

Thursday,
12th January, 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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ASSEMBLED FOR THE PURPOSE OF MAKING

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1882.

VOL. XXI.

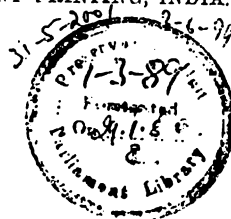
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1883.



The Council met at Government House on Thursday, the 12th January, 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 Honour the Lieutenant-Governor of Bengal, K.C.S.I.

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 Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble L. Forbes.

The Hon'ble G. H. P. Evans.

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

The Hon'ble A. B. Inglis.

The Hon'ble Rájá Shiva Prasáda, C.S.I.

The Hon'ble W. C. Plowden.

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

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble Durga Charan Láhá.

CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Code of Civil Procedure. He said that the object of this Bill was to make two or three small amendments of the Code which the experience of the last three years had shown to be desirable. Section 266 of the Code now exempted from attachment a moiety of the salaries of Government servants and Railway servants. It was now proposed to exempt entirely the salaries of such servants when below a certain small amount, say Rs. 12 per mensem. The proposal was supported by the Local Governments of Bombay, Madras and the North-Western Provinces. The object, of course, was to benefit the public by providing

(so far as the law could do so) that its servants should not be reduced to a state of inefficiency by the action of their creditors.

The learned Advocate General of Bengal had held that in section 539, which provided for suits relating to public charities, the word "charitable" did not include, as it would do in England, 'religious'; there seemed, therefore, no means of getting the Court to settle a scheme for the administration of a public religious endowment, and great inconvenience had been felt in consequence both in the Lower Provinces and the Panjáb. The second object of the Bill was, therefore, to amend this section by inserting, after "charitable", the words "or religious."

Doubts, again, had been raised as to whether sections 434 and 650 A referred to revenue as well as to civil Courts, and whether a notification issued under the latter section could be cancelled. The Bill would preclude these doubts; and the opportunity would be taken to transfer to its proper place in the Code the section (85) in Act VII of 1880 providing for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction.

The Motion was put and agreed to.

INDIAN PORTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also introduced the Bill to exempt certain vessels from the Indian Ports Act, 1875, section 38, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

INDIAN PENAL CODE BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to amend the Indian Penal Code.

SEDITIONOUS PUBLICATIONS BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to amend the law relating to Seditious Publications.

TRUSTS BILL.

The Hon'ble Mr. STOKES moved that the further Report of the Select Committee on the Bill to define and amend the law relating to Private Trusts and Trustees be taken into consideration. He said that since he last had the honour of addressing the Council on this Bill, it had been twice revised by a Select Committee, at first composed of the Hon'ble Mr. Gibbs and himself, and then of the Hon'ble Messrs. Gibbs, Evans, Crosthwaite and himself, his hon'ble friend the Mahárájá Jotíndra Mohan Tagore, to his regret, being unable to assist them owing to his other avocations. The Committee had left the Bill in substance as it was settled by the Indian Law Commission. But it had made five changes which he would briefly state to the Council.

The Bill, as originally drawn and as settled by the Indian Law Commissioners, applied to the whole of British India. Now, the Government of India had no desire to bring this Bill into operation in any part of India against the wishes of the Local Government. The Committee had, therefore, made the Bill to extend in the first instance only to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam; and they had given power to the other Local Governments to extend it by notification to any part of the territories respectively under their administration.

Section 20, in accordance with a suggestion of the Bombay High Court, enumerated the securities on which trustees might properly invest trust-funds. The learned Chief Justice of Bombay had pointed out that the most ordinary and popular investment among Native trustees (at least in the Bombay mufassal) was an investment of money with the firms of shroffs or merchants of good repute to run at interest. To proscribe this form of investment, as the Bill as introduced practically did, would, in Sir M. Westropp's opinion, cause much inconvenience. Similar kinds of investment might also occur in other parts of India. The Committee had, therefore, in section 20, clause (f), provided that money held in trust might be invested on any security expressly authorized by any rule which the High Court might from time to time prescribe in this behalf.

At the suggestion of the British Indian Association, the Committee had expressly provided, in section 41 of the Bill, that the income of property held in trust for a minor might be applied for the reasonable expenses of his religious worship.

After section 42 they had inserted a section taken, with some slight modification, from the Property Act, 1881 (44 & 45 Vic., c. 41), and declaring the power of a trustee to compromise or compound debts or claims relating to the trust. A like power was given by section 38 of the Trustees and Mortgagees Act (XXVIII of 1866) to executors, whose position was similar to that of trustees.

Clause (b), section 72, which empowered retiring trustees to appoint a new trustee, was objected to by the British Indian Association on the ground that retiring trustees would probably be indifferent to the interests of the beneficiary. The Committee had, therefore, provided that they could only appoint with the consent of the Court.

No objections to the Bill had been received since it was republished last July, except those contained in a memorial from the British Indian Association, dated the 9th December, 1881. The Committee, and especially the Hon'ble Mr. Evans and himself, had carefully examined this memorial and adopted two of the suggestions which it contained. But they were unable to adopt its other recommendations, most of which were, as seemed to them, founded on a misconception of what the law of trusts really was, as applied to Natives by the High Courts. He was prepared, if the Council wished him to do so, to go through the memorial point by point and to answer each of the objections. But this would take up at least an hour with matters of which only a lawyer could properly judge; and he was bound to say that he thought the time of the Council might be occupied both more pleasantly and more profitably than in listening to such a dissertation.

He, therefore, now asked the Council to pass the Bill. The reception which it had met with in the greater part of India, namely, in Madras, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, Coorg and Assam, convinced him that it was accurate, intelligible and really wanted; and the growing tendency of Hindú testators in the Lower Provinces to create trusts by will, of which he had recently been informed by Mr. Justice Wilson, made him sanguine that His Honour the Lieutenant-Governor would soon see the propriety of extending it to the Provinces which he administered so ably.

The Hon'ble MR. EVANS said that he had been placed on the Select Committee since his return to this country in November, and had not had much leisure to go minutely through all the provisions of the Bill, but that he had in Select Committee considered the objections urged by the memorial of the British Indian Association, with the result stated by the hon'ble mover. As to the Bill

generally, the somewhat cursory examination which he had been able to give to it did not lead him to believe that the rights and obligations of trustees and beneficiaries would be materially altered, save possibly as regards the class of securities in which a trustee might invest. Power was given to the High Courts to relax the rules as to investment if found too stringent.

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.

INDIAN COMPANIES BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Durga Charan Láhá be added to the Select Committee on the Bill for the incorporation, regulation and winding up of Trading Companies and other Associations.

The Motion was put and agreed to.

HINDÚ WILLS BILL.

The Hon'ble MR. STOKES then moved that the Hon'ble Rájá Shiva Prasáda be added to the Select Committee on the Bill to declare the extent of the testamentary powers of Hindús and Buddhists, and to regulate their Wills.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 19th January, 1882.

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

CALCUTTA ;
The 12th January, 1882. }