

*Tuesday,  
2nd October, 1888*

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

VOLUME XXVII



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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 Vict., cap. 67.*

The Council met at Viceregal Lodge, Simla, on Tuesday, the 2nd October,  
1888.

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., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble G. R. Elsmie.

SOLDIERS' NECESSARIES PURCHASE ENACTMENTS REPEAL  
BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved for leave to introduce a Bill to repeal certain enactments relating to the purchase of regimental necessities from soldiers. He said:—

“I may explain that under the Army Act there is a certain scale of penalties laid down for the illegal purchase of regimental necessities from soldiers. By the Indian Act of 1867 a much lower scale of penalties has been enacted than is provided in the Army Act, and frequent representations have been made to the Government of India by the military authorities that this lower scale of penalties is insufficient for the purpose of stopping the malpractice. The object of the present Bill is to repeal the Act of 1867, in which case the Army Act and the provisions thereof would be applicable to India. I may mention that the High Court of Bombay have already expressed a doubt as to whether the Act of 1867 was not, in fact, superseded by the Army Act. But however that may be,—whether or no the Act of 1867 has been superseded,—it appears at any rate desirable to put the matter beyond all doubt by repealing the same. This it is proposed to do by passing the measure which I now beg leave to introduce. The Bill will, when passed, enable the Governor General in Council to publish a notification under section 169 of the Army

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Act declaring that for the purposes of section 156 of that Act, which deals with penalties, Rs. 50 and Rs. 200 shall be deemed to be equivalent to £5 and £20, respectively, which are the penalties laid down in the Army Act."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and 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.

#### TELEGRAPH ACT, 1885, AMENDMENT BILL.

The Hon'ble SIR CHARLES ELLIOTT moved that the Bill to make an addition to the Indian Telegraph Act, 1885, be taken into consideration. He said :—

"I have to report for the information of Your Excellency's Council that since the Bill was introduced on the 25th of July it has been circulated to the Local Governments concerned, that is to say, Madras, Bombay and Bengal, and the Chief Commissioner of Burma, and has been published in the official Gazettes. There is only one very small matter on which any difference of opinion has arisen. As was pointed out at the time I introduced the Bill, its object was to amend a slight technical omission which had taken place in the drawing up of the original Act, according to which certain powers were conferred on District Magistrates. But these powers had to be exercised in the presidency-towns of Calcutta, Madras and Bombay, in which no officer bearing the title of District Magistrate exists ; and it was therefore necessary to appoint some officer in his place who should exercise these powers, and the Bill has provided that the Commissioner of Police shall take the place of the District Magistrate in these presidency-towns. The only possible alternative was to appoint the Chief Presidency Magistrate, or one of the Presidency Magistrates ; and it has been suggested by one of the Judges of the Bombay High Court that the Presidency Magistrate might have been a better authority. But I beg to point out that the three cases in which the interference of that authority is necessary lie in sections 16, 17 and 18 of the Act, and in all these cases the power given to the District Magistrate is an executive and not a judicial power. Thus section 16 says that the Magistrate may, in his discretion, enforce the

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right of a telegraph authority to exercise certain powers which the Act confers : section 17 says that the Magistrate may insist on the compliance by a telegraph authority with a reasonable requisition for the removal of a telegraph line or post : and section 18 says that if a tree interrupts the line of wire the Magistrate has power to cause the tree to be removed and to give compensation for the value of the tree. All these powers are such as must be exercised by an officer visiting the spot, and are therefore much more suitable to be exercised by the Commissioner of Police rather than by the Presidency Magistrate, who is occupied all day long deciding cases ; and the Bombay Government has on further consideration withdrawn its objection and expressed its satisfaction with the Bill. On the other question of substituting a Judge of the Court of Small Causes in place of the District Judge no suggestion has been made, and I think I can therefore recommend that your Excellency's Council should pass the Bill."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES ELLIOTT also moved that the Bill be passed.

The Motion was put and agreed to.

#### PUNJAB COURTS ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. ELSMIE moved for leave to introduce a Bill to amend the Punjab Courts Act, 1884. He said :—

" The Bill deals chiefly with the sections of the Act which govern the law of appeal, but the opportunity has been taken, with the approval of the Local Government and the Government of India, to propose certain alterations and additions in other sections which the experience of the last four years has suggested to the Judges of the Chief Court.

