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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.

1881.

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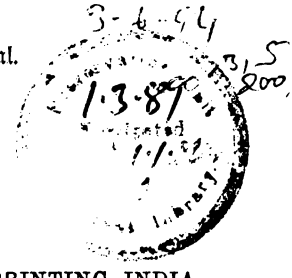

CALCUTTA:
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1882.

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 Friday, the 25th February, 1881.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to exempt Pársís from certain provisions of the Administrator General's Act, 1874, be taken into consideration. He said that the Bill as introduced excluded Pársís from the operation of section 36 of the Act, which empowered the Administrator General, in the case of estates not exceeding one thousand rupees in value, to grant to the representatives of the deceased, on their application, a certificate having much the same operation as letters of administration. A meeting of Pársí gentlemen, convened at Bombay last August by Sir Jamsetjee Jeejeebhoy, had represented—and its representation was supported by the Registrar of the High Court, the Administrator General of Bombay and the Local Government—that it was not desirable to exclude Pársís from the benefit of this section.

Sir Jamsetjee Jeejeebhoy wrote as follows:—

"In communicating this resolution I have been requested by the meeting to state the reasons which induced them to recommend that section 36 of the Act of 1874 should not be

included within the exempting operation of section 2 of the proposed Bill. They consider that section 36 is a distinct portion of the Act, widely distinguished from that division of which sections 16 and 64 are the leading provisions. The scope of section 36 extends so far only as to vest in the Administrator General power to grant certificates of administration in respect of a certain class of estates at the instance of those interested in its administration. The Párs̀í community can have nothing to urge against such a provision, which has nothing in common with those sections from which they have petitioned to be exempted. The meeting was, therefore, of opinion that section 36 might be allowed to remain with advantage."

The Pársís of Surát and Broach, on the other hand, were opposed to allowing this section to remain applicable to the Párs̀í community; but their opposition proceeded almost altogether, if not entirely, from a fear that the application of section 36 to them must carry with it the application of section 37, which empowered the Administrator General to administer himself, of his own motion, or grant a certificate to a creditor.

The Select Committee had, however, found no difficulty in separating the two sections, and they had accordingly amended the Bill, so that section 36, but not section 37, should remain applicable to the Pársís.

Further, the Registrar of the High Court at Bombay and the Bombay Administrator General had represented, and some of the members of the Committee knew, that the need of a cheap and simple method of obtaining a representative title had been much felt by the heirs of Hindús and other Natives who died leaving in Calcutta, Madras or Bombay Government securities, shares in public companies, negotiable paper and deposits in banks, when the assets did not exceed in the whole Rs. 1,000. The Committee had, therefore, made section 36 of the Act (without section 37) applicable to persons of all descriptions, and they believed that it would provide for the poorer classes of Natives in the Presidency-towns a simpler, speedier and cheaper procedure than would be afforded them by conferring testamentary and intestate jurisdiction on the Presidency Small Cause Courts, as proposed in the Bill relating to those Courts now before the Council.

As commonly happened when an amending Bill of this description was introduced, suggestions had been made to the Committee for the alteration of the principal Act in points not touched by the Bill, and some of these suggestions had been adopted.

In the first place, it had been represented that inconvenience had resulted from the High Court at Fort William having ruled in *In the Goods of Hewson*, I. L. R. 4 Calc. 770, that the Administrator General was not, as an ordinary administrator was under Act XIII of 1875, entitled to obtain from one

of the Presidency High Courts letters of administration which would operate throughout British India. The Committee thought it would be advantageous to the public that the High Courts should have power to grant to an Administrator General letters operating in this way. Similar considerations would apply to cases where the Administrator General was named as executor by virtue of his office. The Select Committee had, however, provided that, when the Administrator General of one Presidency obtained a grant of this sort, he should not be entitled, in respect of assets situate in another Presidency, to commission at a higher rate than that allowed to the Administrator General of the latter Presidency. Thus, if the Madras Administrator General obtained a grant of letters of administration operating throughout the three Presidencies, he would get, in respect of assets situate in the Bengal Presidency, only three per cent. All clashing of jurisdictions would be avoided if every petition by an Administrator General for the grant of such letters contained a statement that no letters of administration to the deceased had been obtained from a High Court in another Presidency.

