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OF THE BRITISH PARLIAMENT,

FROM THE EARLIEST PERIODS, WITH NOTICES OF EMINENT PARLIAMENTARY MEN, AND EXAMPLES OF THEIR ORATORY.

Compiled from Authentic Sources by

GEORGE HENRY JENNINGS.

"Law Times" Office, Windsor House, Bloom's-buildings, E.C.

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Vol. CVII.—No. 2663.

The condition of the Court of Appeal in the matter of arrears does not improve. A total of 328 appeals is serious, the most disturbing item being 38 "Re The Workmen's Compensation Act." In the matter of final appeals, the Chancery list is not much below that of the Queen's Bench, the former numbering 114, and the latter 118. There are 16 cases in the new Trial Paper, and 10 Probate and Divorce and 7 Admiralty appeals.

The vigorous methods of the younger judges in the Chancery Division has reduced the volume of arrears, the total of causes and matters for hearing being 402, while in the Winding-up Court there are 32.

The Queen's Bench list shows a total of 768. In addition to the 558 causes mentioned last week, there are 170 matters for the Divisional Court and 40 Appeals in Bankruptcy.

There are 198 Probate and Divorce cases, of which 111 are undefended and 10 for trial with special juries; 86 Admiralty actions await hearing, and 2 appeals to a Divisional Court.

The total therefore stands at 1842 for all branches of the Supreme Court for Hilary Sittings 1900.

The retirement of Mr Justice North and the appointment of Mr. Buckley, Q.C., to fill the vacancy are events concerning which there will be no difference of opinion. The new judge is of the same type as Mr. Justice Farwell. The work on his Company Law may be considered as phenomenal. We trust he may relieve Mr. Justice Wright of winding-up business, so that that learned judge may devote himself exclusively to the business of the Queen's Bench Division.

SIR JOHN LUBBOCK, who has been transferred from the House of Commons to the House of Lords, has been known in connection with much useful and sensible legislation from the Bank Holidays Act 1871 to the present day. The codification of common law by the Bills of Exchange Act 1892, the Partnership Act 1890, and the Sale of Goods Act 1893 may, with advantage, be carried a step further by the passing of the Marine Insurance Bill of the late Lord Herschell, whose place in connection with it may well be taken by the new, present Codification Bills are best originated in the House of Lords.
The INDIAN EXECUTIVE AND THE JUDICIARY.

A BENGAL DEPOT CASE.

From one of his few lines of doggerel that he omitted to blot, gave as his opinion: "What's ever is best administered is best." This old saw might serve any opportunist politician, but no lawyer, however rough and ready, would soood accept it. The object of the Anglo-Indian system of laws—objects that were set forth in the Codes—required a more subtle and refined interpretation. Practicing lawyers would believe it possible that one of the best systems of jurisprudence and procedure could, even in sporadic instances, result in one of the worst conceivable examples of perverted judicial administration.

The sequel, however, contained in sect. 18 (17) might very usefully be extended. There is in fact, except so far as the operation of the Statutes of Limitations is concerned, very little difference between a covenant under seal and what may be termed a parcel covenant. The respective rights of the covenantor and covenantee are concerned. The abolition of any distinction between an action of covenant and any other action based on contract sounds well. It might be expected that the district officer would take out a suit, and apply for arrest, and get him dismissed, Mr. Simkins adding, as an ultimatum, "You go, or not go?"

On this, Narsingh, the worm, turned again, and, as the two officers alleged, snapped at the fingers of the Finn and said he did not care for that sort of treatment. Then the Finn, in his usual way, struck Narsingh by the shoulders, kicked him behind, and told him to go. But the worm again turned and approached, as Corbett asserted, in a way to make the Finn strike him. Not only struck him, but Corbett struck him three times in the face, knocking him down. Then Simkins, the engineer, who is a big man, literally sat on the unlucky officer, and Corbett went on "good hammering" (Corbett's own confession), after which Narsingh was bundled off to the work; but, after a few minutes' attempt at delving, he was let off, for, as Corbett averred in evidence, the engineer was not at all severely hurt. The expedition that evening was under the peculiar example of "your boasted British jurisprudence," began to follow Simkins to their forced labor. It may be said that Corbett had had helplessly the strength of the engineer whilst Narsingh was "in Trades" and a more plucky Chumna (outcaste) had made at the beaters with his stave; but the engineer, equal to the occasion, seized the Chumna's stick and with it gave him a crack on the head. Thus order, if not law, was restored to the village of Fornia.