" The immediate necessity of altering the law of appeal has arisen in the following way. It will be in the recollection of the Council that one of the principal features of the civil appellate system introduced into the Punjab by Act XVIII of 1884 was the constitution of Benches of two Judges at the headquarters of divisions for the purpose of dealing with civil appeals of the more important class, namely, those arising from suits other than those technically known as ' small causes '. One of the objects of this important innovation was to secure a reduction in the number of appeals to the Chief Court. The Hon'ble Mr. Barkley in asking leave to introduce the Punjab Courts Bill said that—

' the reason for proposing that these Courts should consist of two Judges was that it was

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considered that this would strengthen them for appellate purposes, and allow of finality being given to their decisions passed in appeal.'

" Mr. Barkley went on to show that there was of course the drawback that more Judges would be required to do the same work, but that where two Judges concurred in reversing or modifying the decision of a subordinate Court there would be less reason for allowing a further appeal than where a single Judge of appeal had come to a different decision from that of the first Court on the same evidence. The Punjab Courts Bill therefore, as originally introduced, contemplated the appointment of a Bench of at least two Judges in each civil division, but an important modification of this arrangement was proposed by the Select Committee.

" Mr. Barkley in presenting the Report referred to this alteration as follows :—

'An important change is that the Divisional Court may consist of one or more Judges, the Bill as introduced having provided for its consisting in all cases of two Judges at least. The constitution of Appellate Courts subordinate to the Chief Court and consisting of more than one Judge is an experiment to this extent at least that we have hitherto had no experience of how such Courts may be expected to work ; and, in addition to this, the sanction which has been given for the appointment of thirteen Divisional Judges would not admit of the constitution of more than six Courts of two Judges each, unless some of the Judges are appointed in addition to other duties—an arrangement which may not always be found convenient. It therefore seemed desirable to give greater elasticity to the Bill by allowing a Divisional Court to consist of one Judge if, with reference to the circumstances of the case, the Local Government thinks this expedient or necessary.'

" This proposed modification was adopted by the Council, effect being given to it by section 19 (1) of the Act as passed, and, as a consequence, a very important alteration of the law of appeal to the Chief Court was embodied in section 40 (b). In view of the appointment of Divisional Benches it had been originally intended to permit, as of right, a further appeal to the Chief Court only in suits exceeding five hundred rupees in value ; but, when it was decided that Divisional Courts might, under certain circumstances, consist of one Judge only, it was also provided that a further appeal should lie to the Chief Court from the decree of a single Judge varying or reversing the decree of the Court below.

" When the Act was passed, the Government appointed seven Divisional Benches, the Commissioner of the Deraját being directed to sit as a member of a Bench in addition to the thirteen Civil Judges referred to by Mr. Barkley. The power to appoint Divisional Judges to sit singly meanwhile remained in abeyance.

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"Before many months had elapsed, however, it was found that, although the new Act had, as was expected, greatly reduced the number of civil appeals to the Chief Court, the amount of work coming before the Divisional Benches was much greater than had been anticipated, and these Courts rapidly fell into hopeless arrears. This state of things led to much correspondence with the Chief Court, and eventually the Local Government, agreeing with the opinion of the learned Judges, came to the conclusion that the advantages of the Bench system were more than outweighed by the disadvantages. Section 19 (1) of the Act was therefore brought into operation; the Benches were dissolved and thirteen single Judges were appointed in their stead. The first result of this measure has been a considerable reduction but not a complete clearance of the arrears in the Divisional Courts. The second result,—the natural consequence of the greater number of appeals disposed of by Divisional Judges sitting singly, combined with the operation of section 40 (b) of the Act,—has been so large an increase in the number of further appeals for disposal by the Chief Court that it has been found quite impossible to prevent the accumulation of very heavy arrears.

