

*Friday,  
11th February, 1887*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVI

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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

VOLUME XXVI



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1888.

*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 11th February, 1887.

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 Bengal, K.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. B. Peile, M.A., C.S.I.  
The Hon'ble A. R. Scoble, Q.C.  
The Hon'ble R. Steel.  
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.  
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.  
The Hon'ble Syud Ameer Hosein.  
The Hon'ble Peári Mohan Mukerji.  
The Hon'ble W. S. Whiteside.

INDIAN COMPANIES ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Companies Act, 1882, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed. He said :—

“ It will be in the recollection of the Council that the origin of this small Bill was a suggestion from the High Court of Bombay that, where a company went into liquidation under the Companies Act, the clerks, labourers and workmen of the company should have priority in respect of their wages over other creditors. The Select Committee in considering the matter came to the conclusion that in dealing with this question of giving priority to one class of creditors the general question of priority in respect of public claims should also be considered ; they

26 *INDIAN COMPANIES ACT, 1882, AMENDMENT; PROVINCIAL  
SMALL CAUSE COURTS; NATIVE PASSENGER SHIPS;  
LOWER BURMA COURTS.*

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have therefore amended the Bill so as to give priority to all claims of the Crown, which perhaps it was not absolutely necessary to provide for by legislation, and also to give priority to rates and taxes due to local and municipal authorities. The Bill therefore gives priority to all revenue, taxes, rates and cesses payable to Her Majesty or to any local authority which have become due within twelve months before the date of liquidation. In regard to the primary object of the Bill, namely, the salaries of clerks and the wages of servants and workmen, the Committee thought it wise to adopt a suggestion of the Bengal Chamber of Commerce and the Calcutta Trades Association, who pointed out that in this country the salaries of clerks and the wages of servants and workmen do not approximate so closely as they do in England. The Bill has been therefore amended by empowering clerks and servants to recover salaries to an amount not exceeding Rs. 1,000, and labourers and workmen to recover wages to an amount not exceeding Rs. 500, in respect of services rendered within two months before the date of liquidation. With these amendments, which I think will commend themselves to the approval of the Council, I move that the Bill be passed."

The Motion was put and agreed to.

PROVINCIAL SMALL CAUSE COURTS BILL.

The Hon'ble MR. SCOBLE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble SIR A. COLVIN presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to consolidate and amend the law relating to Courts in Lower Burma. He said :—

"The defective constitution of the Special Court, the increase of business in the Court of the Recorder of Rangoon, and the complaints which have been made respecting the finality of the decrees and orders of the Recorder in some cases, and respecting the delay and expense involved in appeals to the High Court at Calcutta in other cases, having rendered necessary a revision of the

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existing arrangements for the administration of justice in Lower Burma, the Government of India has decided, with the sanction of the Secretary of State in Council, to constitute at Rangoon a Chief Court on the model, so far as practicable, of the Chief Court at Lahore.

“The main object of this Bill is to give effect to that decision.

“It is proposed by the Bill to abolish the Court of the Recorder, the Court of the Judicial Commissioner and the Special Court, and to establish in their place a Chief Court which will be for Lower Burma the Court of ultimate resort in India.

“The Chief Court is to consist of three or more Judges, of whom one at least must be a barrister of five years' standing. That Judge will be styled Recorder, and one of the other Judges will be styled Judicial Commissioner. The other Judge or each of the other Judges, as the case may be, is to be appointed as a Recorder or as a Judicial Commissioner, as the Governor General in Council sees fit. The Recorder or Recorders will ordinarily exercise the original jurisdiction of the Court and such other jurisdiction as has reference to the Town of Rangoon, while the Judicial Commissioner or Judicial Commissioners will ordinarily exercise the appellate and revisional jurisdiction of the Court in reference to the Courts subordinate to it beyond the limits of the Town of Rangoon, and discharge with respect to those Courts the functions of superintendence which are vested in the Chief Court.

“That is the main object and purpose of the Bill; the other provisions are really subsidiary, and I think I shall only unnecessarily occupy the time of the Council if I go further into details at this stage with regard to this Bill.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

#### SUITS VALUATION BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of

determining the jurisdiction of Courts with respect thereto be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed. He said :—

“ When my learned friend Mr. Ilbert in August last introduced this Bill, he described it as a little Bill of no great importance. I think I may accept that definition with the addition of the words ‘ except to litigants in the Civil Courts.’ As the Council is no doubt aware, when a suit is brought in a Civil Court, it becomes necessary to value the subject-matter of that suit for two purposes—first to ascertain the amount of the stamp-duty to be levied upon it under the Court-fees Act, and secondly for the purpose of ascertaining the Court within whose jurisdiction the suit properly falls. It might perhaps appear at first sight that the one valuation should answer both purposes. But that has not been found to be the case, particularly in regard to suits concerning land. It has been laid down by the High Courts in many decisions that the law may well establish for purposes of revenue certain fixed rules as to the valuation of suits ; but such valuation obviously cannot be accepted as a criterion of a matter of fact such as the actual amount or value of a claim upon which the jurisdiction of the Court depends. That being so, and the Courts having declined to accept the court-fees valuation as available for the purposes of jurisdiction, it might be suggested that it would be desirable by legislation to enact that one valuation should suffice for both objects. That has been attempted in the Presidency of Madras, but there it has been found that the court-fee system of computation, being based upon an arbitrary multiple of the revenue paid in cases where land was the subject of litigation, admits of great inequality of taxation and is not consistent in principle ; and the Government of Madras has reported that suits for land in that presidency were greatly under-valued, with the result that Munsifs, while nominally disposing of suits only valued at Rs. 2,500 or less, were in fact deciding cases which involved much higher values. The Government of Bengal have also expressed their opinion that in practice the revenue of an estate affords no clue whatever to its value, and, in any system under which the jurisdiction of Courts is settled by the amount of revenue payable by an estate, it is decided at haphazard. Therefore, with regard to land-suits, I think the Council will be of opinion that some other system than that established by the Court-fees Act ought to be admitted

