

Wednesday, January 24, 1877

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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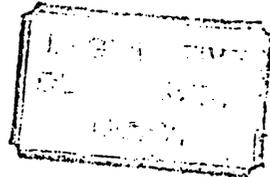
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1877.

WITH INDEX.

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1878.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the pro-
visions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Wednesday, the 24th
January 1877.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal.

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

The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.

The Hon'ble Sir E. O. Bayley, 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 Sir J. Strachey, K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble D. Cowie.

The Hon'ble Mahárájá Narendra Krishna.

The Hon'ble J. R. Bullen Smith, C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble B. W. Colvin.

NEW MEMBER.

The Hon'ble B. W. COLVIN took his seat as an Additional Member.

INDIAN FOREST BILL.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to amend the law relating to the management and preservation of Government forests, to the transit of forest-produce, and to the duty leviable on timber. He said that, in asking this permission, he might observe *in limine* that the present idea was that the Bill should be merely of a permissive character, and would not necessarily apply to any province where there might be special local circumstances or peculiarities which needed separate and peculiar legislation. Burma was an instance of the peculiarities to which he referred. He had explained what they were in introducing a separate Bill on a recent occasion. It would be for the Select Committee who would consider the Bill if he obtained

leave to introduce it, to judge how far those peculiarities were sufficient to warrant a separate Act, or whether or not it was possible to bring the case of Burma within the general Act now contemplated. At the same time he might say that the tendency of all enquiries that had been made into this subject and the general purport of the reports that had been received, went to show that these peculiarities in different parts of India were not so very formidable in themselves as was supposed, and it would appear to be very practicable to have a law embodying general principles applicable to the whole of India, and to provide for local peculiarities by means of rules to be framed by Government under it.

Another general feature of the Bill was that it was proposed that there should be given power to extend certain portions of the Act, and not the whole Act, to any particular Province. The object of this was that the people in a certain district might not be oppressed, for instance, by restrictions which were quite unnecessary in their district, although they were of the utmost importance in another.

As to the necessity for general Forest legislation, he might refer briefly to the present basis of action in some provinces. Take the Panjáb for instance. We had one set of rules passed in 1855 which had acquired the force of law under the Panjáb Laws Act; they applied to one portion of the Panjáb. Another set of rules was passed in 1871, under the General Forest Act of 1865; but it was not quite certain whether the whole of the rules passed under that Act properly fell within its provisions. Again, another set of rules was passed in 1873, the legality of some portions of which had been called in question in some quarters. Besides these, the district of Hazára had a separate Regulation, which was passed under the Statute 33 Victoria, c. 3; and after all there were certain portions of the Panjáb which had no rules and no laws whatever relating to forests.

He would not trouble the Council by going through all the different provinces under the Government of India in order to explain the differences and inconsistencies in the laws and rules applicable to them. The Panjáb might be taken as a fair sample of the whole. The laws in force in Bengal had been by competent authority designated as "utterly useless," and there was more or less of action without legal warrant going on throughout the various forest-tracts in the country.

In the Presidencies of Madras and Bombay, there was no regular forest-law, because Act VII of 1865 had never been applied to either of them. In Bombay this absence of law was a special difficulty, because we had there

Government forests interlaced with important private forests and private lands of different tenures, and with small Native States ; so that it was a matter of extreme difficulty to prevent our forests being pillaged, and from this cause there was a loss in the forest-revenue of several lakhs of rupees annually. In Bombay the question had been under consideration for some years, and more than one Bill had been drafted on the subject; but it was now the desire of the Bombay Government that they should be embraced in this general Bill. As to Madras no doubt the necessity for legislation had long been established and gradually admitted by all the authorities there. It might be a question whether, as in the case of Burma, the local peculiarities were such as to require them to be dealt with by the local legislature; and as this Bill presented no obstacle to such a course being pursued, the local Council could legislate with regard to them if necessary. But if local legislation was not needed, Madras could of course be brought under the Bill.

As regards the Bill itself, he might say that the question had been under consideration for a long number of years. This was about the fourth Bill which had been circulated to the various Governments, and they had all been most elaborately reported upon. All the recommendations, observations and criticisms that had been received had been fully considered, and the present draft was in the main the work of the Inspector General of Forests with the assistance of two Conservators. At the same time Mr. HOPE had no doubt that in Committee they would be able to improve it very considerably.

There were only two main features in the Bill to which he need now refer. One of these was complete provision for the investigation, preservation or commutation of private rights in forests; and the other was that power was given to control timber in transit, and otherwise to ensure that the Government really received the revenue to which they were entitled. He had no doubt that if permission were given to introduce the Bill, it could be worked out in an efficient manner and would prove an immense improvement on any thing which they had at present.

The Motion was put and agreed to.

BROACH AND KAIRA THAKURS INCUMBRANCES BILL.

The Hon'ble Mr. HOPE also moved for leave to introduce a Bill to relieve from Incumbrances the estates of Thakurs in Broach and Kaira. He said that, referring to Kaira first, he might state that it was a district which lay on the north of the Bombay Presidency in the Province of Gujarát. On one side was the district of Ahmadábád, for which a special law of this

description was passed in 1862, and on the south was Broach, for which also a special Act (XV of 1871) was passed with a similar view with reference to Thákurs there. This district of Kaira had remained between the two, containing landholders and owners who were under very similar circumstances to their neighbours, and hitherto there had been no special legislation for their relief. It contained a great number of petty Native gentlemen or Chiefs. These, in some places, were entitled to the name of Chiefs, and in others were what was equivalent to squires or squireens, according to the different classes to which they belonged. These men were for the most part of Rájput or Kúli origin. They had maintained their families by the law of primogeniture from very remote times. A certain number of them were of more recent origin being Muhammadans and owning estates acquired at the conquest. The designation of Thákur did not exactly fit the various local appellations which these men received, and further the limits of the Kaira District did not exactly cover all the persons whom we were desirous of relieving. There might be a particular class of men in Ahmadábád, for instance, who were not exactly covered by the Ahmadábád Act, and whom it was intended to relieve by this Act. He hoped that in Select Committee they should be able to hit upon some designations which would answer both purposes.