"In 1887, up to the vacation, the Court consisted of four Judges,—its present permanent strength,—but from the month of November, when it was apparent that the arrears were daily increasing, the appointment of two extra Judges was sanctioned as a temporary measure, and from that time till the 15th August last the Court consisted of six Judges. Notwithstanding this fact the Judges have found themselves quite unable to reduce the pending file. Institutions have been so numerous that it has only been possible to prevent the accumulation of further arrears. For this state of things the Punjab Courts Act, as it stands, affords no remedy, and the immediate object of the Bill which I have been instructed to introduce is to relieve the block of work, to prevent its recurrence in future, and so to secure to appellants in the highest Court of the province the disposal of their cases within a reasonable time. Although this is the immediate aim of the Bill, I believe I am right in saying that, in the opinion of the Local Government, a further object will be attained, namely, a very material improvement in the principles of the Punjab civil appellate system.

"Circumstances have prevented me from studying all the provisions of the Bill in as much detail as I could have wished. I shall therefore on the present occasion merely invite the attention of the Council to what appear to me to be the chief features of the proposed law.

"Section 3 of the Bill is intended to repeal the proviso to section 8, sub-section (1), of the Punjab Courts Act, which declares that no decree,

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sentence, decision or order of any Court not being an order within the meaning of the Code of Civil Procedure shall be reversed or modified by any Judge of the Chief Court sitting alone. A proviso of this nature has had a place in the law relating to the Chief Court ever since the constitution of that tribunal in 1866, but a similar restriction is not laid on the Judges of the High Courts. The Government of India, the Local Government and the Judges of the Chief Court, after very careful consideration, are of opinion that the proviso may now be safely withdrawn, it being of course understood that the exercise of powers by single Judges will be carefully controlled by rules to be made under the first paragraph of section 8, sub-section (1).

"The next important sections of the Bill are 39 and 40, which must be read in connection with the definitions contained in section 2. The Punjab Courts Act, in dealing with suits for the purpose of appeal, divides them into two classes only, namely, 'small causes' and suits other than 'small causes'. The new Bill proposes to divide suits into—

- (1) small causes;
- (2) land-suits—that is to say, suits relating to land as defined in the Punjab Tenancy Act;
- (3) unclassified suits—that is to say, suits which are neither small causes nor land-suits.

"Under the present law District Appellate Judges are competent to dispose only of appeals in 'small cause' suits not exceeding five hundred rupees in value. It is now proposed in addition to confer on those Judges power to hear appeals in 'unclassified suits' not exceeding one hundred rupees in value. By this arrangement Divisional Judges will probably be relieved of about twenty per cent. of the appeals in 'other suits' which, at present, they alone are competent to dispose of. Section 40, proviso (ii), lays down that no further appeal shall lie in any 'unclassified suits' of value not exceeding one hundred rupees. This is an important restriction on the law of appeal as at present in force which merits careful consideration.

"Section 40 (1) (a) of the Bill corresponds with section 40 (a) of the Act, save that it is proposed to raise the value of suits in which unrestricted further appeal may lie from five hundred rupees to one thousand rupees; but this provision is very materially modified in the case of all 'land-suits' by section 40 (b), which allows, as of right, a further appeal in 'land-suits' where a Divisional Court consisting of a single Judge varies or reverses otherwise than as to costs the decree of the Court below.



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“The last point in the Bill to which I shall at present call attention is section 40, sub-section (2), which proposes to make a very considerable addition to the existing law regarding appeals on certificates granted by Divisional Courts. These ‘certificate’ appeals are at present provided for by section 40 (d) of the Act, to which section 40, sub-section (1) (d), of the Bill corresponds; but, whereas in the existing law the refusal of a Divisional Court to grant a certificate is final, it is proposed by the Bill to permit an application to the Chief Court for a certificate which a Divisional Court has declined to grant. I understand that the Judges of the Chief Court lay great stress on this proposal, and that they consider it will have a very material effect in modifying some of the existing and newly proposed restrictions on further appeals; but on the whole it is anticipated that institutions in civil appeals will be reduced by not less than thirty per cent.

“There are other provisions in the Bill which, with those I have mentioned, will require the careful attention of the Select Committee whose appointment I am about to propose and whose Report will be duly presented for consideration, but I do not think it is necessary for me to occupy the time of the Council with further remarks at present.”

The Motion was put and agreed to.

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

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

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Westland and the Mover, with instructions to report at the next meeting of Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 12th October, 1888.

SIMLA;	}	S. HARVEY JAMES,
<i>The 5th October, 1888.</i>		<i>Secretary to the Government of India,</i> <i>Legislative Department.</i>