

*Wednesday,
15th September, 1886*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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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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1887.

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 Viceregal Lodge, Simla, on Wednesday, the 15th September, 1886.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble Colonel W. G. Davies, C.S.I.
The Hon'ble Rana Shankar Baksh Singh Bahadur, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*).

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

GENERAL CLAUSES BILL.

The Hon'ble MR. ILBERT also moved that the Bill for further shortening the language used in Acts of the Governor General in Council, and for other purposes, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

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JHANSI AND MORAR BILL.

The Hon'ble MR. ILBERT also moved that the Bill to annex the Town and Fort of Jhansi and certain adjacent Territory to the Jhansi district, and for certain other purposes, be taken into consideration. He said that the Bill was of no great importance, it affected a very small number of people and a small quantity of cases, and it had not been considered necessary to refer it to a Select Committee. However, since the date of the introduction of the Bill he had received a few suggestions from persons interested in the measure, and the motions which stood in his name on the list of business were based on those suggestions. He thought it would be found that all the suggestions had been satisfactorily met, with the exception of the suggestion which had been made for giving a right of appeal from decrees and orders of the Gwalior Courts to our own Courts. As to this suggestion he agreed with His Honour the Lieutenant-Governor that it would be inexpedient to interfere in any way with those decrees and orders, and therefore he did not propose to bring forward any amendment on that point.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT then moved that words importing the neighbourhood to the town and fort of Jhansi of the lands to be ceded by His Highness the Maharaja Scindia to the British Government and by the British Government to His Highness be omitted from the preamble to, and section 2 of, Part I, and that the words " adjacent to the Jhansi district " be inserted after the words " certain lands " in the third clause of that preamble. He explained that he asked leave of the Council to make this amendment in a general form, because it would involve a good many verbal modifications. In the Bill as introduced the lands proposed to be given and taken in exchange were described as in Jhansi, but he now found that the territories which it was proposed to cede to the Maharaja Scindia lay at a considerable distance from the town of Jhansi, while some of the lands to be ceded by His Highness were not in the immediate neighbourhood of that town. He proposed therefore to correct the Bill in accordance with those facts.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following clause be added to the preamble to Part II, and the following section to that Part :—

Clause.

" And whereas the period of limitation prescribed for suits in the territories of His Highness is twelve years, and it is expedient that persons having just claims which, but

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for the cession of territory, they might have enforced in the Courts of His Highness should not be debarred from enforcing those claims by reason of a shorter period of limitation being prescribed for any class of suits by the law in force in the Jhānsī district."

Section.

"7. (1) Notwithstanding anything in the Indian Limitation Act, 1877, or in any other enactment, the Deputy Commissioner may, within such term, not exceeding two years from the commencement of this Act, as the Local Government may prescribe in this behalf, admit any suit of a nature cognizable by the Courts of British India, which, if there had not been a cession of territory, and the suit had been instituted in a Court of His Highness having jurisdiction with respect thereto, would not be liable to be dismissed by that Court by reason of its being barred by any law of limitation.

"(2) In the computation of the period of limitation for a suit referred to in sub-section (1) which the plaintiff has been debarred from instituting by reason of the cession of the town and fort of Jhānsī to the British Government, there shall be excluded from the period the time which has elapsed between the cession of the town and fort and the commencement of this Act.

"(3) Subject to revision by the Commissioner of the Jhānsī Division, an order of the Deputy Commissioner admitting or refusing to admit a suit under sub-section (1) shall be final."

He explained that this amendment had been inserted at the suggestion of the Commissioner and Deputy Commissioner of Jhansi, and was in accordance with a request preferred to him (MR. ILBERT) by a local banker named Seth Sooraj Raj on behalf of the trading community of the town of Jhansi. The facts were that under the Maharaja's law the period of limitation prescribed for certain suits was twelve years whereas in British territory the period was only three years; and it was represented that some hardship might be caused if persons living in the newly ceded territories were suddenly brought under a different law. In order to remove that hardship it was proposed to grant an extension of the period of limitation for a period not exceeding two years notwithstanding that such suits would be time-barred under the law in British territory.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following further clause be added to the preamble to Part II and the following further section to that Part :—

Clause.