The next suggestion which the Committee had adopted had reference to section 28 of the Act of 1874. That section was intended to protect an Administrator General, who had made a distribution after giving due notice to claimants against the estate, from liability to claimants subsequently coming forward; but it was so drawn as to afford protection only when the distribution was deferred for a year from the grant of letters of administration. Now, for the convenience of the parties concerned, the Administrators General sometimes took upon themselves the risk of making the distribution within the year, but it was obvious that they could not generally be expected to do so; and, as a matter of fact, the section had led to delays in closing administrations which, with the speedy means of communication now-a-days available, were quite unnecessary. The High Court of Bombay had expressed its opinion that "the period within which an Administrator General might distribute the assets of a deceased person might be advantageously shortened;" and there was no doubt that one of the reasons why the public resorted to private agency-houses was that those houses generally distributed the assets in from three to four months. The Committee had accordingly substituted, for section 28 of the Act of 1874, a section similar to section 320 of the Indian Succession Act, which enabled an administrator to make a distribution after issuing "such notices as would be given by the High Court in an administration-suit," that was to say, as they were informed, notices of a length fixed with reference to all the circumstances of the particular case.

The only other amendment the Committee had made was the insertion of a section, before section 61 of the Act, empowering an Administrator General to examine on oath any person, who was willing to be so examined, regarding any question of fact on which the Administrator General might have to satisfy himself for the purposes of the Act. The want of such a power had been felt in cases in which there might be some room for doubt as to a claim, but not such reason to believe it to be false as would warrant the Administrator General in putting the claimant or the estate to the expense of legal proceedings—cases, for instance, in which the Administrator General wished to satisfy himself as to the validity of the claim made by a creditor who could not produce positive proof of the debt, or by a next-of-kin who could not furnish satisfactory evidence of relationship or identity, or cases where trust-property came into the hands of the Administrator General, in which the deceased had, apparently, no beneficial interest, but documentary proof of his being a mere trustee was wanting.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the further report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act of 1873 be taken into consideration. He said that, on the last occasion when the Bill was before the Council, he had explained all the amendments and changes which had been made in the Act up to that time. The Bill, at that meeting of the Council, was referred back to the Committee, with a view to repealing and re-enacting the Act instead of merely amending it. The Select Committee had carried out those instructions. But whilst consolidating the law they had received a few suggestions, chiefly from the North-Western Provinces, which they had thought it right to adopt, and they had inserted these in the Bill as now prepared.

A few words in respect of the changes so made were necessary. The first of them was in section 29. That section of the Act was to the effect that, "if any lease be granted, or if any agreement be entered into, by any landowner under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, such lease or agreement

shall, on the expiration of the term aforesaid, be void at the option of either party." The object of that section was to prevent the sacrifice of the future claims of Government to revenue, by the creation of leases which would debar landholders from raising their rents when a new settlement was made, and which would thereby diminish the source from which the Government revenue was drawn. It appeared, however, from a communication which had been received by the Committee, that certain tea-planters in the North-Western Provinces, in ignorance of these provisions of the law, had accepted and granted leases either in perpetuity or for periods exceeding the terms of the periodical settlements, and that in some of these cases the rent, on the supposition that it would never be liable to enhancement, had been fixed at a very high rate. It was impossible for the State, in justice to the public, to recognise and maintain such perpetual or long-term leases in parts of the country which were liable to re-settlement and a periodical enhancement of revenue. On the other hand, it would be hardly less inconsistent with justice to leave the law in its present state, as by that course an unscrupulous lessor would be enabled to cancel his lease when there was, as far as he was concerned, no justification for doing so. In order to remove this difficulty, the Committee had gone as far as they thought they could go in the direction of giving relief, and had provided that in such a case the leases should not be voidable unless the tenant refused to pay, or the landlord to accept, what the Settlement-officer considered at the time to be a fair and reasonable rent. As land under tea-cultivation had never yet been assessed at a higher rate than adjoining lands under cereal crops, the rate of these would probably determine what the Settlement-officer would consider a reasonable rent, and the arrangement proposed would obviate, as far as it was possible to do so, the hardship which the tea-planters apprehended.

