notice of such things. Therefore it was proposed to give that power to the Judicial Commissioner of Oudh. The section was one which would become quite unnecessary if the Council passed the Civil Procedure Code in the shape now proposed; but the Committee were told that the mischief which he had been describing was in actual operation at this moment, and therefore it was desirable to lose no time in giving the Judicial Commissioner the power which they thought that every superior Appellate Court ought to have.

He did not know that there was any other matter which he need mention to the Council in connection with the Bill; but as this was perhaps the last time that he would have any observations to make on this subject, he wished to say that the measure had been prepared from time to time with the assistance of the authorities in Oudh, who had bestowed the greatest pains and attention upon it. The late Chief Commissioner, Sir George Couper, the present Chief Commissioner, Mr. Inglis, and the Judicial Commissioner, Mr. Currie, had all laboured very hard on it; and indeed he might say that without their assistance it would have been quite impossible to have brought the Bill to the stage at which it had now arrived. He would now move that the Reports of the Committee be taken into consideration.

The Motion was put and agreed to.

*STAGE CARRIAGES.***STAGE CARRIAGES BILL.**

The Hon'ble Mr. BAYLEY moved that the Report of the Select Committee on the Bill to amend the Stage Carriages Act be taken into consideration. He had little to add to what he had said on a former occasion. The Select Committee had only slightly modified the drafting of the Bill. The original Act had worked well. The present Bill merely extended the operation of the law both in regard to the area and to the classes of animals to which it applied, and he therefore saw no objection to passing the Bill at the present meeting of the Council.

The Motion was put and agreed to.

The Hon'ble Mr. BAYLEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned to Monday, the 9th October 1876.

SIMLA;
The 4th October 1876.

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