"And whereas it is expedient that suits pending in the Courts of His Highness and left undetermined by those Courts by reason of cession of territory should be continued in the Courts of the Jhānsī district."

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Section.

“ 8. An original suit pending in a Court of His Highness and left undetermined by that Court by reason of cession of territory may be continued, under the law of limitation applicable to that Court but otherwise in accordance with the law and procedure of British Indian Courts, in any Court in the Jhānsī district subordinate to the Court of the Commissioner which the Deputy Commissioner may appoint in that behalf.”

Continuance of pending suits.

He explained that this amendment, the meaning of which was obvious, had also been included in the suggestions of the Deputy Commissioner and Seth Sooraj Raj.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following further clause be added to the preamble to Part II and the following further section to that Part :—

Clause.

“ And whereas it is expedient to remove doubts as to the effect of the law in force in the Jhānsī district, with respect to registration and stamps on documents, and instruments to which at the time of their execution the law of His Highness applied, and the law of British India did not apply.”

Section.

“ 9. The provisions of the law of British India with respect to the consequences of documents being unregistered or instruments being unstamped shall not apply to any document or instrument which may have been executed before a date to be prescribed in this behalf by the Local Government, and to which the law of His Highness applied, and the law of British India did not apply at the time of its execution.”

Saving in favour of unregistered documents and unstamped instruments.

He said that he was not sure that this amendment was strictly necessary, but it had been asked for by the traders at Jhansi, and its insertion could certainly do no harm and might possibly remove some misapprehension on the points to which it related.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following sub-section be substituted for sub-section (2) of section 6, namely :—

“(2) If in any case the Deputy Commissioner is of opinion that for special reasons the sanction ought to be withheld or ought to be granted subject to conditions, he may

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either withhold his sanction or permit the application to be made on any conditions which in the circumstances he deems it proper to impose; but in either of those cases he shall record the reasons in writing."

He explained that this amendment was proposed at the instance of His Honour the Lieutenant-Governor of the North-Western Provinces with a view to making it clear that the power of withholding sanction to the execution of decrees and orders of the Gwalior Courts was only to be exercised in very exceptional cases.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 10 of the Bill in its present form (section 7 of the Bill as introduced) the words and figures "articles 66 to 75 (both inclusive)" be substituted for the words and figures "articles 74 and 75."

He explained that it was intended by this amendment to enable persons lately trading at Morar to sue at Jhansi or Agra, or other places appointed by the Governor General in Council, on bonds and bills of exchange and on promissory notes other than those specified in the articles in the original Bill. Thus the object of the section would be more effectually attained than it would be in the more restrictive form in which that section was originally drawn.

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.

LIEUTENANT-GOVERNOR'S (N.-W. P.) FUNCTIONS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council.

BURMA INDIGENOUS TRIBES PROTECTION BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to provide for the protection of Indigenous Tribes in Burma. He said:—"The object of this Bill is to afford some protection to the Karens and other indigenous tribes in Lower Burma, especially in the Toungoo District, against

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the annoyance and injury caused to them by the acts of squatters belonging to other tribes and races. It appears that Burman, Shan and Chinese strangers occasionally settle in these Karen villages, and cause great annoyance to the Karens. The Karens are a quiet and inoffensive race, and as a rule, either from shyness or timidity they do not resist the intruders, but cases have arisen in which they have been goaded into acts of lawlessness. A characteristic case of this kind occurred in 1883. There is a large Karen village called Baw-gale. This village is inhabited mainly by Christian Karens, and is the site of an American Baptist Chapel. In 1883 a number of travelling Shan traders established themselves in this village with large herds of cattle. 1883 was not the first year in which they had squatted in the village, but in former years there were not so many of them and the Karens had not complained. In 1883, however, they made themselves an intolerable nuisance to the permanent inhabitants. They picketed their bullocks near the Mission Chapel and on the village-paths, and disturbed the peace of the village by gambling and disorderly habits. The consequence was that the Karens under the leadership of an American Missionary gentleman took the law into their own hands, destroyed the houses of the Shan squatters and summarily ejected them from the village. The results were rather unfortunate for the American gentleman, for there was no law to prohibit the Shans from settling in the village, nor had the Karens any right to eject them, and so the matter went before the Law Courts, and the Missionary was fined Rs. 50 for contravening section 426 of the Indian Penal Code. The case attracted the attention of the Local Government to the position of the Karens generally, and it was satisfied that, although the law had in this particular instance been contravened, yet the Karens had sufficient ground for complaint. Lest it should be supposed that the Government had acted on the representations of the Missionaries alone, I will read a short extract from a report submitted to the Chief Commissioner by Mr. Bridges, who had been for some years Settlement-officer in the Bassein district, where there are large settlements of Karens. In his Report dated the 30th July, 1883, he wrote as follows :—