The next change made in the Bill was that the Committee had added a clause to section 44, providing that a tenant at fixed rates, or an occupancy-tenant, should be entitled to compensation for every improvement made without the consent of the landlord, after this Act came into force. The improvements which would entitle such tenants to compensation were detailed in section 44. By far the most important of these improvements was the construction of wells; in fact, it was scarcely too much to say that no cultivator on the North-Western Provinces was very likely to make any improvement in the land except in the shape of wells. Now, the High Court of the North-Western Provinces had recently ruled that *every* tenant had a right to make wells. The section, therefore, did not in any way go beyond what had been declared to be the existing law; it merely limited it, in accordance with existing customs. It

further provided that suits to recover compensation for, or to prohibit, breaches of the conditions of a lease should be tried in the revenue Courts, as was already the case with suits to eject a tenant for the like reasons. A divided jurisdiction in such cases would obviously be open to very great objections.

The next change was in section 174, which had been altered so as to correspond with section 190 of the Revenue Act. By that Act a proprietor whose estate was transferred for arrears of revenue was allowed to retain his ex-proprietary rights in respect of his *sír*-land. The section included in the present Bill placed the judgment-debtor, who was temporarily excluded from his estate with a view to satisfying the dues of a private creditor, in a similar position.

Fourthly, a change had been made in section 181, which related to claims made by a third party in respect of property taken in execution of a decree. In such cases, as the law now stood, if the third party failed to make good his claim to the property and an order was made for its sale, the claimant could bring a suit in the civil Court to establish his right, but the suit could not be for recovery of the property, but only for compensation from the judgment-creditor. It appeared to the Committee that there was no good reason for applying this provision to immoveable property. If the lands of a third party were erroneously sold by order of the Court, it seemed unjust that the rightful owner should not be entitled to recover his lands, but only to sue for compensation. The Committee had accordingly amended that section.

There was only one more point; the Committee had provided that the Act should come into force, not on the day on which it was passed, but from the 1st April next. The Act contained a number of new provisions, which it was desirable that all persons concerned should have time to acquaint themselves with, and with this view the Committee proposed postponing the operation of the Act till 1st April next.

His Excellency THE PRESIDENT doubted whether the Council should proceed to pass the Bill to-day. The question of the consideration of the Report would not create any difficulty, but he should like to know whether the Report had been circulated or not.

The Hon'ble MR. GRANT replied that it had not.

His Excellency THE PRESIDENT said that to him it appeared that some of the changes proposed in the Bill were of a good deal of importance, and that it would be hardly fair to Members of the Council if the Bill were to be passed to-

day. He thought, therefore, that it would be advisable to allow some further time for printing, circulating and considering the Bill, as well as for considering the Report of the Select Committee.

The Hon'ble MR. COLVIN thought that His Excellency's wishes would be met by postponing the Motion to pass the Bill until the next week.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN asked leave to postpone the Motion that the Bill as amended be passed.

Leave was granted.

CORONERS' BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes, be taken into consideration. He said that the substance of the Bill as introduced was unaltered, but the Select Committee had taken this opportunity to make certain amendments in the Coroners' Act which experience of its working had shown to be desirable, and which had, for the most part, been brought to their notice by the present Coroner of Madras, Mr. Eardley Norton, the able son of an able and distinguished father.

The first of these was in section 8, which they had altered in such a manner that the Coroner would not be bound to act, as it had been supposed he was at present, on every information he received, but only if he saw reason to believe that the information was trustworthy.

The Select Committee had, in the next place, amended section 17 so as, first, to empower the Coroner to issue process beyond the local limits of his jurisdiction, and secondly, to remove a doubt which had been felt as to his power to issue a summons for the production of a document.

Lastly, they had added a clause to section 20, providing that the Coroner should be deemed to be a Magistrate for the purposes of section 26 of the Evidence Act. The effect of this last amendment would be that confessions made before a Coroner would be admissible in evidence, though the persons making them were at the time they made them in the custody of the police. As the Coroner was not a "Magistrate," the effect of the Evidence Act was that, when a prisoner was tried at the sessions, on the Coroner's warrant, a voluntary confession of guilt made at an inquest by that prisoner (while he

was in the custody of the police) to the Coroner was inadmissible in evidence. As even Village Munsifs had been held to be Magistrates for the purpose of section 26 of the Evidence Act (I. L. R. 2 Madras 5), it was clear that Coroners should be declared to be Magistrates for the purposes of that section.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXEMPTION FROM MUNICIPAL TAXATION BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to exempt certain persons and property from Municipal taxation be taken into consideration.

