

Friday,
20th February, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1885

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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 on Friday, the 20th February, 1885.

P R E S E N T :

- 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 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 Sir. A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
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.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend section 265 of the Indian Contract Act, 1872, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Quinton, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Mr. Goodrich and the Mover. He said :—

“ I have already explained the object for which it is proposed to amend this section of the Contract Act, and, after looking at the cases decided on the section, I am disposed to think that the best way of effecting that object will be to omit the *explanation*, and simply to declare that applications under the section must be made by suit. The effect of thus amending the Act

will be to bring applications under the section within the operation of the general rules which regulate the jurisdiction of the Courts with respect to the value of the subject-matter of suits."

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 local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PÁNCH MAHÁLS LAWS BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the law in force in the Pánch Maháls be taken into consideration. He said :—

"This Bill has been considered by the Bombay Government, and the only amendment which they suggest is the addition of one Act to the schedule of enactments which are not to apply to the Pánch Maháls. I propose to adopt that amendment, and also to make another amendment which will postpone for two months the date on which the Act is to be brought into operation."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in the preamble and in sections 2, 3 and 4, for the words "the first day of March, 1885" the words "the first day of May, 1885" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 1, "1885" be substituted for "1884".

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the second part of the schedule appended to the Bill be amended by the addition thereto of Bombay Act V of 1862 (*An Act for the preservation of the Bhágddári and Narwáddári Tenures*).

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.

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[Mr. Hope.]

LAND ACQUISITION (MINES) BILL, 1885.

The Hon'ble Mr. HOPE moved for leave to introduce a Bill to provide for cases in which Mines or Minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870. He said:—

“Our old legislation with regard to the acquisition of land for public purposes in India contained certain provisions which to a limited extent provided for the object which the Bill I have the honour to ask leave to introduce is intended to effect. When, however, the Land Acquisition Act was revised in 1870, the provisions to which I refer, which were contained in the Act of 1863, were omitted altogether. I have not been able to find as yet in the records any definite reasons assigned for such omission. At the same time I am inclined to infer that the omission probably arose from two causes, firstly, that at that time all minerals in India were supposed to be the property of the State, and secondly, that probably there were no minerals then thought of any special value except coal and salt, and the State had at that time got practically whatever powers were then necessary for it in respect to one or the other. On these grounds it seems probable that the matter was not considered to require any special provision of law at all. However that may be, both those reasons, if they were indeed the reasons which led to the omission I have referred to, have now to a great extent disappeared. As to the second reason, we find, fortunately I think I may say, that there is now some call for legislation in the matter; for the scheme of railways which we have adopted is gradually extending across territories where there is a certain amount of coal to be found; our lines are traversing coal-fields not only in Bancegunge, but in the hitherto unopened tracts of Chota Nagpore, the Central Provinces and Orissa. On the other hand, we find with regard to the first reason that it has been held since 1863 or 1870 that the State is not ordinarily the owner of minerals in permanently settled estates, and consequently that, if we require lands for railways in estates which are permanently settled, we have to acquire and deal with rights to minerals as well as rights to the surface of the soil. I am not coming to the Council, as may be supposed from this preamble, in order to ask for leave to take away all these private rights from the owners of permanently settled estates; on the contrary, I am coming for power to leave them alone. The defect in the present law which I desire to remedy is that we are practically obliged to acquire the whole rights, or to leave alone all rights, in any land we have to acquire. This is exactly what we do not want to do. We do not wish to deprive the owners of permanently settled estates of lucrative property which they may possess and which would be of no use to us. On the other hand, we do not desire to incur the loss to our finances which we should undoubtedly

[*Mr. Hope.*]

[20TH FEBRUARY, 1885.]

suffer by the heavy price which we should have to pay for such proprietary rights. We therefore propose to bring in a new measure to remedy these defects.

“This measure will not be exactly on the lines of the old legislation which existed previously to 1870, because that old law, Act XXII of 1863, was imperfect in one respect; that is to say, it left it entirely doubtful whether, in the event of taking land which was underlaid with minerals, it was necessary to compensate the owner for the full value of the minerals there, or only for any amount of loss which might be incurred by him in the case of a railway passing over his land. In the new law we propose to follow the English law in the main, and to reserve to the State the option either to take the whole of the property, including the minerals underground, or to leave the owner to work the minerals below as he pleases, or to impose suitable restrictions upon his working with a view to prevent the surface from falling in, and to compensate him for any loss which such restrictions may entail on him.

“I trust these explanations will be sufficient to justify the application which I have made to the Council to-day. If I am permitted to introduce the Bill, I shall then be able to explain the details rather more fully.”

The Motion was put and agreed to.

The Council adjourned to Friday, the 27th February, 1885.

R. J. CROSTHWAITE,

FORT WILLIAM ;
The 25th February, 1885. }

*Offg. Secretary to the Government of India,
Legislative Department.*