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in order to ascertain the value of a suit for purposes of jurisdiction, and there appears to be a general consensus of opinion that the market-value of the land ought to be taken as such value. The difficulty, however, arises as to how that market-value is to be simply, cheaply and expeditiously ascertained. In a country like this it is found practically impossible to discover any uniform rule which would apply to all parts, and it has, therefore, been proposed in this Bill to leave it to the Local Governments to make rules for determining the value of land for the purposes of jurisdiction in suits relating to land.

“The first part of the Bill relates to such suits, and it provides that the Local Government may, with the previous sanction of the Governor General in Council, and after consultation with the High Courts or other chief judicial authorities within the province, make rules for the purpose of determining the value of land in local areas according to the general or special circumstances of the district. And it provides that these rules shall be published so as to give the opportunity of criticism upon them before they come into effect.

“The second part of the Bill relates to suits other than suits for land, and it lays down the simple rule that the valuation which is made for the purposes of the Court-fees Act in such suits shall be the valuation adopted for purposes of jurisdiction.

“The third part provides a special procedure for cases on which the objection that a suit was not properly valued for purposes of jurisdiction is taken in an Appellate Court.

“The first part of the Bill, I may say here,—and I do so because one of my hon'ble colleagues on the Select Committee, though thinking that the Bill is well framed for the purpose it is intended to serve, does not see the necessity for it,—the first part of the Bill is permissive, and I think that consideration meets the objection which the Hon'ble Mr. Mandlik has made to it. He says that in Bombay the Bill is not necessary. If that is so, it is very easy for the Government of Bombay not to make any rules under it, and to go on with their old system. But if it should chance at any time that the Government of Bombay find it desirable to make rules, they will be at liberty to do so. In other parts of the country the High Courts and local authorities are in favour of it. Where it is unnecessary, it will do no harm: where it is put in force, I hope it will do a great deal of good.”

The Motion was put and agreed to.

## MILITARY COURTS OF REQUESTS ABOLITION BILL.

The Hon'ble MAJOR-GENERAL CHESNEY moved that the Report of the Select Committee on the Bill to abolish Military Courts of Requests as established by Indian Military Law be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MAJOR GENERAL CHESNEY also moved that the Bill, as amended, be passed. He said :—

“ I may explain to the Council that the amendments which have been made by the Select Committee are only of a verbal character. Enquiries which were made by the Select Committee have satisfied them that if this Bill is passed into law creditors would still have sufficient remedies against their debtors in the ordinary Courts of the country : the jurisdiction which the Civil Courts now possess is sufficiently extensive to enable the operation of the Military Courts of Requests to be suspended. I may also explain that if this Bill is passed into law it will not affect the Native officer, as his case is provided for by the British Army Act. The Bill will apply to soldiers of the regular forces within the meaning of the Act, that is to say, to private soldiers and non-commissioned officers; a Native of India, who is a soldier or non-commissioned officer of the regular forces within the meaning of the Act, will be liable to be sued in any Civil Court having jurisdiction under Chapter II of the Code of Civil Procedure, but with the limitation provided by the British Army Act of 1881 that, unless the debt exceeds £30, exclusive of costs, a soldier shall not be compelled to appear in that Court. Secondly, under the Indian Articles of War, whatever the amount of the debt may be, a soldier may not be arrested under any process issued by a Civil Court. Lastly, under the British Army Act, under the Indian Articles of War and under the Code of Civil Procedure, if a Civil Court passes a decree against a private soldier or a non-commissioned officer, execution cannot be had against his pay and allowances or against his arms, accoutrements, regimental necessaries or equipments. These are provisions which the Bill before the Council does not touch.”

The Motion was put and agreed to.



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[*Mr. Scoble.*]

PUNJAB TENANCY BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as a Member of the Select Committee on the Bill to amend the law relating to the Tenancy of Land in the Punjab and that the Mover be added to the Committee.

The Motion was put and agreed to.

PUNJAB LAND-REVENUE BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as a Member of the Select Committee on the Bill to declare and amend the Land-revenue Law of the Punjab and that the Mover be added to the Committee.

The Motion was put and agreed to.

The Council adjourned to Friday, the 25th February, 1887.

S. HARVEY JAMES,

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

FORT WILLIAM; }  
*The 15th February, 1887.* }