

*Thursday,
20th February, 1896*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
LAW AND REGULATIONS

Vol. XXXV

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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,

1896

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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 20th February, 1896.

PRESENT :

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

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

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

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., K.C.S.I., 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 J. Woodburn, C.S.I.

The Hon'ble Mohiny Mohun Roy.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble A. S. Lethbridge, C.S.I., M.D.

The Hon'ble M. R. Ry. P. Ananda Charlu, Rai Bahádur.

The Hon'ble Alan Cadell, C.S.I.

The Hon'ble J. D. Rees, C.I.E.

The Hon'ble G. P. Glendinning.

The Hon'ble Nawab Amir-ud-Din Ahmad Khan, C.I.E., Bahádur, Fakharuddoulah, Chief of Loharu.

The Hon'ble Rao Sahib Balwant Rao Bhuskute.

The Hon'ble P. Playfair, C.I.E.

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1889, be taken into consideration.

The Hon'ble MR. PLAYFAIR said :—“ I think that the amendments proposed by the Select Committee, if accepted by Your Excellency's Council, will remove the principal objections raised to the Bill by shipowners and agents.”

The motion was put and agreed to.

146 AMENDMENT OF INDIAN PORTS ACT, 1889; INLAND BONDED WAREHOUSES AND SALT-BONDING; AMENDMENT OF FOREIGN JURISDICTION AND EXTRADITION ACT, 1879; AMENDMENT OF INDIAN PENAL CODE; AMENDMENT OF EXCISE ACT, 1881.

[*Sir James Westland; Sir Alexander Miller.*] [20TH FEBRUARY, 1896.]

The Hon'ble SIR JAMES WESTLAND moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INLAND BONDED WAREHOUSES AND SALT-BONDING BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses.

The motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Foreign Jurisdiction and Extradition Act, 1879. He said :—" I think any observations which I may have to make on the changes made in the Bill by the Select Committee will be better made when I ask that it be taken into consideration."

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to amend the Indian Penal Code. He said :—" This Bill is an amendment of the definition relating to Queen's coin in the Indian Penal Code. An objection was raised in certain quarters to the form in which the Bill had been drawn, namely, that we left the original definition in the Penal Code and afterwards stated that the definition in certain cases would not apply. The Select Committee in considering this objection have thought it advisable to alter the original definition, and now the Bill in its present form is not liable to the objection which has been made to it on the ground mentioned."

EXCISE ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to amend the Excise Act, 1881, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Cadell, the Hon'ble Rao Sahib Balwant

[20TH FEBRUARY, 1896.] [*Sir James Westland; Sir Alexander Miller.*]

Rao Bhuskute, the Hon'ble Nawab Amir-ud-Din Ahmad Khan Bahádur and the Mover, with instructions to report within one month.

The motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Indian Contract Act, 1872. He said:—"There are two somewhat conflicting principles in English law, one that a man who makes a voluntary payment on behalf of another has no claim to be reimbursed however timely his action may have been, and however much the other may have been benefited by it,—and that has of course always been a principle in Courts of Law,—and the other, which the Courts of Equity have grafted on that a sort of exception—that where the action has been done either by compulsion of law, or because the person making the payment has a certain interest in it, or other circumstances of the kind, he should by making the payment get a right to stand in the shoes of the person on whose behalf he made the payment, and therefore, if any property was saved for the benefit of that person, he, by standing in the shoes of the person who ought to have paid, obtained certain limited rights over the property. Managed as this was until a late period by the somewhat anomalous, as far as appearance went, principle, which nevertheless worked very much better than it sounds, of equity being administered by one Court and the law by another, there never was any real difficulty or hitch in the application of the conflicting principles to the particular cases to which they applied; but the attempt which was made to settle by express enactment the rights of parties under these conditions in India, where the law has always been administered as it is in England now by one set of Courts, overlooked I think a portion of the difficulties and complications arising in the case. By section 69 of the Indian Contract Act of 1872 it is provided that when a person interested in the payment of money which another is bound by law to pay makes payment in default of the other, he is entitled to be reimbursed by the person who ought to have made the payment, but the law only gives a personal right against the defaulter; and, as I dare say in the majority of cases in which a default is made, it is made as much because the defaulter is unable to pay as because he won't pay, a personal right against the defaulter is in most instances an imperfect right, and to try to enforce that right is in many cases only throwing good money after bad. The difficulty which has been felt has given rise to conflicting rulings in the various High Courts in India on the question whether under certain circum-

[*Sir Alexander Miller.*]

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stances, where immoveable property has been preserved by such a payment, the man who makes the payment has or has not a lien or charge upon the property itself. The High Courts of Calcutta and Allahabad have decided—and I am bound to say if you will look only at the words of the Contract Act, I think rightly decided—that no such lien or charge has been given; at the same time neither of these decisions was unanimous, there were dissentient Judges in both Courts. The other two High Courts of Bombay and Madras have taken a different view and consider that they have by their inherent equitable jurisdiction a right to go beyond the letter of the Contract Act and to say that under these circumstances there is a lien or charge imposed upon the property preserved.

“ That it is only right that that should be so I think is clear, as I will show by a simple illustration. Take the commonest of all imaginable cases—a case where two persons being tenants in common of a single estate, one of them *A*, is ready to pay his half of the Government revenue, and the other, *B*, is not; in order to prevent the estate from being sold by the Collector, *A* pays the whole. It is quite clear that the Collector must have the whole sum, and it would not be right to expect him to take the revenue in parcels, to allow one man to pay half and leave the other half to be recovered. His right is to recover the whole, and to recover it by the sale of the estate. Surely under the circumstances it would only be right that *A* should recover back out of the half of the estate belonging to *B* the half of the revenue demand paid by him which *B* ought to have paid on his own account. That is one of the commonest instances of the alteration of the law which is proposed by this Bill. There are other instances, all of a similar kind. I take that as a simple illustration which really exhausts the principle of the Bill, though it does not exhaust all the instances to which the Bill may possibly refer. The Bill has been the subject of a good deal of discussion; it has been circulated and reported upon by the various authorities whom we are in the habit of consulting, and it has after considerable alteration assumed a form which has been generally approved by those authorities and which I hope I may see passed into law without any further substantial alteration.”

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English,

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[*Sir Alexander Miller.*]

and in the local official Gazettes in English and in such other languages as the Local Governments think fit. He said:—"I would wish to say, in order to avoid misconception, that under the circumstances I have just mentioned I do not propose to ask the Government to ask for any further opinions upon the matter, because all the Local Governments and their officers have given their opinions at large upon the question, and I do not think it would be reasonable to ask them to go to all the trouble and expense over again on a matter on which they have already expressed their views so lately."

The motion was put and agreed to.

The Council adjourned to Thursday, the 27th February, 1896.

S. HARVEY JAMES,

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

CALCUTTA;

The 21st February, 1896.