

*Thursday,
28th July, 1892*

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,

1892

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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 Thursday, the 28th July,
1892.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.C.M.G.,
G.M.S.I., G.M.I.E., *presiding*.

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

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

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble G. R. Elsmie.

N E W M E M B E R.

The Hon'ble MR. ELSMIE took his seat as an Additional Member of
Council.

MADRAS CITY CIVIL COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented the final Report of the
Select Committee on the Bill to extend the jurisdiction of the Court of Small
Causes of Madras.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill to provide
for the levy of a rate on private estates under the management of Government to
meet the cost of superior supervision and management be referred to a Select
Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir
Charles Crosthwaite, the Hon'ble Mr. Elsmie and the Mover.

The Motion was put and agreed to.

[*Sir Alexander Miller ; Sir Philip Hutchins.*] [28TH JULY,

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PRO-
CEDURE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Indian Limitation Act, 1877, and the Code of Civil Procedure be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS said that he wished to suggest an amendment with reference to the first section of the Bill. He had not prepared any formal amendment, as he had not had time to do so, the papers having only reached him yesterday. He had, however, mentioned the matter to the Hon'ble Member in charge of the Bill. He wished to omit from the section referred to, which was to be inserted after section 5 in the Limitation Act, the words "at the time when he presented such appeal or application," and also other words in the lines following relating to the same time. It seemed to him that if the Court was satisfied that the appellant had been misled, and that it was solely owing to his being misled that the appeal was out of time, the Legislature ought to allow the appeal to be admitted. It ought not to be required that he should show that he was still misled at the moment that he presented the appeal, or that the misleading order, practice or judgment should cease to be an excuse from the moment that it was overruled. A man ought to have reasonable time to become acquainted with the new decision and to conform himself to it. He would like the words in the section, "a Court," to be altered into "*the Court*;" the words already quoted—"at the time when he presented such appeal or application"—to be omitted; and he would also like the words "then unrepealed," "then existing" and "not then overruled" to be left out. The section would then run as follows:

"5A. Whenever it is shown to the satisfaction of the Court that an appeal or an application for a review of judgment was presented after the expiration of the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice or judgment of the High Court of the Presidency, Province or District, such appeal or application, if otherwise in accordance with law, shall for all purposes be deemed by all Courts to have been presented within the period of limitation prescribed therefor."

The Hon'ble SIR ALEXANDER MILLER said that he had no objection whatever to the alteration, which seemed to him an improvement. He should,

AMENDMENT OF INDIAN LIMITATION ACT, 1877, AND 81
CODE OF CIVIL PROCEDURE.

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however, like to mention that the section in question was drafted, he believed, by Mr. Justice Straight—at any rate by the Judges of the Allahabad High Court—in order to cover the particular decision which gave rise to the Bill. It would, however, still cover that decision, and he did not think that there could be any objection on their part to the proposed alteration.

The Hon'ble SIR PHILIP HUTCHINS then moved that section 1 should be amended in the manner which he had described.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the words "appealed from" be inserted after "decree" in the explanation to section 375A of the Code of Civil Procedure added by section 2 of the Bill.

He said that it was originally intended to point out that an application to the Appellate Court pending an appeal was not an application subsequent to the decree, but of course it was only in the case where it was an appeal from the decree. If the appeal was from something other than the decree, then it might, or might not, be subsequent to it. It was therefore necessary to insert the words "appealed from".

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the following section be added to the Bill :

"5. The provisions of this Act shall apply to every appeal and review of judgment
Application of Act. heard after the passing hereof, notwithstanding that the
judgment appealed from or under review may have been
passed, or the petition of appeal or application for review presented, before the passing of
this Act."

