

Thursday,  
19th October, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

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Not to be taken away.

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1882.

VOL. XXI.

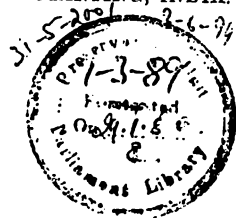
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

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The Council met at Government House, Simla, on Thursday, the 19th October, 1882.

P R E S E N T :

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

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

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

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

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

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

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

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble W. C. Plowden.

**ELEPHANTS PRESERVATION ACT, 1879, AMENDMENT BILL.**

The Hon'ble MR. GIBBS introduced the Bill to amend the Elephants Preservation Act, 1879, and moved that it be circulated for the purpose of eliciting opinions thereon. He said that the Bill, as he had explained to the Council when he moved for leave to introduce it, was a purely technical one, and he need not now take up the time of the Council with further explanations about it. It was not proposed to refer it to a Select Committee, because it would be important first of all to elicit opinions from the Local Governments of the places to which the Bill applied.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

## NIZÁMAT ACT REPEAL BILL.

The Hon'ble MR. ILBERT introduced the Bill to repeal Act No. XXVII of 1854, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Sir Steuart Bayley and the Mover. He said that he had stated on the last occasion when the Council met the objects with which the proposed Bill was prepared; he need now only say that the enacting part of the Bill was comprised within the limits of a single line.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

## MADRAS FOREST ACT CONFIRMATION BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to confirm the Madras Forest Act. He said:—

“The reasons for which I ask leave to introduce the measure are these:—The Indian Forest Act of 1878 does not extend to the Presidency of Madras. The Madras Government have power to extend it to their Presidency by notification; but they have come to the conclusion that this mere power of extension will not suffice, and that, to meet the circumstances of Southern India, special legislation is necessary. Accordingly, they have passed an Act which does for Madras what was done for British Burma by the Burma Forest Act of 1881; that is to say, the Act enacts the Indian Forest Act of 1878, with such changes as are necessary to adapt it to the Madras Presidency. But, in doing this, they have been compelled to embody in their measure certain provisions which, though modelled on provisions contained in the general Indian Forest Act, are inconsistent with provisions contained in certain other Acts of the Governor General in Council,—in particular, the Easements Act,—and therefore are beyond the competence of the local legislature to enact. Of course, we are anxious that the Madras Act should follow, as closely as possible, the lines of our own Act, and therefore we propose to confirm the Madras Act, so far as it purports to repeal or amend any general Act of the Governor General in Council.

“So much for this particular measure. But I should like to add a few words about the difficulty out of which the need for this measure has arisen, because it is a difficulty which is likely to recur.

“The legislative powers of the Local Governments are, as we all know, derived from section 42 of the Indian Councils Act, which is as follows:—

“The Governor of each of the said Presidencies in Council shall have power at meetings for the purpose of making Laws and Regulations as aforesaid, and, subject to the provisions herein contained, to make Laws and Regulations for the peace and good government of such Presidency, and for that purpose to repeal and amend any Laws and Regulations made prior to the coming into operation of this Act by any authority in *India*, so far as they affect such Presidency: provided always, that such Governor in Council shall not have the power of making Laws or Regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.’

“Now, the effect of this section is, that the local legislatures have not the power to repeal or amend any Act of Parliament, and have not the power to repeal or amend any Act of the Governor General in Council, passed after the date on which the Indian Councils Act came into operation. Consequently, every Act which we pass, and which comes into operation in territories under local legislatures, operates, *pro tanto*, to circumscribe the powers of those legislatures. I am inclined to think that some of our Acts have had this effect to an extent not anticipated at the time when they were framed. Take, for instance, some of the important codifying Acts, such as the Contract Act, the Evidence Act or the Easements Act. The main objects of these Acts, I take it, was, not so much to alter the law, as to declare and define it—to make it clearer and more certain. But when you take a rule of common law and put it into an Act of the legislature, you alter its character and effect. As long as it is merely a rule of the common law, which says that ‘the owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person,’ you have a rule which, like other rules of the common law, can be repealed or altered by legislation; but directly you take that rule and put it into an Act of the Governor General in Council, as you have done by one of the sections of the Easements Act, you make a rule which can no longer be altered by the local legislatures. The consequence is that, whenever a local legislature wishes to give power to take away or to modify for any public purpose any right in the nature of an easement, it incurs a serious risk of running its head against an Act of the Governor General in Council. This is not an altogether satisfactory state of things. Of course, it is essential that we should have the power of legislating for the whole of British India; but we have not the least desire to encroach upon the province of local legislatures by passing Acts which are merely of local importance. And again, we do not want to be constantly placed in the position of being asked to do what I

propose to-day that we should do; that is to say, to introduce special legislation for the purpose of removing technical difficulties of our own creation.

“It is much easier to see the difficulty than to devise a satisfactory remedy for it, because our powers, like the powers of the local legislatures, are entirely derived from, and limited by, Act of Parliament. When Parliament has said that a local legislature shall not have the power to repeal or amend an Act of the Governor General in Council, of course we cannot give it that power. But we have power to amend our own Acts; and it has occurred to me that possibly a partial remedy for the difficulty to which I have referred may be suggested by a provision which is to be found in the new Civil Procedure Code. The Civil Procedure Code extends to the whole of British India except the Scheduled Districts, but it contains, in section 4, a saving of certain local Acts. This saving is as follows:—

“Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments \* \* \* \* \*

\* \* \* or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

“or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.”

“The words to which I wish to call particular attention are “or hereafter passed,”—that is, the words which prevent the Act from affecting, not only past local Acts, but future local Acts. It has occurred to me that we might possibly, on the analogy of this section, amend such Acts as the Contract Act, the Evidence Act and the Easements Act, by enacting that their provisions shall not affect any Act hereafter passed by a local legislature for certain purposes. Those purposes would of course have to be very carefully considered and specified. The effect of such legislation would be to make it easier to extend the operation of such of these codifying Acts as have at present only a partial operation in India. The whole subject is involved in technical difficulties, and I call attention to it now for the purpose of inviting suggestion and criticism.”

His Excellency THE PRESIDENT said:—“The question which has been raised by my hon’ble friend who has just spoken is undoubtedly important; it is also one of considerable difficulty, but well worthy of consideration. I should not be inclined to express any opinion on it myself at present and until I have

had an opportunity of giving it fuller consideration. At the same time, I am much obliged to my hon'ble friend for having brought it to the notice of this Council, and, through the Council, to the notice of the public."

The Motion was put and agreed to.

PAPER CURRENCY ACT, 1871, AMENDMENT BILL.

Major the Hon'ble E. BARING presented the further Report of the Select Committee on the Bill to amend the Indian Paper Currency Act, 1871.

DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. HOPE moved that the Hon'ble Sir S. C. Bayley be added to the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 26th October, 1882.

SIMLA ;  
The 19th October, 1882. }

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