

Wednesday, December 7, 1881

COUNCIL OF GOVERNOR GENERAL
OF
INDIA

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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.

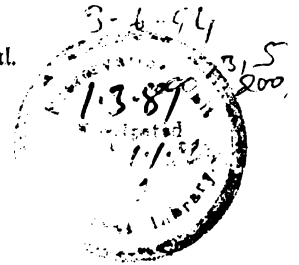
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WITH INDEX.

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OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.

1882.

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 Wednesday, the 7th December, 1881.

PRESENT :

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 Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., 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.

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

The Hon'ble H. J. Reynolds.

The Hon'ble Mahārājā Jotindra Mohan Tagore, C.S.I.

The Hon'ble L. Forbes.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES moved that the fourth Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques be taken into consideration. He said that this Bill was a good instance of the tendency to hasty legislation of which the Government of India was so constantly accused by the veracious newspapers on behalf of which his hon'ble friend opposite (Mr. Gibbs) was going to address the Council. Drawn originally in 1866 by the late Indian Law Commission, and intended to be one of the chapters of the Indian Civil Code, it was introduced without alteration in December, 1867,—just fourteen years ago,—and referred to a Select Committee. The then mercantile members of this Council, while admitting the desirability of codifying the rules relating to negotiable instruments, objected to the Bill on account of its numerous deviations from English law, and they were supported in their objection by the criticisms which in the years 1868—1869 were sent in to the Legislative Department. Strong objection was also taken to the omission from the Bill of any saving of the customs of native merchants regarding hundis. To obviate these objections the Bill was, in 1877, recast in the Legislative Department, Mr. Phillips of the Calcutta Bar, then Legislative Secretary, doing the bulk of this laborious and difficult

piece of work with a skill and zeal of which MR. STOKES had already spoken in this Council. A preliminary report was presented by the Select Committee in October, 1877, and the revised Bill was published in the *Gazette of India* and circulated to all the Local Governments for opinion and publication in the local Gazettes. Further criticisms from the Local Governments, the High Courts and the Chambers of Commerce came in, and these, with the Bill, were submitted to a Select Committee comprising, amongst others, the Advocate General of Bengal, Mr. Evans of the Calcutta Bar and Mr. E. C. Morgan, a leading Calcutta merchant. These gentlemen reported in favour of the Bill, but made certain alterations both in wording and substance. The Bill as amended by them was published in the Gazette for February, 1879. It was then by orders of the Secretary of State referred to a new Law Commission, composed of Sir Charles Turner, Mr. Justice West and himself. That Commission reported that they had found little or nothing to change in the Bill, but thought that certain specified additions (some of which were suggested by Mr. Chalmers' able *Digest of the Law of Bills of Exchange*) might usefully be made to it. Of these the most important was in the second paragraph of section 1. That paragraph saved local usages relating to hundís and other instruments in an oriental language. But, in order to facilitate the assimilation of the practice of native shroffs to that of European merchants, the Law Commissioners recommended the insertion of a proviso that such usages might be excluded by any words in the body of the instrument indicating an intention that the legal relations of the parties should be governed by the proposed Act. He believed that this proviso (which had, as well as he remembered, been suggested by the practice of the Bank of Bengal for many years) would have the most beneficial results in ultimately rendering the custom of shroffs as to hundís identical with that of European bankers as to negotiable paper. An eminent critic (Sir James Stephen) of the Bill said that he "cannot see why uniformity of practice is desirable." The reason was that it prevented uncertainty and litigation as to what had been called the most cosmopolitan of all contracts, and that it facilitated dealings, not only between English and native merchants, but between native merchants in different parts of India. The practical working of a system of credit was made safer and more beneficial when the bills of exchange under which a banker or merchant was responsible were governed by precisely the same legal conditions as those on which he was a creditor, and in reference to which the others were issued or accepted.

The next stage in this long history was that the Bill as settled by the Law Commission was published in the *Gazette of India*, and that it was then, by order of the Secretary of State, communicated to the Select Committee, which

at that time consisted of Mr. Bazett Colvin of the Bengal Civil Service, Mr. Pitt Kennedy, Mr. Paul and himself.