Now it was time for legal proceedings to begin, as they did next day in a fashion worthy of Baratia. In Narsingh, as we have seen, knew a little law; hence he would take out a suit, and apply for arrest, and bebattery. But, before doing so, his bruises needed surgical aid, with that object he presented himself at the Chumpa hospital with his two black eyes and other depressions. Surgeon-Captain Maddox took him in, of course, but did for him other than surgically—sending word to Mr. Corbett that he had the erring constable at his disposal. Thereupon Corbett drove over to the hospital, arrested Narsingh, and took him to the house of his superior, Mr. Peggotty, the district officer, and the police. There he appears to have been bullied with threats of prosecution, which, it was suggested, he might be spared if he would resign his place as constable and go about his business. But Narsingh had still more matter in his refusals. He wanted the commission that was to the bungalow of the (Civilian) district magistrate, Mr. Twidwell, with whom the two European police officers consulted as to which sections of the Code would serve as justifications for the action of the constable. Of course the Sessions Judge later on remarked—seemed to have been "the very serious one of having been assaulted by a European officer." This council of three found that sects. 333 and 195 I. C. S. might do to frame a charge on Corbett's "report"; and forthwith Mr. Twidwell wrote out an "order" directing prosecution before a deputy magistrate—Moulvie Zakir Husain, one of his own subordinates. The gist of these charges (to which another was added in course of the proceedings), as expressed by Mr. Deputy Moulvie in his finding, was "an insult sufficiently capable of provoking (the young police officer Corbett) to commit a breach of the peace"; and, having found Narsingh "guilty," passed on him a sentence of six months' imprisonment and thus affixing to the unhappy "hammered" constable the stigma of a felon.

But before this predetermined result was reached there had been certain expected legal proceedings that are worth recording. The mischief of the Codes and the best rules of procedure may be rendered futile by personal neglect or dearth violation thereof. On the first hearing Mr. Bradley, the district superintendent of police, in his preliminary and private consultation with Mr. Twidwell, the superior Civilian magistrate, must needs plant himself on the bench beside Deputy Moulvie, with whom "he discussed the law and evidence" whilst the hearing was going on. After this he heard the details across the desk, cautiously followed by the trying magistrate with the "record," where they considered the course to be taken at the next hearing, the latter having previously consulted with Mr. Twidwell in the train on the train. For as a rule it must be mentioned that when Mr. Deputy Moulvie, in the subsequent proceedings before Mr. Pennell, the sessions judge, was called to account for these private confabs in preparation of his finding and sentence, he naively expressed that "it was to avoid future troubles" for, as he further explained, "sometimes when cases are disposed of and [his] superiors magistrate do not like it, they find fault, and so I settled it beforehand." If we are to take this as an example of how in rural Bengal it is "sometimes" administered, it is difficult to conceive...
anything more grotesque and scandalous. And as to Mr. Twidell's part in these Savoy-opera proceedings in real life, he, when before the Sessions Judge, after much wriggling, was constrained to "admit that it is difficult for him to say where he did it himself or how he was to decide the case." It may be remarked here in passing that Mr. Twidell, the district magistrate, is a Citizen of only about five years' standing, while Mr. Deputy Moutrie has exercised municipal police powers for more than thirty years. But, as he inquired of a class who can never rise above that subordinate position, it may be understood how that, in the language of the Sessions Judge, he is a more servile tool in the hands of his [local] superiors, a man without conscience, with no fear of God before his eyes.