His Excellency THE PRESIDENT said that he had looked at the Report of the Committee and was very glad to see the alterations which they had introduced into the Bill as originally introduced. He confessed that it appeared to him that the Bill, as first proposed, gave too extensive powers to the Government of India, and that the amount of uneasiness that was felt on the subject by a considerable number of municipal bodies in the country was justified by the very sweeping character of the clauses of the Bill as at first drawn; and he was very glad that the Select Committee had taken into consideration the representations made by them and had modified the Bill and had removed all reasonable objection to it. HIS EXCELLENCY thought that it was worthy of consideration by Government in the Executive Council, whether it would not be desirable to issue a circular to Local Governments after the Bill had been passed, drawing their attention to the provision and suggesting that they should appoint a person to communicate with the municipalities with a view to settling what Government should pay towards the municipal rates. This was the course followed in England. The right of the Crown on behalf of Crown property to exemption from rates had been maintained, but a sum had been settled in each case which was paid to the municipality in the place of Crown rates; and he could only say that he hoped the Local Governments in dealing with the question would deal with it in a considerate spirit, and that, under the particular circumstances of each case, the Government of India would be made to contribute, in regard to their own property, whatever would be fair and reasonable towards municipal rates.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CONSOLIDATION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to consolidate and amend the law relating to criminal procedure. He said that, notwithstanding the partial consolidation effected in 1872, the Criminal Procedure of British India was now contained in seventeen Regulations and Acts, comprising over 1,050 sections, and in the numerous and sometimes conflicting reported decisions of the four High Courts and the Chief Court of the Panjáb. Of these Acts, the chief were the three Codes—Act X of 1872 (the Code of Criminal Procedure), amended by Act XI of 1874, in force in the Mufassal; Act X of 1875, in force in the Presidency High Courts, the High Court at Allahabad and the Chief Court at Lahore; and Act IV of 1877, in force in the Courts of the Presidency Magistrates.

In his despatch (Legislative), No. 44, dated 26th October, 1876, the then Secretary of State for India, referring to the Presidency Magistrates Bill (now Act IV of 1877) and its variations both in arrangement and phraseology, from the Code of Criminal Procedure, proceeded as follows:—

"This appears to me a wide departure from the settled policy of providing a simple and uniform system of law for India.

"The Draft Code of Criminal Procedure prepared by the Indian Law Commissioners in 1856 was intended by them for use in all the Courts, and although it was not deemed advisable to carry out the whole of this design when the Code of Criminal Procedure was enacted in 1861 for the Mufassal only, I think that circumstances are now more favourable to its completion. In the preparation of the High Courts Criminal Procedure Act, 1875, and of the present Bill, the whole of the Code of Criminal Procedure has been carefully reviewed and freely amended, and it seems desirable that the Mufassal districts should not continue under a less perfect law than the Presidency-towns, but that they should enjoy the benefit of the latest corrections and improvements; and that whatever rules are intended to be observed by all the Courts alike should be placed before all in the same language, care being taken at the same time to define the special duties and procedure of each. This is the best safeguard against conflicting rulings.

"I request, therefore, that your Excellency in Council will direct your attention to the question whether the Criminal Procedure Code of 1872 might not now be recast so as to combine with it the substance of the High Courts Act, 1875, and of the present measure, and thus at length to give to India a complete Code of Criminal Procedure."

MR. STOKES accordingly proceeded to frame a scheme for a Bill consolidating the Code of Criminal Procedure, the High Courts Criminal Procedure Act, the Presidency Magistrates Act and other enactments relating to Criminal Procedure. The general principles on which it was framed were four—first, that

the constitution and powers of the Criminal Courts should be dealt with at the beginning of the Code; secondly, that the rules relating to the prevention of offences should come before the rules relating to their prosecution; thirdly, that all matter of the same kind should be thrown together; and, fourthly, that the proceedings in a prosecution should be treated, as nearly as may be, according to the chronological order of the ordinary events; but that special proceedings and supplementary provisions should be dealt with apart. In this last respect the scheme followed the analogy of the Code of Civil Procedure, and was in accordance with a proposition thus laid down by Sir Fitzjames Stephen when introducing the Bill now Act X of 1872:—"The principle," he said, "on which a Code of Criminal Procedure ought to be arranged was perfectly simple. You would naturally begin at the first steps taken when a crime had been committed or was suspected: you would go on through the various steps from the time when the enquiry was first made till you got to the execution of the sentence of the Court. Exceptional incidents and supplementary arrangements should be separately dealt with. That was the principle on which a Code of Criminal Procedure ought to be framed."

