

**Thursday,
19th April, 1883**

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1883,

VOL. XXII.



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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 Government House, Simla, on Thursday, the 19th April, 1883.

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.

Major the Hon'ble E. Baring, B.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. O. Hope, C.S.I., C.I.E.

The Hon'ble J. W. Quinton.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING moved for leave to introduce a Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*). He said :—

“Article 12, Schedule I, of the Court-fees Act, VII of 1870, provides, among other matters, for the levy of a fee of two per cent. on the amount or value of the property in respect of which a certificate is granted under Act XXVII of 1860. The following note is appended to the article :—

‘The person to whom any such certificate is granted, or his representative, shall after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate.

‘If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.’

“In the course of the discussions in the Legislative Council which preceded the passing of the Probate and Administration Act, V of 1881, a proposal

was made by Mr. Pitt-Kennedy that Act XXVII of 1860 and the Court-fees Act should be amended so as to require, from any one obtaining a certificate under the former Act for the recovery of any portion of the estate of a deceased person, payment of a court-fee at the rate of two per cent. on the entire value of the estate. A circular was thereupon addressed to Local Governments calling for opinions on this proposal. The replies show that the weight of authority is altogether against its adoption; but many of them call attention to the fact, already more than once brought to the notice of the Government of India, that the requirements of the note in the Court-fees Act, to which I have referred, are, as a rule, neglected or evaded; that persons taking out certificates do not file the statements required by it; that the Courts have no proper means of compelling them to do so; and that large amounts of debts are thus collected under certificates obtained for trifling sums. Various suggestions have been made for enforcing compliance with the provisions of the note, but there are objections to any device for securing the fee which involves the imposition on the person obtaining the certificate of a duty to be performed after he has obtained the certificate. The great mass of the people who take out certificates are so indolent or careless or unintelligent, that there is little hope of getting them to comply with the provisions of such a law; and the consequence is that, if it is not allowed to remain a dead-letter, as the present law has been, public officers will be constantly compelled to inflict penalties on large numbers of persons, many of whom have been guilty of no deliberate wrong. The simple plan is that already adopted without any warrant of law by some of the officers consulted, namely, to require each applicant for a certificate to file with his application a schedule of the debts in respect of which the certificate is required, and to amend Act XXVII of 1860 so as to make the certificate good only for the debts entered in the schedule, at the same time allowing the certificate-holder, if he afterwards finds that he needs a certificate for other debts, to obtain an extension of the certificate on paying the additional duty and (if the Court requires him to do so) giving additional security. The only objection that has been taken to this arrangement is that taken by the Calcutta High Court in their Registrar's letter No. 54, dated 10th January, 1880. They fear that 'improper use' might be made of the schedule 'by fraudulent debtors whose debts were not in the knowledge of the applicant at the time (he filed the schedule), or in some way prejudice might arise.' Now, there is little doubt that a fraudulent debtor would take the point referred to, and that he would thereby put the certificate-holder to the trouble of explaining his omission to enter the debt in his original schedule; but there would be no great hardship in this, and there would, on the other hand, be a certain compensating advantage, inasmuch as (as observed in one of the replies to the circular) the fear of this would stimulate applicants for certificates to be careful in compiling their schedules.

Assuming that the law is to be amended in the manner proposed, a further question arises as to what debts the applicant for a certificate should be bound to include in his application. Should he be bound to include—

- (a) all debts known to him to be outstanding, including those which could be realized equally well without a certificate; or
- (b) only those debts which he chooses to include, because he believes he cannot realize them without a certificate?

“The former, it is believed, would be more in accordance with the views of those who framed the existing law; but it appears to the Government that it would be sufficient to adopt the second mode of valuation, and allow the applicant to take out a certificate in respect of such debts only as he thinks fit. No doubt, a larger revenue might be obtained by insisting on the other mode of valuation; but it is apprehended, having regard to the class of people who take out these certificates, that any system requiring the applicant to give a complete list of debts would, if it was to be thoroughly enforced, necessitate proceedings of an inquisitorial nature for which no sufficient machinery exists, and which it would not be worth while to undertake for the sake of the additional revenue to be obtained. The rule which it is now proposed to lay down, while it dispenses with all proceedings of an inquisitorial or penal nature, may reasonably be expected to lead to some slight increase of the revenue under this head, inasmuch as the certificate being expressly limited in its operation to the debts specified in it, the necessity of including in it all debts except those due from persons standing in some peculiarly friendly or confidential relation will be brought home to the applicants, and debtors will probably become alive to the risk they run in paying a debt which is omitted from it. The additional revenue realized will not, as I have already observed, be as large as if the alternative mode of valuation were adopted, but this is a result which, for the reason I have already stated, the Government is prepared to accept. The present Bill has been prepared for the purpose of carrying out these views. The effect of it, if it becomes law, will be that every applicant for a certificate under Act XXVII of 1860 will be required to state in his application the debts in respect of which he desires the certificate. It will be in his option to include what debts he pleases. He will pay duty only in respect of the debts which he elects to include, and the operation of the certificate will be limited to those debts. If he subsequently desires to include other debts, he can have the certificate extended to them on paying the additional duty. The note appended to article 12 of the schedule to the Court-fees Act will not apply to him. For the rest, the amendments made by the Bill in Act XXVII of 1860 and in the Probate and Administration Act, 1881, are of an unimportant nature, and merely such as are necessitated by the above alterations in the substance of the law.”

The Motion was put and agreed to.

Major the Hon'ble E. BARING also introduced the Bill.

CIVIL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the motions relative to the Bill to amend the Code of Civil Procedure, 1882.

Leave was granted.

BURMA LABOUR LAW, 1876, REPEAL BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to repeal the British Burma Labour Law, 1876, be taken into consideration. He said that, when he had the honour to introduce this Bill, he explained that the law was practically a dead-letter, and no operations had ever been effected under it, but that it was found to interfere with the free flow of labour from Madras to British Burma. The Chief Commissioner of British Burma had asked the Madras Government that the law should be repealed, and the latter had readily acceded to the proposal. The Bill was one of the shortest, consisting of but one section, and it was not thought necessary to refer it for the consideration of a Select Committee.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill be passed.

The motion was put and agreed to.

LITTLE COCOS AND PREPARIS ISLANDS LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law in force in the Little Cocos Island and Preparis Island be taken into consideration. He said that the Bill had been published and circulated. All the replies to it had been received, and they contained nothing to show that any amendment was required in the Bill as it had been introduced.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 3rd May, 1883.

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| SIML ; | } | D. FITZPATRICK, |
| <i>The 19th April, 1883.</i> | | <i>Secretary to the Government of India,</i> |
| | | <i>Legislative Department.</i> |