A fourth report was then prepared. The Committee adopted most of the additions proposed by the new Law Commission, made some further unimportant changes and recommended that the Bill as thus amended be passed. Their report was published last January with the Bill as revised for the fourth time, and the Bill was again circulated for opinion and publication, and was translated into the vernacular by all the Local Governments with the single exception of British Burma. Considering the many years that the Bill had now been before the Council, the copious and searching criticism it had received from all or almost all competent persons in India, the number of times it had undergone revision, and the absence of all objection on the part of the Local Governments, MR. STOKES had only to repeat what he said when presenting the fourth report last January, namely, that without the experience derived from its actual operation the Bill was not likely to be further improved. He trusted, therefore, that the Council would now follow the example of more than forty countries which had codified their rules on the subject, and allow this useful measure to become law; and he was authorised by his learned friend the Advocate General, who was unavoidably absent, to say that he fully concurred with him in thinking that the Bill might now take its place on the Indian Statute-book.

The Select Committee was well aware that the Bill did not deal exhaustively with the subject: no Bill could possibly do so. But it believed that the Bill, the Contract Act (to which it was a supplement) and the Evidence Act would, taken together, supply rules for the disposal of all the questions that ordinarily arose in British India as to the rights of parties to negotiable instruments.

MR. STOKES, in conclusion, expressed his deep sense of the obligations which the Government, and especially the Law Member, were under to the Additional Members who had successively served on the Select Committee on this Bill, and he wished also to acknowledge the valuable criticisms received officially and unofficially from his friends Sir Richard Garth, Sir Charles Turner, Mr. Wilkinson, the Recorder of Rangoon, and Mr. O'Sullivan, the Advocate General of Madras, from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon, from the Calcutta Trades Association, from Mr. Dickson, Mr. Scrymgeour, Mr. Franck and other officers of Indian banks, from Mr. Rattigan of the Lahore Bar, and last, but by no means least, from those distinguished native lawyers Lakhsmí Náráyana Pandit of Lucknow and Nánábhái Haridás of Bombay.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that, in section 1, for the word "January," the word "March," be substituted. The object of this amendment was to postpone the commencement of the Act for two months, so as to give more time to judges and lawyers to familiarise themselves with its provisions.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that in section 3, paragraph 2, line 1, for the word "officer" the word "person" be substituted. The object of this amendment, which had been suggested by the Local Government of the Panjáb, was to authorise the appointment as notaries public (for the purpose of noting and protesting bills and hundís) of persons not being officers of Government. Such officers would, it was feared, be in some places too much occupied with their proper duties to undertake the additional functions of notaries under the proposed Act.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INLAND EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON presented the Report of the Select Committee on the Bill to amend the law relating to Emigration to the Labour-districts of Bengal and Assam.

HINDÚ WILLS BILL.

The Hon'ble MR. STOKES introduced the Bill to declare the extent of the testamentary power of Hindús and Buddhists, and to regulate their Wills, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Evans, the Hon'ble Maharájá Jotindra Mohan Tagore and the Mover. He said that the Hindú Wills Act, 1870, had now been in force for eleven years in the Lower Provinces of Bengal, the Chief Commissionership of Assam and the towns of Madras and Bombay. It had worked satisfactorily in preventing forgery, fraud and perjury. There was also reason to believe that it had enhanced the value of property by making the title thereto more readily ascertainable and by facilitating its transfer. The primary object of the present Bill was to extend to the rest of British India such of the provisions of the Act as had not been repealed by the Probate and Administration Act, 1881.

The opportunity had been taken to declare, in accordance with recent decisions, that a Hindú's right to bequeathe was co-extensive with his power to alienate, except where in an undivided family the right to bequeathe conflicted with the law of survivorship. MR. STOKES had submitted the wording of this declaration to his friend Mr. J. D. Mayne, who was probably, next to Professor Bühler of Vienna, the highest living authority on what was called Hindú law, and Mr. Mayne had expressed his approval of the clause.

