

Wednesday, May 19, 1869

ABSTRACT OF 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 under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 12th May 1869.
The Council adjourned to Wednesday, the 19th May 1869.

WHITLEY STOKES,

*Secy. to the Council of the
Govr. Genl. for making Laws and Regulations.*

SIMLA,)
The 12th May 1869.)

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 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 19th May 1869.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I.,
Presiding.

His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble B. H. Ellis.
The Hon'ble F. R. Cockerell.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them.

The Hon'ble MR. COCKERELL also moved for leave to introduce a Bill to exclude the ordinary Civil Courts from the cognizance of suits relating to land in the Bhután Dvárs, and to legalize certain Rules for the settlement of the said territory. He said that in July 1866 the territory ceded by the Government of Bhután, and known as the Bhután Dvárs, was annexed, and attached to the Bengal Division of the Presidency of Fort William. Shortly afterwards the Code of Civil Procedure was extended to that territory, and thereupon the cognizance of all suits of a civil nature became vested in the ordinary Civil Courts having jurisdiction within the annexed tract of country. Experience had shown that in a newly-acquired territory where British administration had been preceded generally by bad government, and often, as in the case of Bhután, by a complete absence of any regularly-constituted Government, claims relating to interests in land, or in any way connected therewith, were not satisfactorily dealt with by the ordinary Civil Courts, governed and restricted as those Courts were by the rules of Civil Procedure in their adjudication of all suits and matters coming before them.

For claims of this kind, whether with regard to the equitable interests of the persons concerned, or the interests of the State which, until the land revenue assessment of the newly-acquired territory was completed, might be said to be interwoven with those of claimants of any right or title in the land, needed to be determined by considerations of expediency and good policy, such as the Civil Courts in the exercise of their ordinary jurisdiction were precluded from entertaining.

Hence, in the case of such previous acquisitions of territory as the Punjab and Oudh, the operation of the Code of Civil Procedure was barred as regards claims to any interest in land pending the completion of the land revenue settlement of those provinces, and all claims of the nature referred to were adjudicated in the Court of the settlement officer.

Why this course was not adopted, as regards the territory ceded by Bhután at the time of its annexation, did not appear; but a case had recently occurred which showed conclusively that this measure ought to have been taken when the Code of Civil Procedure was introduced into the annexed province, and should certainly be no longer postponed.

It was, Mr. COCKERELL thought, unnecessary to state in this place the particulars of the case to which he referred, but he would read a passage from the High Court's judgment on it in appeal from the decision of the local Civil Court.

"No considerations of expediency can weigh with us, or can legally be entertained by us. We must treat the question as if it arose in one of the long-settled districts. Were the matter otherwise, we might possibly concur in the view taken by the Deputy Commissioner. It might have been well if

the plaintiff's case had, in the first instance, been differently treated by the Executive. But so far as this suit is concerned, it appears to me that the plaintiff proves his case. He did, in fact, get this maurusí jotlári pattá from the Súbah, the British Government's officers recognised him and received rent from him, and the defendants have granted him kabúlyáts and attorned to him. Surely, then, as against these defendants, he is entitled to have their names removed from the registry, and to have his own placed upon it instead. Whether a pattá of this sort, granted by the Súbah on eve of flight, is one which really by itself gave the plaintiff a title to the position he claims is, as it seems to me, most doubtful. But that is not the question which we have to decide. The only question before us is whether, as regards these defendants who have acknowledged the title which the plaintiff sets up, he is entitled to a declaration that his title is good, and that his name, and not theirs, ought to appear on the register as jotdár."

Mr. COCKERELL submitted that the natural and reasonable inference to be deduced from this passage in the High Court's judgment was, that in that Court's opinion it would have been well that a case of this kind should not have come before it, because a satisfactory adjudication of such cases demanded the import of considerations which the ordinary Civil Courts could not legally apply. He had cited this case to show that, not only was the policy of this Bill in accordance with that previously adopted by the Legislature under similar circumstances, but that it had the approval of the chief of the ordinary Civil Courts whose jurisdiction it would exclude. The Bill therefore was designed to exclude the jurisdiction of the ordinary Civil Courts in regard to all claims relating to any title or interest in land, or in any way connected therewith, within the Bhután Dvárs, and to substitute therefor a special agency for the adjudication of such claims. It would contain in the form of a schedule annexed thereto a set of rules which had been prepared by the Government of Bengal for the guidance of the Courts to which the adjudication of all claims of the nature above indicated was to be assigned. The effect of those rules would be to supersede the Code of Civil Procedure so far as their provisions were inconsistent therewith.

Leave was granted.

The Council adjourned to Friday, the 5th June 1869.

WHITLEY STOKES,

*Secy. to the Council of the
Govr. Genl. for making Laws and Regulations.*

SIMLA,
The 19th May 1869. }