The Government of India approved of this scheme and sent it to the Secretary of State enclosed in their Legislative despatch No. 41, dated 28th May, 1877.

On the 26th July, 1877, the Secretary of State replied that the scheme had his general approval, and consented that the Council should proceed at Simla with the preparation, and, if this should be completed, with the introduction and publication, of the Bill. MR. STOKES accordingly framed the Bill consolidating the laws above-mentioned, incorporating the numerous reported judicial decisions on the Code, and thus clearing up many doubtful questions, and making certain other amendments of the law which had from time to time been suggested by the Local Governments and the Home Department. MR. STOKES subsequently revised the Bill carefully with the assistance of Mr. Cockerell (then an Additional Member of the Governor General's Council, and a gentleman of large experience in the administration of the criminal law in the Mufassal) and of Mr. Fitzpatrick, the present Secretary in the Legislative Department, who also had had much similar experience, and who re-drew the chapters on Public Nuisances and on Security for keeping the peace. Care was taken to preserve, as far as possible, the language and arrangement of the present Code. But it was necessary for their main purpose—the combination in a compact form of the various laws regulating criminal procedure—to make some changes. The alterations in language were rendered inevitable, partly by the numerous decisions of the High Courts pointing out flaws in the drafting of the present

Mufassal Code,—flaws which it would have been absurd to perpetuate,—partly by the orders of the Secretary of State that the Mufassal Courts should have the benefit of the corrections and improvements made in the Codes in force in the Presidency-towns. The alterations in arrangement were necessitated, partly by the fact that the Bill consolidated no less than fourteen different enactments, partly because the principle on which the bulk of the present Code was arranged was not easily ascertainable.

The laborious task of revision occupied Mr. Cockerell, Mr. Fitzpatrick and MR. STOKES till April, 1879. The Bill was in many respects improved, but they found themselves unable to make any substantial alteration in an arrangement which seemed to them as clear and logical as the nature of the case could admit of. MR. STOKES then laid the revised Bill before the Executive Council, and the Bill was sent to the Secretary of State in a despatch dated the 22nd of May, 1879. It was also published in the Gazette under Rule 22 for the conduct of business, and was circulated to the various Local Governments with a request that it might be examined by selected local officers.

The result of this examination was contained in the thick folio volume before him. A good précis was made of this mass of papers, and, in the autumn of last year, his hon'ble friend Mr. Colvin (who, like Mr. Cockerell, had had large experience in the administration of criminal law), Mr. Fitzpatrick and MR. STOKES went steadily through it, and revised the Bill with the utmost care. The Bill, even as first published, might truly be described as the work of the whole body of Indian Judges and Magistrates, rather than of any individual or department. MR. STOKES was, therefore, not liable to the charge of vanity in saying that the drafting and arrangement of the new Bill were generally admitted to be superior to those of the present Code. On this point MR. STOKES might quote the opinion of Mr. Nelson, a Civil and Sessions Judge in the Madras Civil Service, one of the editors of the present Code, and well known as a somewhat hostile critic of Indian law and its administration:—

"I would wish to be permitted to observe, in the first place, that the Bill appears to me to be most admirable, and to be likely to provide the country with a criminal procedure that, in theory at least, will leave but little to be desired. Most of the principal faults of the original Code have now disappeared, and, when a few more amendments of substance and language shall have been made, the Act probably will be as good as it can be in the present state of legal knowledge. Fortunately, processual law, whilst of infinitely greater importance to the people at large than substantive law, is many times more easy to make and understand; and a Code of Criminal Procedure would seem to be almost exempt by its very nature from the objections that habitually are raised against codification as often as a benevolent attempt is made to make the people know what they may or may

not do, what rights belong to them, what duties are laid upon them. And periodic correction of such a Code, whilst introducing all the improvements that experience can devise, will interfere with no vested interests and injure not a single class of men. It is not unreasonable, therefore, to hope for the possession of a thoroughly successful Code of Criminal Procedure, after one or two more revisions shall have been effected.