In British Burma, the learned Recorder of Rangoon and the Judicial Commissioner, sitting as Judges of the Special Court, had recently decided that a Buddhist had no power to make a will. But both Judges were strongly in favour of conferring the power by legislative enactment. The Local Government remarked that "the Burmese of the larger towns are in the habit of making wills. They are very ready to adopt the practices of advanced civilisation where they recognise their advantages, and they are quick to discover the merits of any particular custom. In the course of the rapid progress which their country is making, they have easily perceived the benefits of a power of regulating the devolution of property by will, and a genuine want for this power has in consequence grown up." The Bill, therefore, expressly declared that every Buddhist might bequeathe property in the cases and to the extent in and to which he might transfer the same.

As there possibly were in some parts of the empire Hindús and Buddhists to whom it might be inexpedient to apply the rules for the execution, attestation, revocation, revival and interpretation of wills, power had been given to each Local Government, with the previous sanction of the Governor General in Council, to exempt from all or any of those rules the members of any race, sect or tribe throughout the whole or any specified portion of the territories administered by such Government.

The Motion was put and agreed to.

SEDITIONOUS PUBLICATIONS BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the law relating to Seditious Publications. He said—

"My Lord, I have the honour to move for leave to introduce a Bill to repeal Act IX of 1878 and its amending Act, XVI of 1878.

"It will be remembered that what is commonly known as the Vernacular Press Act was introduced and passed at a time when it was considered that some further restriction than the law then allowed should be placed on the

freedom which the writers in the vernacular press enjoyed, and which it was considered they had abused, and this, not because the provisions of the Indian Penal Code had been tried and been found wanting,— although legal opinions had been obtained throwing doubt on the provision of that Code being sufficient for the purpose,—but to give the Government the power, when necessary, of its own motion to stop seditious writing without having recourse to the ordinary tribunals of the country. The measure, I believe, was considered more in the light of a preventive than of a punitive nature.

“ Whether so severe a measure as Act IX of 1878 was needed or not it is not now necessary for me to inquire, but since its passing into law it has never been fully put into operation against any vernacular publication in British India, and its exceptional nature has doubtless prevented it being made use of, it going much further than its alleged precedent, the Irish Press Act, did, and rendering necessary, at all events in the opinion of the present Government, the existence of a state of circumstances far more serious than happily has occurred for many years to justify its being placed in full operation. For these reasons the question of its repeal has been very carefully considered, with the result that a Bill for that purpose has been prepared, and for permission to introduce which is the object of my present motion.

“ Act IX of 1878 dealt with two separate questions, namely, seditious writings in—

- (1) vernacular publications in British India, and
- (2) vernacular publications printed elsewhere and imported into British India.

“ With regard to the latter subject, the Act had been put into force on the occasion of an attempt to import into this country a very objectionable publication issued in Turkey. It is not intended that the power so given to the Government should be done away with, but it will be preserved in a different form, namely, by an executive order under section 19 of the Sea Customs Act of 1878 and a re-enactment, in the form of an addition to the Indian Post-office Act of 1866, of the 15th section of the Act now to be repealed. A combination of these will give Government full power to stop the import of any objectionable publications issued abroad and to punish attempts to infringe the law on the subject.

“ Should any seditious communications in publications issued within British India be brought to the notice of Government, the law as

provided by the Indian Penal Code can, if necessary, be had recourse to, while, should a state of things unhappily arise at any time in this country which would compel Government to take exceptional measures beyond what the law of the Penal Code would permit, the present Government at all events would not shrink from taking such steps as might be deemed necessary and justifiable. But in a normal condition of affairs it is considered sufficient to leave the law as it stood before the passing of Act IX of 1878."

The Motion was put and agreed to.

POWERS-OF-ATTORNEY BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to Powers-of-Attorney, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Reynolds and Evans and the Mover. He said that, as the law stood, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and, where sealing was required, must seal, in his principal's name. The first object of this Bill was to render it legal for such donees to execute in and with their own names and seals. The law respecting the execution of instruments under powers-of-attorney would thus be made accordant with what would be the rule in England from and after the 31st December, 1881, and with what was believed to be the practice of the Natives in the North-Western Provinces, the Panjab, British Burma and, probably, elsewhere in India. The section effecting this was copied from section 46 of the recent Statute 44 & 45 Vic., c. 41, which took effect from the close of the present year.