He said that it was pointed out to him, when he was at Allahabad, that there were a number of appeals pending there which, if the law to be applied to them was that which existed at the time when the original decrees were passed, were wrong ; that is to say, appeals from decisions which, as the law stood when they were made, were right, but which, if this law were introduced, would become wrong. It was pointed out that it would be the duty of the High Court when an appeal came on to consider whether the decision was technically right at the time when it was pronounced, and it had been suggested that that could

[*Sir Alexander Miller ; Sir Charles Crosthwaite.*] [28TH JULY,

be obviated by declaring that the law " always had been " what this Bill proposed now to make it. That would, however, have been legislatively to declare that the previous decisions of the Allahabad High Court had been wrong, a course which he did not think admissible, and he had therefore prepared a clause; the object of which was to apply the new rules without stating that the old decision was wrong ; because, even if it would ever be proper for this Council to say that a High Court had miscarried, this was not a case in which he would think it right to do so. At the same time it was desirable to apply the new rules, and the reason why he had not put the provision in earlier was that he was considering what form of words would have that effect without appearing to throw any discredit on the decisions appealed from. He thought that the provision which he proposed now to insert would have that effect.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved for leave to introduce a Bill to further provide for the Administration of Towns in Lower Burma. He said :—

" The Bill is almost a transcript of Regulation No. VI of 1891, which was enacted to provide for the administration of towns in Upper Burma.

" The Bill is in the main a measure of police. The police administration in Burma, as in other parts of the Indian Empire, and perhaps more than in other parts, offers problems of much difficulty. One of the most difficult is how to get the police force into touch with the people, and to obtain their goodwill and assistance, without which the task of detecting and repressing crime is very hard.

" One cause of our difficulties has been that we have neglected the old indigenous institutions of the country, and have endeavoured to work entirely through a police department which has no close connection with the people.

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[*Sir Charles Crosthwaite.*]

“ When we annexed Upper Burma, we were brought into contact with the indigenous system, and by means of the Village Regulation, and afterwards of the Upper Burma Towns Regulation, a timely and, as I believe the records of the Burman administration will show, a successful effort was made to preserve and utilize that system and to connect it with our police. As the success of the Village Regulation led to its adaptation to Lower Burma, where the indigenous institutions of the country have been partially overlaid and destroyed, so the success of the Upper Burma Towns Regulation has led the Chief Commissioner to ask for a similar enactment for Lower Burma towns. All over Burma there was in former times a police machinery by which villages and portions of towns had their headmen, under whom were minor officials, each entrusted with the supervision of a number of houses, usually ten. Even where this machinery has from neglect fallen into disuse, the people are readily induced to adopt it again, and take to it without difficulty. As an example and proof of this, I may state that in 1883 Rangoon and its neighbourhood were in a very disturbed state. Dacoities and robberies were frequent, and life and property both unsafe. The police were helpless and disheartened, although their Superintendent, the late Mr. Jameson, was one of the most experienced and able officers in Burma. Like most successful Indian administrators, he took counsel of the people of the country, and at their desire the old system was reverted to. The town was divided into wards, and Myogan-lugyi, which is the Burmese translation of aldermen, were appointed, who undertook to help the police to supervise the bad characters and prevent crime. The system has been worked now for nearly ten years without legislative sanction, and, as the Chief Commissioner reports, ‘ since that time Rangoon has been remarkably free from crimes of violence, and it is generally believed that the Myogan-lugyi system has contributed materially to its immunity from disturbance.’ I mention this instance to show that the Bill, which may be described as the legal expression of the Rangoon system, contains nothing that is new or strange to the country, but rather proposes to revive old institutions which have not yet altogether disappeared, and which, when restored, will be welcome to the people.

“ The measure is of a very simple character, its main provisions being (1) the division of towns into wards and blocks; (2) the appointment of persons to be headmen of wards or aldermen of blocks; (3) the conferment on such headmen and aldermen of certain powers and the imposition on them of certain duties. I may add that, although for police purposes it is proposed to apply the Bill to all towns, yet care will be taken to interfere in no way with the duties, powers and

[*Sir Charles Crosthwaite.*] [28TH JULY, 1892.

responsibilities of municipal committees, and the Bill is so drawn as to enable the Chief Commissioner in each case to restrict the general duties of headmen and elders to such limits as may appear to him fit."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES CROSTHWAITE also introduced the Bill.

The Hon'ble SIR CHARLES CROSTHWAITE 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.

The Council adjourned to Thursday, the 11th August, 1892.

J. M. MACPHERSON,

SIMLA ;
The 29th July, 1892. }

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