

Friday,  
30th January, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

Jan.-Dec., 1885

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1885

VOL. XXIV



Published by the Authority of the Governor General

CALCUTTA :  
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,  
1884



*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 on Friday, the 30th January, 1885.

**PRESENT:**

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

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

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

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

The Hon'ble O. 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 Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

**NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.**

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, be taken into consideration. He said:—

“ This Bill proposes to amend in certain matters of detail one of the important codifying measures which were passed into law by my learned predecessor Mr. Whitley Stokes. It was introduced at the suggestion of some leading bankers, who pointed out that the Indian Negotiable Instruments Act imposed on persons dealing with bills of exchange the observance of certain formalities which, though they survive in text-books, have become obsolete in modern mercantile practice, and are not required by the recent English Statute on the same subject.

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“Accordingly, we proposed so to amend the Indian Act as to assimilate it in those points with the English Statute, which may be regarded as a later and revised edition of the law.

“The papers which have been submitted to us since the Bill was introduced have brought to our notice certain other provisions of the English Statute which may, in our opinion, be advantageously inserted in the Indian Act.

“We propose, in accordance with suggestions which have been made in these papers, to provide machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker; to declare that presentment of a bill through the post office, when such presentment is authorised by agreement or usage, shall be sufficient; to make it clear that the demand which is required to be made by a notary public for the purpose of rendering a protest valid need not be made by the notary in person; and to provide, as in the English Statute, that in certain cases noting shall be deemed equivalent to protest.

“In dealing with these matters the view on which we have proceeded is that we can, as a general rule, with safety and propriety go as far as the English legislature has thought fit to go in the direction of relaxing formalities, but that we ought not to go further. With respect to one provision we have not thought it advisable to go quite so far. Having regard to the difference between the postal arrangements in England and in India, we think that when presentment of an instrument is made by post it should in this country be made by registered letter.

“In the clauses of the Bill relating to notaries public we have made no alteration. Perhaps I ought to explain to the Council how it is that we come to be dealing with notaries public under this Bill. The office of notary public, as the Council are doubtless aware, is one of great antiquity. In France and other Continental countries the notary public plays a very important part, and his intervention is constantly required in the legal transactions of everyday life. In countries under the English law his functions are of a much more limited character, and the most important branch of his practice is connected with certain formalities relating to bills of exchange and promissory notes. Nevertheless, the English notary public enjoys all the prestige attaching to the membership of an ancient and venerable profession; he derives his authority from no less a personage than the Archbishop of Canterbury, and he is supposed to act under the control of a mysterious body known as the Court of Faculties. In India, as might be expected, the members of this profession are scarce. In Calcutta you may entertain a notary

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[*Mr. Ilbert.*]

public unawares, but throughout British India these archiepiscopal emissaries are few and far between. Under these circumstances the Government of India thought it might be for the convenience of the mercantile public if it established what may be called a local manufacture of notaries public. Accordingly, we have appointed persons to be notaries public under the Negotiable Instruments Act, and, having appointed them, we have laid down rules for their guidance and fixed the fees which they are to take. As these persons are our own officers, we can, of course, regulate their proceedings as we please, but we think it advisable to give express legislative recognition to the executive arrangements which we have made; and that is what we propose to do by the Bill. It has been suggested that we ought to go further and take power to regulate the proceedings of notaries public appointed in England but exercising their functions in India. It may be that if I proposed to take this power I should be charged with infringing the prerogatives of the Archbishop of Canterbury or of the Court of Faculties. This is a charge which I should be most unwilling to incur, and which it is not at all necessary that I should incur, because I feel sure that the procedure and fees of the two classes of notaries—those appointed in England and those appointed in India—will in practice assimilate themselves to each other.

“On the other hand, it has been suggested that we might dispense with the intervention of notaries public in any cases under this Act, and might adopt a provision of the recent English Statute, which says that where the services of a notary public cannot be obtained ‘any householder or substantial resident of the place’ may act in his stead. If we had not established a liberal supply of local notaries public under the power to which I have referred, some such provision would be doubtless very useful. As it is, I think it would be desirable to avoid the use of a phrase so pregnant of litigation as the phrase ‘substantial householder’. I believe that there is a reported case in which the question whether a village tailor was or was not a substantial householder within the meaning of an Indian Regulation was fought up to the Privy Council. I have not refreshed my memory of the case by looking up the report, and therefore I am not in a position to say how far the argument turned on the question whether the tailor represented only a fractional part of a householder. But, however that may be, the case is sufficient to show that the use of any such phrase might provide an inconveniently wide scope for the exercise of forensic ingenuity.

“These are the only points in connexion with the amended Bill to which I need direct the attention of the Council, except perhaps a suggestion, which

has proceeded from the Bank of Bengal, that we ought to declare a particular section of the Contract Act inapplicable to negotiable instruments. This is the section (45) which enacts that—

‘When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.’

“It has been suggested that this section might have an inconvenient effect if applied to joint promissory notes and bills of exchange. I am not aware of any case in which it has been held to be so applicable, and, if the question were to be argued, I am disposed to think that the application of the section would be held to be sufficiently limited by the express saving of any usage or custom of trade, and by the provisions of the law with respect to partners, trustees and executors. But, however this may be, I think that, if any amendment of the law in the direction suggested by the Bank of Bengal is necessary, it might be more appropriately embodied in a Bill for amending the Contract Act, since there may well be other cases besides those of negotiable instruments from which the applicability of this section ought to be excluded.”

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble Mr. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, be taken into consideration. He said :—

“This is another Bill for amending one of the codifying Acts, and its main object is to give a more workable form to the power of exemption which is contained in one of the introductory sections of the Transfer of Property Act.

