

*Thursday,
17th September, 1891*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

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OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
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 under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 17th September, 1891.

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 Excellency the Commander-in-Chief, BART., 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 Colonel R. C. B. Pemberton, R.E.

The Hon'ble W. H. Rattigan, M.A., LL.D.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Law of Evidence with respect to Bankers' Books. He said:—

“ The Select Committee have made several considerable changes in detail, but none which, I think, affect the principle of the Bill, or which would require further consideration or republication. The alterations are briefly these. Instead of the elaborate machinery proposed in the Bill, in which it is to be proved by a system of affidavits that the books were examined and the extracts verified, we propose to introduce a system of certified copies, exactly analogous to that in the present law in respect to certified copies of public documents, and we do not propose to permit any evidence to be given otherwise than by the production of the books themselves, or by certified copies. We were asked to extend the Act to all kinds of mercantile concerns, but that was not thought desirable. We have omitted all reference to Government Savings Banks and to the Post Office, because we think that the books of these bodies are ‘public documents’ within the meaning of the Evidence Act. We have, however, introduced a clause enabling the Local Government in any case to extend the provisions of the Act to the books of any company which keeps a regular set of books analogous to the recognized bankers' books and to which the Local Government may consider it desirable to extend them. We have also introduced provisions enabling

[Sir Alexander Miller.]

[17TH SEPTEMBER,

the bank, if it thinks fit, to offer to produce certified copies instead of allowing its books to be examined. We thought there might be very good reasons for this course, and that in the interests of the bank or its clients the clause which proposed to enable any party to obtain authority to look through the books of the bank was undesirable without this modification. Instead therefore of this being done, we propose that the bank may offer to give copies of the necessary certificates. There is one point in connection with this matter, which is that we propose, in that case, that the bank should have to certify that it has given all the relevant entries. One of the District Judges has made a note to the effect that it is impossible for a bank to judge what entries are, or are not, relevant. The answer is that the bank is not bound to take advantage of this provision. If for the purpose of concealing its accounts, it chooses to take advantage of it and does not insert all relevant entries, it must act on its own responsibility and at its own risk.

“ We have inserted no clause with reference to the payment of any fee to a bank for the supply of certified copies, but we have given a discretionary power to the Court, where the matter comes before it, to award costs to or against the bank as it may think just; and the reason is that we think that in most cases it would be more beneficial to the bank to give these certificates free of cost than to have their books produced, and possibly detained for days, or even weeks, for purposes of legal proceedings; but if in any case the bank does not choose to grant these certified copies without payment the party will have it in his own power either to pay what the bank asks, or to go before the Court and get an order. Probably in many cases an agreement with the bank would be come to in preference to going before the Court, but if the matter does go before the Court, then we give the Court complete power to make any order which it thinks proper as to costs for or against the bank.

“ The Bill does not contain any express power to the Court to require the production of the books, instead of acting on the certified copies. I think this power is given incidentally, because we say that these certified copies shall be received as *prima facie* evidence of the existence of the entries, and also that no officer of a bank shall in any proceedings to which the bank is not a party be compelled to produce the books without special order; but I am not quite sure that it may not be desirable to insert a clause to the effect that notwithstanding anything in the Act the Court may order the production of the books themselves whenever it thinks this necessary.

“ I do not think there is anything else which calls for remark.”

1891.] [*Mr. Rattigan; Sir Philip Hutchins.*]

PUNJAB MUNICIPAL BILL.

The Hon'ble MR. RATTIGAN moved that the presentation of the Report of the Select Committee on the Bill to make better provision for the administration of Municipalities in the Punjab be postponed till the next meeting of Council. He regretted that it had not been found possible to present the Report of the Select Committee at the present meeting. A large number of opinions had been received only very recently, and owing also to the pressure of other business the members of the Select Committee had not been able to meet up to the present time. The Committee would, however, begin its meetings to-morrow, and he thought he could undertake that the Report would be placed upon the table at the next meeting of the Council.

The Motion was put and agreed to.

LOWER BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the presentation of the Report of the Select Committee on the Bill to amend the Lower Burma Municipal Act, 1884, be also postponed till the next meeting of Council. He said that when he introduced the Bill he explained that, as far as it went, it had a great deal in common with the Punjab Bill; the two Bills had been referred to the same Committee, and he thought it desirable that they should be dealt with together.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 1st October, 1891.

L. PORTER,

SIMLA; } *Offg. Secretary to the Government of India,*
The 18th September, 1891. } *Legislative Department.*

Note.—The Meeting fixed for the 10th September, 1891, was subsequently postponed to the 17th idem.