

Thursday, June 28, 1877

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 16

March - Dec.

Book No. 2

1877

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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 & 25 Vic., cap. 67.

The Council met at Simla on Thursday, the 28th June 1877.

PRESENT:

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

His Honour the Lieutenant-Governor of the Panjáb.

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

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

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

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

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

Major-General the Hon'ble Sir E. B. Johnson, K. C. B.

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

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

The Hon'ble F. R. Cockerell.

The Hon'ble B. W. Colvin.

**CHUTIA NÁGPUR ENCUMBERED ESTATES ACT AMENDMENT
BILL.**

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill to amend the Chutia Nágpur Encumbered Estates Act, 1876, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT also moved that the Bill be passed.

The Motion was put and agreed to.

BRITISH BURMA EMBANKMENTS BILL.

Colonel the Hon'ble SIR ANDREW CLARKE presented the further Report of the Select Committee on the Bill to provide for the execution of works urgently required in connection with embankments in British Burma, and moved that the Reports be taken into consideration. He said that he had only to call the attention of the Council to two slight, but still important, alterations, which had been made upon the suggestion of the Lieutenant-Governor of the Panjáb. The Bill as brought before the Council at a former meeting attempted to describe the class of people to be brought under the operation of the Act, who were referred to simply as "male labourers," and who might, or might not, be interested in the district where

the work was to be done and in the protection which was to be afforded. It also indirectly omitted to bring under its influence those who were the most benefited by these embankments, and who would suffer most from any injury done to them by flood and storm; for the lands in Burma were held by small landholders or cultivators, as they were locally called, occupying small farms of from eight to ten acres. As the clause originally stood these people were practically exempted; now they were brought under the provisions of the Bill.

The Lieutenant-Governor had further pointed out the inconsistencies, difficulties and possible abuses which would arise under the Act as then framed, and suggested a modification based upon the working of the Act in the Panjáb, in which the local officers had to prepare and be responsible for certain lists of, and to give proper notice to, the persons to be employed on those works. The character of the workers in British Burma was also to be taken into consideration; for the great majority of them were, as he had already stated, men possessed of small farms of eight or ten acres, and the alteration in the Act would allow the local officers to put these people's names on the list subject to regulations which must be approved by His Excellency in Council.

There was also another rather important suggestion which came from the same source, relating to the penalties attaching to the employment of immigrants under contract; and in the last section of the Bill we had now added a proviso to the effect that section 71 of the British Burma Labour Law, 1876, which rendered penal the employment of immigrants under contract, should not apply to the embankment-officer or those authorized by him to act under section 3 of the Bill.

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE then moved that the Bill as amended be passed, remarking that in asking His Lordship and the Council to give to what was now a lifeless paper the quickening force of an executive law, he (SIR ANDREW CLARKE), unlike other authors, had no aspiration as to the success of his offspring; his hopes rather were that the landowners and cultivators in British Burma, confiding in the honesty and justice of English administration, would ever permit the Act to rest an inanimate power.

The Motion was put and agreed to.

BROACH AND KAIRA THÁKURS INCUMBRANCES BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Thákurs in Broach

and Kaira be taken into consideration. He said that, when introducing the Bill to the Council, he took the opportunity of explaining that its object was to extend to the Thákurs of Kaira provisions similar to those which existed in other districts and had lately been applied to the zamíndárs of Sindh; and also to get rid of an Act on the Statute-book, XV of 1871, and to subject the Thákurs to whom it applied to the present Bill with certain reservations. The Bill, as introduced, received, in somewhat vague terms, the approval of the then Government of Bombay; but since the accession of Sir Richard Temple it had been thought proper to make a second reference to that Government, in consequence of which a number of useful suggestions had been received and had been carefully attended to by the Select Committee. The Committee had made a number of changes which were mentioned in the Report; but none of them were sufficiently material to need a definite explanation to the Council.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PANJÁB COURTS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to consolidate and amend the laws relating to the Courts in the Panjáb. He said—"As this is one of the measures of which the primary object is to condense and clarify the existing Acts and Regulations of British India, I propose, with Your Excellency's permission, to make a short statement as to the work in this direction which still remains to be performed.

"Some respectable authorities are still unconvinced of the advantages of codification, by which I mean the reduction to a statutory form of laws previously unwritten, save in the reported decisions of judges and in the treatises of legal text-writers. But, so far as I am aware, no one, except the proprietors of unsold editions of lawbooks, objects to the consolidation of separate enactments relating to the same subject. For, in the first place, it diminishes the size and consequent costliness of the statute-book, and thus renders it more accessible to the bulk of the population, who are supposed to know the law and are bound under heavy penalties to obey its provisions. In the second place, judges, lawyers and the public are greatly helped by having all the enactments

relating to the same subject-matter within the four corners of a single Act. Qualifications and exceptions thus run less risk of being overlooked, and the law becomes capable of being easily comprehended and accurately remembered.

