

*Thursday,
10th January, 1895*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIV

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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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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 10th January, 1895.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D.,
G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, K.T., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

INDIAN PENAL CODE AND ACT VI OF 1864 AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Dr. Lethbridge, the Hon'ble Mr. Mehta, the Hon'ble Gangadhar Rao Madhav Chitnavis and the Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá be added to the Select Committee on the Bill to amend the Indian Penal Code and Act VI of 1864. He said :—“ This is a Bill the main object of which is to give effect to the provisions of the Vienna Postal Convention, although there are one or two other matters introduced into it. Owing to the Post Office authorities having pressed for the passing of the Bill I had set it down for a small Committee during the Simla session, but when we came to look at it we

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found that some of the matters dealt with were of sufficient importance to be discussed here and the Bill was therefore postponed in order to have it considered by a larger Committee in Calcutta. I now propose to supplement the small Committee appointed at Simla by the addition of the names which I have just mentioned."

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE, 1882 (SECTIONS 366 AND 371),
AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend sections 366 and 371 of the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Anthony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Babu Mohiny Mohun Roy and the Mover. He said :—"This is a Bill which was introduced for the purpose of setting right a practice which has prevailed, and I think I may venture to say necessarily prevailed, but which the Courts both at Allahabad and Calcutta have, as I think rightly, decided to be contrary to the strict letter of the law. The law provides that in every criminal trial the judgment shall be read and signed at the time that it is delivered. Now it has been the practice, instead of reading aloud the judgment, merely to pronounce the sentence under the impression that the meanings of the words 'judgment' and 'sentence' are identical. That is not so: the judgment referred to in the Code is not merely the conclusion at which the Court has arrived, but the judge's analysis of the evidence and statement of the case, and the reasoning by which he justifies the sentence; and there is no doubt that under the law as it stands it is his duty to read the judgment out at full length and to sign it after it is delivered. There is also no doubt that it would be useless in nine cases out of ten for the Judge to do this and that he would be simply taking up time which can ill be spared in doing a thing that could answer no good purpose. We therefore propose to alter that by only making it necessary that the substance of the judgment should be explained at the time of its delivery and that a copy of the judgment should be handed over to the accused if he applies for it. That will answer every possible purpose. He or his counsel will get an explanation of the substance of the judgment. In

AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882 17
- (SECTIONS 366 AND 371;) INDIAN COMPANIES (MEMO-
RANDUM OF ASSOCIATION).

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[*Sir Alexander Miller; Sir James Westland.*]

nine cases out of ten he would not understand the judgment if read aloud, especially as it would be read in English, and, if after hearing the substance of it he thinkst worth while to consider the case further, he has only to apply for a copy, which he can make much more use of than if the judgment had merely been read aloud to him. That is, I think, the whole substance of the Bill which I now propose. Of course, some small alterations may be found necessary in the language in which it is framed, but these will be attended to in the Select Committee."

The Motion was put and agreed to.

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted and to amend the Indian Companies Act, 1882. He said:—"The main object of this Bill is to provide a means by which what is in the Companies Act of 1882 called 'the memorandum of association' may be amended. The memorandum of association is the fundamental document upon which a company is constituted. The main purpose of it is to declare the part of British India in which the registered office of a company is proposed to be situate and the object for which the proposed company is to be established. As the law at present stands it is impossible to procure any amendment of a memorandum of association once it is registered except in one solitary point relating to the capital and its distribution into shares. Now, as time goes on new processes of manufacture are occasionally introduced and means are found of making use of the waste material of one phase of manufacture for the purpose of another phase of manufacture; and these and similar changes and improvements often render it necessary to alter the statement of the objects for which the company is about to be established. Under the present law, however, if a company proposes to make any change in these respects, they are obliged to wind up the old company and reconstitute a new one under a new memorandum of association. In the Imperial Parliament of 1890 a procedure was laid down by which this memorandum of association could be altered in these particulars. It has been found desirable to adopt that legislation in this country, and the Bill which I now ask

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for leave to introduce is for the most part based upon the Act of Parliament passed in 1890. It copies it almost word for word. I would say, word for word, were it not that my hon'ble friend Sir Alexander Miller justly considers that the grammar that is good enough for an Act of Parliament is frequently not good enough for the Indian Statute Book. The detailed provisions of the Act have for the most part in view the protection of the creditors of the company and the protection also of the shareholders. An alteration in the constitution of the association may affect the security which the creditors have for the payment of their debts ; and it is considered unfair to compel shareholders who have embarked their capital in one kind of manufacture to launch it into other enterprises. The protection of these two classes is the main purpose of the provisions of the Bill.

“ Opportunity has been taken at the same time to introduce a small change in another particular. Section 65 of the Companies Act provides that a company must, if its place of business lies outside the local limits of a High Court's jurisdiction, express its name both in English and in Vernacular, on the outside of its office, on its seal, and on all the business documents, bills, cheques and receipts, which it issues.

“ It is considered that this provision has ceased to be necessary, and that, although it is desirable that the name at the registered office and the name upon the seal should be expressed in the English language and in the Vernacular languages also, it is unnecessary to impose upon the company the obligation of expressing it in the Vernacular in all the bills, documents and advertisements with which they have to deal. The final section of the Bill which I now introduce withdraws this obligation so far as relates to the Vernacular languages.

“ We have had some suggestions, made from Bombay, to go much further in the direction of the Companies Amending Act. The Government are unable to adopt the recommendations so made. The full adoption of them would practically mean that the Government would have, in its capacity as Government, the whole oversight of the management and administration of companies ; in fact, it would be almost their bounden duty to see that a company was so managed as to return respectable dividends to its shareholders. This object, however desirable, the Government cannot possibly undertake to procure. We

have not found ourselves able therefore to introduce those very wide extensions of the law which have been recommended to us in this matter."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also introduced the Bill.

The Hon'ble SIR JAMES WESTLAND 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.

The Council adjourned to Thursday, the 24th January, 1895.

CALCUTTA;
The 14th January, 1895. }

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.