“I explained so fully on the occasion of obtaining leave to introduce this Bill the reasons which made some amendment of this section necessary, that I need not recapitulate them now, and I will content myself with stating the conclusions to which the Select Committee have come as to the form which the amendment should assume.

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“With regard to the exemption from those sections which require certain instruments to be registered, we are clearly of opinion that the exemption should be local, as proposed by the Bill.

“Then comes the power to exempt from section 41, which deals with transfers by ostensible owners. With regard to this section, there is much difference of opinion among those whom we have consulted, first, as to whether there should be any exemption from this section at all, and then as to the form which the exemption, if any, should assume. The conclusion to which we have come is that the section merely embodies a rule of equity which the Courts should follow, and which they probably would follow, even if it were not expressly enacted by the Act. We think, therefore, that it should be in force wherever the Act is in force, and that no power to exempt from it is necessary or desirable.

“The last clause of the Bill as introduced related to a section which declares in what cases a power of sale or a mortgage is to be valid—a section which was the subject of much discussion at the time when the Transfer of Property Bill was being framed, and with respect to which the views of the Law Commission, to whom the Bill was referred at an early stage, were not identical with those which ultimately prevailed in the Select Committee of this Council and in the Council itself. The conclusion of the Committee and the Council was that such powers of sale should be declared valid only to the extent to which they were previously valid in accordance with general usage. And to give effect to that view the Bill made the power of sale valid in cases where the mortgage was a mortgage in the English form and neither the mortgagor nor the mortgagee was a Hindu, a Muhammadan or a Buddhist, and also in cases where the mortgaged property was situate within the towns of Calcutta, Madras, Bombay, Karachi or Rangoon. Whether the particular conclusion at which the Committee and the Council then arrived was right or not I do not propose to discuss. There is a great deal to be said on both sides of the question, but the Select Committee on the present Bill thought they ought not to re-open the discussion or to alter the general lines on which the section is framed. We think it will be sufficient so to amend it as to make its meaning clear and its provisions more logically complete.

“In the course of the discussions on the Bill it was suggested to us that one of the sections of the Act might possibly be so construed as to impress the character of transferability on those occupancy-rights and other similar interests in land which by existing law or custom are not transferable. It was certainly not the intention of the framers of the Act to make by it any change

in the law on this point, and we have added to the amending Bill a clause for the purpose of removing any doubts on this head."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend section 265 of the Indian Contract Act, 1872. He said:—This section provides as follows:—

'In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

'*Explanation.*—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.'

"The section has been the subject of various decisions by the Calcutta and other High Courts, but, whatever interpretation is correct, it is clear that its effect is to bring on the files of District Judges a number of unimportant suits which can be equally well adjudicated by the subordinate Courts. The Calcutta High Court has brought to notice that the section has caused the District Judges' Courts to be swamped with a number of petty cases, and has suggested that it should be so amended as to give jurisdiction in this class of cases to some of the subordinate Courts; and it is with the object of making this amendment in the law that the Bill I am now asking leave to introduce has been prepared."

The Motion was put and agreed to.

#### INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875.



ACT XXII OF 1881 AMENDMENT BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to amend Act XXII of 1881.

• OUDH ADDITIONAL JUDICIAL COMMISSIONER'S BILL.

The Hon'ble MR. QUINTON also moved that the Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh be taken into consideration. He said :—

“When introducing this Bill a fortnight ago, I explained to the Council the circumstances which called for legislation on the subject, and the urgent necessity which at present exists for strengthening, at least temporarily, the Court of the Judicial Commissioner of Oudh. Since then I have received a telegram from the Lieutenant-Governor and Chief Commissioner, in which His Honour expresses an opinion that the state of judicial business in the province renders it both urgent and important, in the public interest, that the appointment of an additional Judicial Commissioner should be legalised without delay.

“I therefore feel it incumbent on me to ask the Council to take the Bill into immediate consideration with a view to passing it to-day.

“It is very short, consisting only of four sections.

“Section 1 is introductory, and brings the Act into operation at once. Section 2 enables the Local Government, from time to time, with the previous sanction of the Governor General in Council, to appoint any person it thinks fit to be an Additional Judicial Commissioner, and fixes the term of office at the pleasure of the Local Government. Section 3 empowers the same Government to prescribe the jurisdiction and powers of the Court of the Judicial Commissioner to be exercised by the Additional Judicial Commissioner, and the Judicial Commissioner to divide the work of the Court in accordance with such general directions. And, lastly, section 4 makes applicable to the Additional Judicial Commissioner, while exercising such jurisdiction and powers, all enactments applicable to the Judicial Commissioner.

“The effect of the amendment to section 3 which I shall in the next Motion ask the Council to accept is to enable the Additional Judicial Commissioner to give assistance to the Judicial Commissioner, not merely in the trial of civil appeals as provided by the Bill, but also in the disposal of revenue and criminal cases.

[*Mr. Quinton.*]

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“The reasons for the alteration will be found in a letter from the Lieutenant-Governor, printed as paper No. 1 relating to the Bill, in which Sir A. Lyall points out that it is very desirable that the Additional Judicial Commissioner should be able to assist the Judicial Commissioner in any branch of the work of the Court which the Judicial Commissioner may find convenient. For instance, if the latter officer be engaged in trying a protracted civil suit, it would be to the advantage of public business if his colleague could deal with criminal references which require punctual attention.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that, in section 8 of the Bill, for the words “the Oudh Civil Courts Act, 1879,” the words “any enactment for the time being in force” be substituted.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Friday, the 6th February, 1885.

R. J. CROSTHWAITE,

*Offy. Secy. to the Government of India,*

*Legislative Department.*

FORT WILLIAM;  
The 5th February, 1885. }