Another instance of the shameless personal interference with the course of justice in the case may be traced to the circumstance that Mr. Twidell, when formally asked in the Judge's court to proffer explanation of his part in the irregularities there disclosed, refused to give it, sheltering himself under the plea of advice from his superior, Mr. Bourdillon, Chief Commissioner of the Patna Division, who is a senior civil officer, to close the case for redemption. Yet this gentleman had so little regard for impartiality in judicial proceedings that he committed the impropriety of writing a demi-official letter to the Sessions Judge urging that the evidence of the witnesses should be taken over here.

Two or three further circumstances must be mentioned in order to show how the case was disposed of. It is doubtful whether these outrageously procedings would have been formally brought to the cognizance of the Sessions Court had not the advocate, Mr. Jagannath Satarai, whom Narsingh had secured before the final hearing in the deputy's court, taken the "usual course"—which Mr. Penell commended in the instance—of himself swearing an affidavit "recalling the story of these extra-judicial proceedings," which comprise very grave irregularities beside those essential points we have selected. It was with much difficulty that Narsingh obtained bail after the first hearing; he then preferred charges against Messrs. Corbett and Simhine of causing hurt and of imposing unlawful compulsory labour. The same deputy magistrate heard the indictment in its usual form of a petition, but this was dismissed as "utterly without ground" under sect. 226, C. P. C.

But, later on, the Sessions Judge, in the exercise of his "revising authority," set aside Moutrie Zako's dismissal order, and directed a fresh inquiry to be made by his superior. In passing the order Mr. Penell directed that it should be dealt with by another district magistrate, Mr. Macpherson, seeing that Mr. Twidell himself was "at the bottom of the disgrace" and to whom the courage and the cowardice of his conduct, both in his official and private capacity, would have to be made to have had to make it a direct reference to the Calcutta High Court. So this is how the subsidiary case of Narsingh v. Corbett and Simhine was left when last noticed.

It remains to be seen how the higher authorities will take notice, or avoid taking notice, of the corrigibilities disclosed in the judgment rescinded by the Nainitollah Judge of Chupra. The searching and conscientious review of this flagitious magisterial maladministration is worthy of the best judicial traditions of the Indian Civil Bench, and so far affords ample vindication of the British India Codes when faithfully administered. But Mr. Moutrie and Mr. Twidell are but the cogs in a monstrous and obsequious machine, both in denial, with penalty by the Executive authorities of Bengal, of whom Sir John Woodburn, the present Lieutenant-Governor, is the head. Will the Chief Justice of the Calcutta High Court, Sir Francis Macleod, will the Governor, by whilst an ill-concealed outray is pleased, be thus dealt with in the impartial administration of justice within his province? Such evasion of duty, were it possible, would tend to weaken the fibres of the strongest cord that binds together our Indian Empire. The highest authorities, who are bound, like any one else, to see that such subordinate official conspiracies against the reign of law as are disclosed in this Chupra case shall not ever be possible; for we quite agree with the Sessions Judge of Chupra that the administration of these Executive authorities are the Legal Member of the Supreme Executive, and the Governor-General in Council, Lord Curzon.

SCOTTISH NOTES.

The Court of Session resumed its sittings after the Christmas recess on Tuesday last, the 9th count.

The three estimates of Lord Watson contained in the December number of the Journal of Review (see ante, p. 135) afford, if read together, a remarkable composite portrait of the character which seem to stand out in clearest relief are his marvellous powers of application, his absolute fairness, his freedom from even the suspicion of bias, his great spirit of asceticism, his neglect of systems of law which it fell to him to aid in administering. His influence on the law of Scotland is the text of Lord Stormont-Darling, and no one can deny that such influence was both profound and wholesome. His eminence as an English judge is acknowledged by Lord Macnaghten Haldane, both of whom rank him among the greatest English lawyers. As an Imperial statesman and jurist in the Privy Council, Haldane's praise is not exaggerated. Lord Watson "was an Imperial judge of the very first order," a "great servant of the Empire," who "did much to make stronger one of the real links which bind and unite its parts." Such praise was a justification of the highest praise in being bestowed by men themselves so praised.