"It would be difficult to find fault with the main object of this Bill, which is to substitute a single homogeneous Act of 566 sections 'for fourteen enactments containing 1,046 unrepealed sections.' And the general arrangement and division of subjects would seem to be but little open to attack."

They found that a large number of suggestions were made for the improvement of the present law, and many of these they had adopted. Objections were, both in substance and form, generally taken to the clauses prescribing a limitation for prosecutions for certain offences, and to the clauses relating to the composition of offences. They felt the force of these objections, and accordingly struck out the clauses relating to limitation, and modified those which dealt with compounding, so that no reasonable opposition could now be made to them.

Furthermore, he must frankly admit that the Governments of Madras, the North-Western Provinces, the Panjáb and British Burma objected to the alteration in arrangement, because, they said, the change would involve the judiciary and police in much trouble before they mastered the new Act. But, as a learned Judge of the Panjáb Chief Court had remarked, this was an objection that almost refuted itself, because it was an argument against change at any time after the provisions of a Code had become familiar. And it seemed to MR. STOKES that those Governments had not sufficiently considered the necessity of obeying the orders of the Secretary of State and the desirability of consolidating the fourteen laws relating to criminal courts and criminal procedure and of incorporating the rulings of the High Courts on the present Code.

There was, moreover, reason to think that the inconvenience which would result from the passing of the Bill had been greatly exaggerated. Thus, to quote the despatch from the Government of the Central Provinces, dated 24th September, 1879:—

"It will not be very difficult for the Judges, Magistrates and practitioners of the Mufassal to make themselves acquainted with it, especially if it be provided with a good index [this is being prepared], and perhaps also with such a schedule as the Commissioner of Jabalpur proposes at the end of his letter, showing in parallel columns the section of the new Code corresponding to each section of the present Code." [This has already been prepared and will be found at the end of the Bill.] "And there will be after all but a temporary difficulty, whereas it will probably be a lasting advantage to have the existing law properly codified."

Mr. Plowden, the Judge of the Panjáb Chief Court, to whom he had referred, said :—

"I have seen an objection urged that Police-officers and others will be put to great inconvenience by the re-enactment of the Code with new provisions and re-arrangements. This is an objection that almost refutes itself, because it is an argument against change at any time after the provisions of a Code have become familiar. I am not an advocate of frequent changes in the law; but I think that, if the present appears to the Legislative Council a convenient time for undertaking to consolidate the law of Criminal Procedure, there is no external obstacle, at least in the familiarity of the Courts with the existing Code and Act X of 1875, so far as the Panjáb is concerned.

"For my own part I should be glad to see the measure become law without long delay."

And Mr. Justice Thornton, a Judge of the same Court, wrote :—

"In drafting and arrangement the proposed Bill for regulating the procedure of the Courts of criminal jurisdiction is, in my humble judgment, a great improvement upon Act X of 1872; and the inconvenience involved in its substitution for the existing law is, I believe, exaggerated; it will, after all, be only temporary and forgotten in two years."

To the same effect wrote the Judges of the High Court, North-Western Provinces. Thus Mr. Justice Spankie :—

"Without committing myself to the opinion that any total repeal of Act X of 1872 was absolutely required, I however must admit that, when mastered (and practitioners will not find it difficult to master it), the Code will be found to be an improvement in form on the old, whilst in many respects it removes many doubtful points, making it clear what the law referring to them really is.

"The form and arrangement of the Code has, I think, been improved, the different chapters taking better places than they did in Act X of 1872.

"I regret that I have not time to go fully into the Bill. It, however, seems obvious that, so far as simplicity goes, it is advisable to have the different Codes now in operation incorporated in one Act; and, so far as the law has been amended, it appears to have been amended in a right direction. I understand that there has been some outcry about the Bill, but I confess that I do not see in its provisions any reasonable justification of any such outcry."

And Mr. Justice Straight, whose experience as a criminal lawyer entitled him to speak with the highest authority on the subject, said :—

"I quite feel that in a country like this, where the dispensing of justice has so largely to be carried out by officers who have not had any special legal training, and whose magisterial duties are so frequently allied to and mixed up with functions of an administrative character, it is in the highest degree undesirable to embarrass them by frequent legislative changes in the procedure of the Courts over which they preside. To pursue an opposite course must only

entail confusion, perplexity and blundering. But, as far as I am able to judge, I see no reason to apprehend that any such consequences are likely to ensue from the introduction of the proposed Code. So far as actually new provisions are concerned, it can cause no excessive mental strain to Magistrates or Sessions Judges, and they need have no difficulty in mastering the few additional enactments it inaugurates; while, for purposes of convenient and ready reference, the amended arrangement of Parts and Chapters is a very great improvement. The consolidation of procedure of all Courts of criminal jurisdiction into one Act would be a sufficient justification for the proposed Code had it no other recommendations."