“ I believe that the account given by the Missionaries of what is actually taking place in Karen villages is substantially correct. * * * I have continually heard complaints in the Karen villages of Burmese loafers settling down among them, stealing their property, swindling them out of their lands and crops, and introducing opium and gambling among them. * * * The Karens will not as a rule come to officials and complain unless they see them in their villages. * * * What I have said applies chiefly to the British Burman Karen villages: but the state of things is much worse in the case of the Talaing Karens, who have as a rule not been converted. * * * In the

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Aingme and Kyaukkanni circles I found the Talaing Karen villages in a dreadful state; the Burmans had settled down in nearly all their villages; they had swindled them out of their lands, and in many cases reduced them to a state of semi-serfdom. The Talaing Karens had taken to opium-eating and thieving, and in one or two villages I found that women and young children were opium-eaters. The Ywa-lugyis (village-elders) were in many cases Upper Burma gamblers and opium-eaters, who, instead of helping and protecting the villagers, either swindled themselves or allowed others to do this. • • • I think the Burmans who have already settled down in Karen villages should be compelled to remove their houses when their presence is complained of."

"That is a statement of the facts with which we have to deal, and I think it quite justifies legislation of the nature now proposed. The nature of the legislation is, no doubt, somewhat exceptional, but I think it is fully warranted by the peculiarities of the relations between these indigenous tribes and their neighbours, and some precedent may be found for it in the provisions which it has been found necessary to apply to the Garo Hills in the Province of Assam. A Regulation has been passed for those Hills which prohibits the acquisition of interest in land by settlers except by special sanction, and it is a principle somewhat similar to this which I propose to apply in the present measure.

"The provisions of the Bill are very simple. It empowers the Chief Commissioner to apply the proposed Act to such local areas as he may by notification prescribe, and it defines the 'term' so as to restrict the operation of the proposed law to purely rural tracts. Then it declares the circumstances under which a resident or intending resident may be excluded or ejected from a village. These circumstances are that the majority of the residents of the village belong to some indigenous tribe, and that not less than one-half of the cultivating householders of the village desire ejection or exclusion of the resident or intending resident, who must not be of the same race as the majority of the residents of the village, or cultivate land within three miles of the village or have resided in the village for twelve years or upwards. The Bill further provides for compensation to persons who have been compelled to vacate any land or house in a village in consequence of their ejection therefrom. Then, under another section, the Chief Commissioner has power to make rules with the sanction of the Governor General in Council prescribing the mode in which the desire of the cultivating householders of a village to eject or exclude anyone therefrom is to be ascertained and recorded, empowering certain persons to eject or exclude persons in pursuance of the recorded desire and on behalf of the cultivating householders, and prescribing

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the procedure to be followed in such cases, and the mode in which compensation under the proposed Act is to be ascertained. Then there is a power which enables the Local Government to direct in any rule that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both. Lastly, there is a section containing the usual formal matter as to the procedure for making and publishing rules."

• The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.

The Council adjourned to Friday, the 24th September, 1886.

S. HARVEY JAMES,
Officiating Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 17th September, 1886. }

NOTE.—The Meeting fixed for the 8th September, 1886 was subsequently postponed to the 15th idem.