As to the condition of the people to whom this Bill was intended to apply, it was simply one of almost hopeless insolvency. Our laws had come in upon them, laws which they were too ignorant to understand and too proud to take means of becoming acquainted with. They had been accustomed for centuries to cut all difficulties with the sword, and they were entirely disarmed by the obligation which our Government forced upon them of cutting them with the tongue and the pen. The result was that they were involved in difficulties from which it was impossible for them unaided to escape. The older men amongst them were quite incapable of business and quite ready to contract fresh debts. The younger men were fairly promising, and were receiving good education in our schools. But they were weighed down by the millstones which their fathers had hung round their necks. These Thákurs had not perhaps the same claims on sentimental grounds for assistance as the Jágirdárs of Sindh, because they were not the very Chiefs from whom we had wrested the country a few years ago. But at the same time they had very important claims from an administrative point of view, because they were of a manly, combative and rather lawless nature. They had great influence, and they had the sympathies of all the dangerous classes of the community, who were always ready to come forward when anything like a row was got up. They had been a source of anxiety ever since we became

possessed of the country. They gave us a great deal of trouble during the mutinies in 1857, and there could be no doubt that it would be highly politic to remove any cause of dissatisfaction with our Government.

In 1874 it was proposed to pass an Act for their relief. It was thought better, however, to make an attempt to settle their difficulties by private negotiation, and the Government agreed to advance nearly three lakhs of rupees for that purpose. But the attempt fell through, as there were no means of settling with the creditors equitably, when they proved quite unreasonable, and there was moreover no restriction on the men themselves, who if liberated one day were ready to contract fresh obligations the next morning. So it had become necessary to come to this Council for a legislative enactment.

When the Chutiá Nágpur Act came before the Council, Mr. HOPE mentioned the good effects which had resulted from the passing of the Acts for Bombay, and when the Sindh Act was being passed, he reviewed the chief features of the several Acts, and showed how that Act differed from the others. The Act now proposed was almost in the same words, *mutatis mutandis*, as the Sindh Act.

Hitherto, what he had had to say was as to the district of Kaira; but it would be observed that the Bill also included Broach, which had a separate Act of its own. That Act was passed in 1871. But it was found to be defective in the wording in several places, and not up to the times; it could be drafted a great deal better in several minor particulars. It was also an object to relieve the Statute-book of a number of petty Acts on analogous subjects. It was therefore proposed to repeal the Broach Act and to make this Bill applicable both to Kaira and Broach. At the same time great care would be taken not to subject any of the Broach Thákurs, without fresh and sufficient cause arising, to any disabilities which the present Act did not impose upon them.

The Motion was put and agreed to.

SALT TRANSPORT BY SEA BILL.

The Hon'ble Mr. HOPE also moved for leave to introduce a Bill to restrict the transport of salt by sea. He said that the object of this Bill might be stated in a few words. There was no law at present to prevent salt shipped from Bombay without payment of duty, with intended destination to Madras or Calcutta, being surreptitiously landed at any port on the coast, and smuggled salt being taken in lieu of it and carried on to the port for which the vessel was cleared.

Moreover there was nothing to prevent foreign salt or any other salt on which no duty had been paid being landed at any of our ports throughout

our seaboard. Both of these defects had led to an immense amount of smuggling, which it was considered highly important to check without further delay. It was therefore proposed to introduce a Bill to the effect that no vessel of less than three hundred tons should be allowed to carry salt except under certain very strict conditions, and that vessels might be brought to and searched regarding which suspicion might exist that they were engaged in carrying on contraband traffic.

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble SIR ARTHUR HOBHOUSE asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to amend the Indian Registration Act, 1871.

Leave was granted.

ACT No. XIII OF 1875 AMENDMENT BILL.

The Hon'ble SIR ARTHUR HOBHOUSE also moved for leave to introduce a Bill to amend Act No. XIII of 1875. He said that the necessity for this Bill arose from an inadvertence of the Council, or he should say of his own, in passing Act XIII of 1875. The object of that Act was to prevent the necessity which existed of persons taking out separate probates of wills whenever a testator happened to die possessed of property in separate Provinces. To effect that object we gave power to the High Courts to grant probates which should take effect all over India; and to prevent the clashing of probates granted by different High Courts, the Council further provided that, when any High Court granted such a probate, it should give notice to the other High Courts. Now what was not considered was this, that by the definition of "High Court" in the General Clauses Act (I of 1868) every Civil Court of final appeal was a High Court; so that in many out-lying parts of India, Courts of the very pettiest kind—such as Courts of Political Agents—would come under the definition of "High Court." It was not intended that such Courts should grant such probates, neither was it intended that they should receive notices from other High Courts. It was desired to introduce a proper definition of the term "High Court" for this purpose, and that was the sole object of the Bill which he asked leave to introduce.

The Motion was put and agreed to.

The Council adjourned to Wednesday the 31st January 1877.

CALCUTTA,
The 24th January 1877. }

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