It would be seen, when the revised Bill was circulated, that the commencement of the measure had been postponed to 1st January, 1883—ten years from the date on which the present Code came into force. This was five years after the date at which, according to Sir Fitzjames Stephen, the Code should have been re-enacted. "I should say," he wrote in his well-known Minute on the administration of justice in British India, p. 38, "that this process ought to be repeated at least once in every five years for every important Act."

Should the Council agree to the present Motion, MR. STOKES proposed to avail himself at their next meeting of the Secretary of State's permission to introduce the Bill. He would then re-circulate it for criticism to the various Local Governments, which would, he hoped, consult the High Courts and the ablest Magistrates and Sessions Judges; but he would not take any further step in the matter till the Council re-assembled next November.

His Honour THE LIEUTENANT-GOVERNOR said he did not think his hon'ble friend had fully stated all the opinions on the subject which had been received: the opinions of those very much in favour of the proposal for the consolidation of the law had been freely quoted, but he believed that the High Court of Calcutta had very strongly protested against the great inconvenience to the Judges, and especially to Native Magistrates and officials, of having the whole Code entirely upset and re-arranged, just as they had thoroughly learnt the existing Code, and that, if this were done, it would be very difficult for them to find out anything to which they might wish to refer. He thought that sometimes there was an exaggerated idea of the value of symmetry, and, though the present Code was not perfect in its arrangement and was contained in a number of different Acts and amendments, still all officers knew now where to look for what they wanted. There was, no doubt, great force in the objection of the High Court as to the inconvenience which would be felt for many years to come, and all these officers, some of whom were not good English scholars, would have to thoroughly re-learn the whole re-arrangements of the Code. If any one could suppose that the new amended Code would be lasting, these objections might

be considered trifling, because the advantage of a re-arrangement made once and for ever would be obvious; but HIS HONOUR saw no more reason to suppose that his hon'ble friend's re-arrangements would be more lasting, or considered by his successors in office to be satisfactory and based upon intelligible principles, than the arrangement of the existing Code by his predecessors was considered to fulfil these requirements by him. He well recollected that at the time the existing Codes were considered by the authors to be perfect. The result would be that patching would go on, year after year, until finally people would not know where to find the law which they had to administer. At the same time HIS HONOUR was perfectly prepared to consider the Bill when it came out, and hoped that as little change as possible would be made for the sake of the mere symmetry of the Code.

The Hon'ble MR. STOKES said in reply that, in the case of the Native Magistrates and officials on whose behalf His Honour the Lieutenant-Governor had spoken, the choice lay between two difficulties. No doubt, if the Code were re-enacted, these gentlemen would for some little time experience some difficulty in finding their way through the provisions of the Code in its re-arranged form. But this difficulty would be diminished by the table showing the corresponding section-numbers and by the index which would accompany the new Act. And, on the other hand, if things were left as they were, the Native Magistrates would continue unable to understand the existing Code without making reference to some two hundred decisions of the High Courts, which were, so far as MR. STOKES knew, reported only in the English language and scattered through some thirty volumes. If the new Code was passed and translated, each of these gentlemen would have the result of these numerous decisions put before him in his own language in a clear and intelligible form. That surely would be a set-off against the temporary and (he ventured to say) exaggerated inconvenience of having to master the provisions of the new Code. His Honour had said that all officers now knew where to look for what they wanted in the present Code. That might, perhaps, be the case in the advanced province of Lower Bengal, but it was not so in other parts of India. Thus, Ullal Raghavendrá Ráo, of Mangalore (Papers No. 33), said:—"The Act as it is now is so much complicated that it is hardly possible for one to study the provisions of any one subject without referring to several chapters"; and Mr. Justice Plowden, of the Panjáb Chief Court, spoke (Papers No. 40) of "the present Code, in which many stray provisions are to be met with in unexpected and inappropriate places." The objection that long familiarity with a faulty law was a reason against improving that law reminded one of the old story of the monk, who had for years read *mumpsimus* in his breviary, and bitterly complained when some pedantic person, with what His Honour would call "an exaggerated idea of the