“But the improvement in the form of different parts of the law, which almost always results from bringing its *disjecta membra* together, is to some minds still more satisfactory. Diffuseness, repetitions, ambiguities, inconsistencies and obscurities are noticed and removed by the draftsman: defects in arrangement are corrected: incidental matters common to most laws, and provided for in India by the General Clauses Act, the Limitation Act, and the Oaths Act, are omitted; and in style and structure the consolidated law is made to correspond with the other Acts of the Legislature.

“The measures of consolidation now before this Council are six in number. First, we have the Bill dealing with Arms, Ammunition and Military Stores, which has been pending for the last six and a half years, but which we shall soon proceed with under the guidance and auspices of my honourable friend Sir Edward Bayley. This Bill will consolidate three Acts and part of a fourth. We then have the Sea Customs Bill, which Mr. Hope, I believe, intends to proceed with as soon as we return to Calcutta, and which consolidates six Acts. We then have the Railway Bill, of which my friend Sir Andrew Clarke hopes to publish a revised edition in the course of the summer, and which consolidates four Acts. Then we have the Shipping Bill, which was introduced nearly eleven years ago, and which has been standing over, and must, for obvious reasons, continue to stand over, until Parliament has consolidated and amended the Imperial Statutes relating to Merchant Shipping. This Bill consolidates no less than ten Acts. Then we have the Bill to consolidate and amend the law relating to Stamps and Court-fees, a difficult and repulsive piece of drafting, which will soon, thanks to the untiring exertions of my friend Mr. Cockerell, be ready for introduction to the Council. This Bill will consolidate three whole Acts and parts of eight other Acts and Regulations. Lastly, we have the Bill relating to the Presidency Small Cause Courts, which will consolidate five Acts, and will be proceeded with as soon as the Home Department, to which its subject-matter pertains, shall have settled some questions as to the jurisdiction which should be conferred on those tribunals.

“Besides these six Bills actually before the Council, we have the Bill relating to the Panjáb Courts, which I now ask leave to introduce, and which will consolidate no less than seven Acts.

“We also propose to consolidate the laws relating to copyright, patterns and designs, which are now scattered through three Acts.

“But the most important and difficult of all our projects of consolidation has still to be mentioned. This is the Bill to consolidate the laws relating to Criminal Procedure, which has been undertaken at the suggestion of the Secretary of State. The Council is aware that no less than three Codes of Criminal Procedure are now in force in British India. The Code of 1872, amended by Act XI of 1874, which is in force throughout the Mufassal; the High Courts Act (X of 1875), which is in force in the Presidency Towns, Allahabad and Lahore; and the Presidency Magistrates Act (IV of 1877), also in force in the Presidency Towns. The proposed Bill will recast the Code of 1872, combine with it the substance of the High Courts Act and of the Presidency Magistrates Act, embody ten other laws dealing respectively with enquiries into the behaviour of public servants, sentences of penal servitude, forfeitures and State prisoners, and thus at last give to India a complete Code of Criminal Procedure.

“The result of passing these measures will be to substitute nine Acts for sixty-two Acts and Regulations. If the local Legislatures of Bengal and Bombay would consolidate their numerous laws relating to land-revenue and to ábkárf, and if Parliament would only proceed with the great measure of consolidation framed originally by the late Mr. Merivale, twice recast by Sir James Stephen, and twice revised by Sir Arthur Hobhouse and myself, which will replace by a compact and clearly-arranged statute of 172 sections the forty-three statutes in which the law relating to the Government of India, the High Courts, the Civil Service and the Ecclesiastical Establishment is now contained, the existing written law of this country would be simplified as much as could be reasonably desired.

“To reward the Council for the patience with which they have listened to a number of dry details, I will conclude with a few wise words of Lord Bacon’s—the first, so far as I know, of English lawyers to appreciate the advantages of consolidation. That great man said:—‘The wisdom of a law-maker consisteth not only in a platform of justice, but in the application thereof, taking into consideration by what means laws may be made certain, and what are the causes and remedies of the doubtfulness and uncertainty of law; by what means laws may be made apt and easy to be executed,, how they are to be pruned and reformed from time to time, and what is the best means to keep them from being too vast in volumes, or too full of multiplicity and crossness.’”

The Motion was put and agreed to.

*LIMITATION OF SUITS.**LIMITATION OF SUITS BILL.*

The Hon'ble Mr. STOKES also presented the final Report of the Select Committee on the Bill for the limitation of suits and for other purposes.

The Council adjourned to Thursday, the 12th July 1877.

SIMLA;
The 28th June 1877. }

A. PHILLIPS,
Secretary to the Government of India,
Legislative Department.