

Tuesday, June 13, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA
LAWS AND REGULATIONS.

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The Council met at Simla on Tuesday, the 13th June 1871.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb.

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

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

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

The Hon'ble F. R. Cockerell.

LOCAL RATES (PANJÁB) BILL.

His Honour the LIEUTENANT-GOVERNOR of the Panjáb presented the Report of the Select Committee on the Bill to provide for the levy of local rates in the Panjáb.

CIVIL COURTS (OUDH) BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to consolidate and amend the law relating to the Civil Courts in Oudh. He said that when, a few weeks ago, a Bill was brought forward to provide for the abolition of the Financial Commissionership of Oudh, the hon'ble Member who had charge of the Legislative Department remarked that—

“The law in relation to the Courts in Oudh was altogether in a most unsatisfactory state. There were at least three Acts on the subject, which it was by no means easy to understand in their relation to each other. There was, in particular, a most extraordinary provision by which the Central Provinces Courts Act was somehow mixed up with the Oudh Courts Act, and the result was to produce great confusion. The Bill proposed to be introduced would for a short time make that confusion worse confounded than before, and the notification (which would be issued on the passing of the Bill) would add to that worse-confounded confusion.”

Since those remarks were made the notification referred to had been issued, and he (Mr. COCKERELL) ventured to say that the result had more than confirmed the hon'ble Member's (Mr. Stephen's) anticipation of its effect, as he would probably have occasion to show at a later stage of this measure.

His hon'ble and learned friend (Mr. Stephen) went on to say, on that occasion, that "he hoped, however, in the course of the summer to put the whole of the law relating to the Courts in Oudh into one Act of an intelligible character."

The Bill which he now asked leave to introduce was designed to carry out the intention thus expressed, and its object was, briefly, an attempt to get rid of that "worse-confounded confusion" above referred to.

The constitution and jurisdiction of the Civil Courts in Oudh were originally fixed by the orders of Government (which, under the Indian Councils' Act of 1861, received the force of law), dated 4th February 1856 and 6th October 1868, respectively.

From the 1st January 1862 the Code of Civil Procedure (Act VIII of 1859) came into force in Oudh, with certain provisos, &c., the first of which affected the jurisdiction of the Civil Courts to a very important extent. In 1865, Act XIV of that year, which purported to provide in an exhaustive manner for the constitution and jurisdiction of the Civil Courts in the Central Provinces, was, under the power conferred by its twenty-fifth section, extended to Oudh.

About the same time Act XVI of 1865 was passed and removed the cognizance of suits relating to land in districts under settlement, from the Civil to the Revenue Courts.

This Act contained also a certain prescription of limitation in regard to some of the suits so removed, and this provision was further enlarged by Act XIII of 1866.

Lastly, there was Act XI of 1871, which was quite recently enacted for the arrangement of matters of jurisdiction rendered necessary by the abolition of the Financial Commissionership of Oudh.

The Bill on which he was now addressing the Council was intended to effect the consolidation of so much of the substance of the enactments and orders having the force of law above enumerated as it was desirable to

retain, and to exhibit the whole law on the subject in a concise and intelligible shape.

But it might be said, perhaps, that Oudh had already got its "Courts Act" through the extension of the Central Provinces Act (XIV of 1865). That Act, however, even in its application to the Courts of those Provinces, was incomplete, inasmuch as it contained no express reservation of the very important power of revision conferred on the Appellate Courts by the proviso which was then in force, subject to which the Civil Procedure Code was extended both to the Central Provinces and Oudh, and had thereby suggested doubts as to the legal effect of some of its clauses in relation to that proviso.

Moreover, in the case of Oudh, the subsequently enacted Act XVI of the same year supplemented the former Act in regard to jurisdiction in the most important class of cases, *i. e.*, suits relating to land, for eleven out of the twelve districts of Oudh were, he believed, still under settlement. Then also there was the Act which was passed in connection with the abolition of the office of Financial Commissioner, with its authorised notification which had, as he thought, dealt with the matters of appellate jurisdiction in an imperfect and unsatisfactory manner.