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value of symmetry," pointed out that *sumpsimus* should be substituted. Then, as regards the chance of his successor, or rather the successor of his successor, re-arranging the Code on another basis, His Honour was perhaps unaware that, thanks to the labours of Mr. Arthur Symonds, Sir Henry Thring and others, the principles on which the different parts of a Code or any other long draft should be distributed had now been ascertained, and, when once any large work of legislation was arranged on universally intelligible and accepted principles, it was improbable that any re-arrangement would be made. MR. STOKES had pointed out that the great features of the proposed re-arrangement were that the constitution and powers of the Courts should first be dealt with; that the rules relating to the prevention of offences should come before the rules relating to their prosecution; that all matter of the same kind should be thrown together; and, lastly, that proceedings in prosecutions should be dealt with according to the chronological order in which ordinary events occurred, but that special proceedings and supplementary provisions should be separately treated. Those, surely, were intelligible and reasonable principles, and the last of them had received the sanction of the legislature in the case of the Code of Civil Procedure, and had, as regards the Criminal Procedure Code, been enounced by Sir Fitzjames Stephen himself. As regards the present Code of Criminal Procedure, MR. STOKES would be glad if His Honour would point out on what principle its provisions had been arranged. He was unwilling to discredit the work of his predecessors, and for part of it (the text of the chapter on charges) he felt, if he might say so, sincere admiration. He preferred to rest his case on the duty of the Government to obey the orders of the Secretary of State, and on the desirability of consolidating the fifteen enactments and the numerous judicial decisions in which the law relating to criminal courts and criminal procedure was now to be found. But, if challenged, he was ready to give instances to show the absence from the bulk of the present Code of any satisfactory principle of arrangement.

His Honour THE LIEUTENANT-GOVERNOR observed that he had heard the same remark made in regard to the superiority of the existing Code over the Act which it displaced; it was then supposed that the Codes were based on such intelligible principles that no one could ever question their arrangement.

The Motion was put and agreed to.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. COLVIN asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

Leave was granted.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Indian Penal Code. He said that this little Bill was a mere attendant on the great Code of Procedure which he had just obtained leave to introduce—a *scapha* attached to that *navis longa*. Its object was to make six amendments of the Indian Penal Code, and these he would shortly state to the Council.

The first was to render the word "offence," as used in sections 65, 66 and 71 (as amended by the Bill), applicable to things punishable under the Code or any special or local law.

The second was to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It would correspond with the first clause of section 309 of Act X of 1872, which would be repealed by the new Code of Criminal Procedure.

The third was to declare that, when an offence was punishable with fine only, the imprisonment in default of payment of the fine should be simple: this was in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth was to declare, by an addition to section 71 of the Penal Code, that, when anything was an offence falling within two or more separate definitions, the offender should not be punished with a more severe punishment than the Court which tried him could award for any one of such offences. This would correspond with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it was clearly matter of substantive law, and should, therefore, be placed in the Penal Code.

The fifth was to replace the obscure Exception which now stood in section 214 of the Penal Code by the following:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This would be read with section 345 of the new Code of Criminal Procedure, which declared that certain specified offences, and no others, might be compounded. The illustrations to section 214 of the Penal Code, which were now a cause of darkness rather than of enlightenment, would be repealed.

The sixth amendment was one of much practical importance, and had been in substance recommended by the Government of the North-Western Pro-

vinces. It rendered the offence of committing mischief by fire intending to cause damage to agricultural produce worth ten rupees or upwards punishable with the severer penalty provided by section 435 of the Code. As the law stood, mischief by fire was cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings were generally so small that the total produce of a holding was often less than Rs. 100. The consequence was, that a raiyat might have garnered his crop and lost the whole of it through the act of an incendiary, and yet the offence could only be punished with three months' imprisonment and fine, and might not be investigated by the police without the special order of a Magistrate. The paragraph in the second schedule to the new Code of Criminal Procedure, which referred to section 435 of the Penal Code, had been framed in accordance with the proposed amendment, and the result would be to render the offence in question cognizable by the police.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th March, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 25th February, 1881.

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