The second object of the Bill was to preclude doubts as to the liability of a donee of a power-of-attorney who made payments in good faith after the donor of the power had died or become lunatic or bankrupt or insolvent, or had revoked the power, when the fact of death, lunacy, bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. The section effecting this was copied from section 47 of the Statute above-mentioned, and merely extended to all attorneys the rule as to trustees, executors and administrators making payments under powers, which had been in force in British India for the last fifteen years—see Act XXVIII of 1866, section 39.

The third and last object of the Bill was to provide for the deposit of instruments creating powers-of-attorney, and for the evidence of the contents of such instruments. The section effecting this was copied (with the modifications necessary to adapt it to India) from 44 & 45 Vic., c. 41, section 48. It might also be worth while to declare (in accordance with section 40 of that Statute) that married women, whether minors or not, should have power to appoint

attorneys on their behalf for the purpose of executing a deed or doing any other act which they might themselves execute or do. The matter would be considered by the Select Committee to which he hoped the Bill would now be referred.

The Motion was put and agreed to.

PRISONERS' ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also introduced the Bill to amend the Prisoners' Act, 1871, and moved that it be referred to a Select Committee, consisting of the Hon'ble Messrs. Gibbs and Reynolds and the Mover. He said that sections 319 and 320 of the present Code of Criminal Procedure had been omitted in the Bill for regulating the procedure of the Courts of Criminal Judicature, which repealed that Code and re-enacted the greater part of it.

The former section empowered the Governor General in Council to appoint a place or places in British India to which persons sentenced to transportation should be sent, and also authorized the Local Government to provide for the removal of such persons to the place or places so appointed. The latter section provided for the case of persons sentenced to transportation while already undergoing transportation under a sentence previously passed.

The reason for the omission of these provisions from the Criminal Procedure Bill was that the bulk of the matter with which they dealt did not belong to criminal procedure, but fell within the scope of the Prisoners' Act, 1871.

The present Bill had, therefore, been prepared. It simply substituted for section 33 of the Prisoners' Act, 1871, a section containing the provisions of sections 319 and 320 of the present Code of Criminal Procedure, and would come into force at the same time as the new Code. The part of the former section which declared that no sentence of transportation should specify the place to which the person sentenced was to be transported did, no doubt, belong to criminal procedure, and would, therefore, be added to section 368 of the new Code.

The Motion was put and agreed to.

BENGAL CIVIL COURTS BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Reynolds and the Hon'ble Maharájá Jotindra Mohan Tagore be added to the Select Committee on the Bill to amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STOKES also moved that the Bill to define and amend the law relating to the Transfer of Property, the Bill to define and amend the law relating to Private Trusts and Trustees, and the Bill to define and amend the law relating to Easements and Licenses be referred back to the respective Select Committees. He said his object in making this Motion was to ask the Select Committees on the Transfer of Property Bill and the Trusts Bill to consider the expediency of making in each of those Bills a few further amendments, most of which had been suggested by the admirable Property Act (44 & 45 Vic., c. 41) which had recently been passed by Parliament, and for which England was indebted to Lord Cairns, and to suggest to the Select Committee on the Easements Bill the desirability of providing, in accordance with a recent decision of the Judicial Committee of the Privy Council, *Turner v. Walsh*, 6 App. Ca. 636, a statutory rule under which easements could be acquired as against the Government.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Evans be added to the Select Committees on the following Bills :—

To define and amend the law relating to the Transfer of Property.

To define and amend the law relating to Private Trusts and Trustees.

To define and amend the law relating to Easements and Licenses.

To consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

For the incorporation, regulation and winding up of Trading Companies and other Associations.

The Motion was put and agreed to.

TRUSTS AND EASEMENTS BILLS.

The Hon'ble MR. STOKES asked leave to withdraw the Motion that the Hon'ble Mahárájá Jotindra Mohan Tagore be added to the Select Committees on the Bills to define and amend the law relating to Private Trusts and Trustees, and to define and amend the law relating to Easements and Licenses. He asked this leave in accordance with the wish of the Hon'ble Mahárájá, who regretted that he had not time to serve on these Committees, as well as on those of which he was already a member.

Leave was granted.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STOKES then moved that the Hon'ble Mr. Forbes be added to the Select Committee on the Bill to consolidate and amend the law relating to Criminal Procedure.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 15th December, 1881.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA, }
The 7th December, 1881.