The antiquated Scotch action of summing and ronning has long ago been relegated to the law's number-room. The process, if remembered at all, is remembered chiefly as the subject of one of the late Mr. Otrant's satires. Only the other day, however, a case came up in the Outer House of the Court of Session involving incidentally the consideration of a decree of summing and ronning pronounced in the Sheriff Court of Aberdeenshire and recently also in the Sheriff Court of Kincardineshire (1890, not reported). The action is a relic of the early system of land tenure prevalent in both England and Scotland, and its purpose is, first, to determine the number of stock which a common can pasture; and, second, to set the price at which the parties in right of the common pasture can sell the several proportions of that number. The test in Scotland of the number of cattle which a proprietor possessing a right of pasturage over a common pasture contentiously set at 76, a number which, according to some estimates, can content in the winter. It is interesting to note that in England, the extent of a commoner's right of pasturage is similarly measured, being determined by the number of cattle levant and consequent upon his land, whereas in Scotland the right of pasturage is fixed by the assessment of several proportions of that number. The test in Scotland of the number of cattle which a proprietor possessing a right of pasturage over a common pasture contentiously set at 76, a number which, according to some estimates, can content in the winter. "Economically, the word "sum" means a cow's grass or its equivalent, while the word "ron" is an old Scotch term for a piece of land.

Three recent decisions in Scotland illustrate the modern doctrine of restraint of trade. The principles originally applied to this difficult subject have not been strictly adhered to either in England or Scotland. In England, restraint unlimited as to space was permitted in Nordfelt v. Mason-Nordenfeld Guns and Ammunition Company (71 L. T. Rep. 469; 1894 A. C. 353), while in Scotland a new departure as to consideration was made in Steen v. Steen's No. 336 (1878) in Scotland. The latter case is of considerable interest in so far as it relaxes the ordinary rule in a case of classes n hitherto touched. "The general rule is that a man ought not to be allowed to contract out of exercising any lawful craft or business at his own discretion and in his own way" (Pollock on Contract, p. 337). The partial restrictions which have hitherto been permitted as exceptions to this rule belong to the past. The court concluded that the right to one to enter into a contract to sell the goods of another who is engaged in an unauthorized trade, to prevent such business itself from injuring another extraneous. The defender was neither seller, partner, servant, nor agent. The parties were brothers, both trained by their father to the business of a photographer. The defender, being in prison for an alimentary debt in England, in consideration of a loan of £10, not to start or carry on the business of a photographer—in Elgin, where the pursuer had a business, or within twenty miles of that town. The contract was signed by the pursuer on the 1st day of April, and the note of money of a consideration for a restriction on personal liberty was unprecedented, and in many cases would be most pernicious in its consequences. The meaning of the word "consideration" has been very different in the law of England and Scotland, bulked largely in the opinions delivered by some of the judges. We shall take another opportunity of referring to these decisions.

IN Macfarlane v. Dumbarton Steamboat Company Limited (23rd June S. L. R. 773) between Glasgow and Dumbarton and other places in the neighbourhood was sold to a limited company, the seller undertaking to give his services to the company during such time and at such remuneration as the directors might direct. The seller further obliged himself "not to engage in, or take part in the management of, any other business, whether alone or in partnership, without the consent in writing of the directors," and to "do nothing to cause the company's articles of association to give up or transfer its business to any other company," and these articles were indorsed by the seller. After some months the seller was dismissed, and there arose the question of competing business in Dumbarton. The seller pleaded that the restriction was in restraint of trade or in any case unreasonable and beyond what was required for the fair protection of the buyers, and in consideration of the company's articles of association to give up or transfer its business to any other company, and these articles were indorsed by the seller. After some months the seller was dismissed, and there arose the question of competing business in Dumbarton. The seller pleaded that the restriction was in restraint of trade or in any case unreasonable and beyond what was required for the fair protection of the buyers. The judgment is reversed, and a new trial directed.