He (MR. COCKERELL) reserved further comment on the ambiguity which existed in regard to the legal effect of some of the more recent enactments above-mentioned in relation to others which preceded them, until the Bill which he desired leave to introduce was before the Council.

He was confident that when its provisions came to be viewed in juxtaposition with the enactments which it was designed to supersede or replace, it would certainly not be regarded as a piece of superfluous legislation.

The Hon'ble MR. STEPHEN said that he wished to say a word or two on this subject as it was especially connected with the Legislative Department. No one could observe the present condition of the law in Northern India without being struck with the necessity which existed for throwing it into some more distinct and systematic form. This was done in Bengal eighty years ago; it was done for the Presidency of Bombay by the Bombay Code in 1827; and it had, he believed, been partially done in Madras. But with regard to the Non-Regulation Provinces, Oudh, the Central Provinces and the Panjáb, it would be difficult to describe the confusion which existed.

This was no matter of surprise when they considered the circumstances under which those large tracts of territories came to form part of the empire, and the suddenness with which the Government was called upon to provide systems of administration for them. But it was no disparagement to the judgment and skill of the framers of those systems, to say that they could not be continued in more settled times without involving inconveniences of the gravest nature. He was led to make these remarks especially because he had put into his hands that morning a volume, for which they had to thank His Honour the Lieutenant-Governor of the Panjáb, by whose directions it had been compiled. It consisted of a collection of the various rules and orders which were considered to have acquired the force of law in the Panjáb under section twenty-five of the Indian Councils' Act, and with which the present administrators of that province were supposed to be acquainted. The rules and orders had been drawn up with admirable clearness, industry and skill by Mr. D. G. Barkley, and the result was a volume of nearly 500 pages. No such collection had hitherto been made, and many of the rules and orders were accordingly inaccessible to every one who had not leisure or inclination to ransack the archives of the Government. It would not surely be creditable to allow laws and orders thus expressed to remain in so inconvenient a shape. Many of them, for instance, were contained in correspondence between the Local Government and the Government of India. The Board of Administration or the Chief Commissioner made a proposal, the Governor General accepted it with a qualification; the proposal thus modified was promulgated in the province, and it had now, in consequence, the force of law. There was another case, of which his hon'ble friend, Sir R. Temple, would no doubt have a very distinct recollection. Owing to the absence of any distinct enactment, it was found necessary in the Panjáb to draw up for the use of officers a manual of law, consisting principally of a statement of the main principles of Hindú and Muhammadan law, together with some portion of the English law, and some general provisions for the administration of the province. This little volume was admirably succinct and intelligible, and had proved, he (MR. STEPHEN) was informed, quite invaluable to the officers for whose use it was intended. Part of it related to insolvency, and its provisions in this respect appeared to have worked extremely well. But now the question had arisen whether this little manual had or had not the force of law. It was a curious illustration of the indistinctness which overlay the whole of this subject, that one of the principal reasons alleged for supposing that it had the force of law in the Panjáb was, that it was introduced as a guide to officers in Oudh; so that positively this had been the result; the volume made no pretensions to being anything more than a manual: it had been originally published for the use of officers

with the distinct orders of the Government of India that it was not to have the force of law; yet, because it was introduced as a legal text-book in another province, it was contended that it had acquired the force of law in the province in which it was originally published. Surely this was a state of things that the Government could not with credit allow to continue. He hoped that they might be able in the course of the summer to deal with this matter in the same manner as his hon'ble friend, Mr. Cockerell, was about to deal with the law in Oudh. They did not want to alter the existing state of things, except in such particular points as the provincial authorities considered to require amendment. But they wished to throw the law into a compendious, intelligible and convenient form, and so to render accessible to the officers of Government and the general public those excellent institutions and orders which they owed to the genius and energy of those who reduced those provinces to British rule.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 20th June 1871.

H. S. CUNNINGHAM,

SIMLA; }
The 13th June 1871. }

*Offg. Secy. to the Council of the Governor
General for making Laws and Regulations.*