

*Thursday,
11th February, 1897*

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
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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 11th February, 1897.

PRESENT :

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

His Excellency Sir G. S. White, G.C.I.E., K.C.B., V.C., Commander-in-Chief in India.

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

The Hon'ble Sir J. Woodburn, K.C.S.I.

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E.

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble H. E. M. James.

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

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

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

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., Bahadur, Fakhar - uddoulah, Chief of Loharu.

The Hon'ble Rao Sahib Balwant Rao Bhuskute.

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

The Hon'ble Rahimtula Muhammad Sayani, M.A., LL.B.

The Hon'ble Pandit Bishambar Nath.

The Hon'ble Joy Gobind Law.

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

The Hon'ble Sir H. T. Prinsep, Kt.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881. He said:—"We have reported on this Bill and we have considerably altered the

Bill as it stood when referred to us ; so I ought to say a few words in explanation of what we have done.

“The object of the Bill is to introduce the provisions of section 74 of the English Bills of Exchange Act into the Indian Negotiable Instruments Act, 1881. We thought that the best way of doing that was to incorporate the words of the English Act, and that is what we have done. The object of the change is this: By the English Common Law the drawer of a cheque is liable on that cheque until the Statute of Limitations runs against it, but there was an exception to this liability. Supposing the cheque was not presented in the ordinary course, and supposing that in the interval the bank on which the cheque was drawn failed, it was clear that the drawer was damaged by the omission to present the cheque, and the rule of the Common Law was that the drawer, having been damaged, was discharged. When the English Act of 1882 was going through a Committee, this rule was altered by Lord Bramwell. He pointed out that it was not fair that the drawer should be absolutely discharged from his debt on the cheque, and from his debt in respect of which the cheque was given, and also that he should have his right of proof against the bank, who perhaps might pay a very substantial dividend. Take this case: Suppose a cheque is drawn for £1,000. The holder of the cheque instead of presenting it at once circulates or keeps it. Well, the bank fails; the drawer of course is discharged, but the bank may pay ten shillings in the pound. The result of the Common Law rule was that the drawer was discharged from his debt, and he also had a right of proof against the bank which realised for him eventually £500. Lord Bramwell pointed out that this was inequitable, and he introduced the present clause which is now section 74 of the Bills of Exchange Act, 1882. It provides that, although the drawer is discharged, the holder of the cheque, in such case, is made a creditor of the bank and has the drawer's right of proof against the bank; so that in the case I have mentioned the holder would be able to prove against the bank and get £500 from it. The drawer would be discharged from liability, but the holder of the cheque would be substituted for the drawer as regards proving against the bank. The Indian Act, 1881, had adopted the English Common Law rule, but it was suggested to the Government of India some two years ago that the English rule was more equitable, and that the English rule ought to be incorporated into the Indian Act. The object of the present Bill is to incorporate into our Indian Act the provision of the English Act. We have adopted the words of the English Act, and we have added a couple of illustrations to show its operation.”

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[Mr. Chalmers; Pandit Bishambar Nath.]

GENERAL CLAUSES BILL.

The Hon'ble MR. CHALMERS moved that the Bill to consolidate and extend the General Clauses Acts, 1868 and 1887, be referred to a Select Committee consisting of the Hon'ble Sir James Westland, the Hon'ble Mr. James, the Hon'ble Rai Bahadur Ananda Charlu, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Sayani, the Hon'ble Sir Henry Prinsep and the mover, with instructions to report within one month.

The Hon'ble PANDIT BISHAMBAR NATH said :—“ I crave permission to say a few words in respect of the Bill that has just been proposed to be referred to the Select Committee.

“ I believe the thanks of the Profession are due to the Hon'ble the Legal Member for his forensic labour in having so ably digested, for the use of the Indian Statute-book, an improved revise, so to say, of the Legislative Thesaurus, which he aptly describes as ‘ Draft Accidents Prevention Bill.’

“ The Bill, when passed into law, will, I think, be of great service not only to the Legislature, but to the Bench and the Bar in determining the *prima facie* meaning of the terms that are constantly used in almost all the Acts.

“ As explained in the Statement of Objects and Reasons, the Bill consolidates the two existing enactments on the subject, namely, the Acts I of 1868 and I of 1887, incorporating certain provisions of the English Interpretation Act, 1889 (52 & 53 Vict., cap. 63). I notice section 4, clauses 1 and 2 of the Bill are declaratory of the existing law as regards previous enactments. A reproduction of the several definitions, as given in the preceding section 3, renders both these clauses, in my opinion, somewhat inartistic in their present form, which, I venture to suggest, might perhaps be avoided without affecting their substance or object, if they were worded differently or on the lines suggested below, namely :—

¹ Section 4. (1).—Notwithstanding the repeal of Act I of 1868 (the General Clauses Act, 1868) all the definitions and expressions contained in the aforesaid Act apply, unless there is anything repugnant in the subject or context, to all the Acts of the Governor General in Council, made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

“ (2) Notwithstanding the repeal of Act I of 1887 (the General Clauses Act, 1887), all the definitions contained in the aforesaid Act apply, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council, and Regulations made on or after the fourteenth day of January, 1887.

[*Pandit Bishambar Nath; Mr. Chalmers.*] [11TH FEBRUARY,

"A further observation, I have to submit, is that section 5 and the following sections prescribe general rules of construction. While I fully appreciate the usefulness of these rules, which are, indeed, an improvement upon the old law, I am not sure whether they can appropriately, or in strict conformity with juristic notions, be embodied as such, and as a part, in an Act, the main object of which is the abbreviating the phraseology employed in Legislative enactments.

"The question, however, being purely one of academic interest, the law upon it, I confess, is to be taken from the Hon'ble the Legal Member, whose minute shows that a cognate matter has been very carefully considered already by competent lawyers elsewhere.

"These are, my Lord, some of the matters, amongst others, that I beg ought to receive the attention of the Select Committee, in discussing the various provisions of the Bill.

"It may as well be observed incidentally, that the proposed measure being not an emergent one, it would have been rather satisfactory had the Bill been allowed to be circulated for eliciting suggestions by the several High Courts, with the object of giving a finishing touch to the Bill, before passing it into law."

The Hon'ble MR. CHALMERS said that he was much obliged for the Hon'ble Member's suggestions. He could only say that they would be most carefully considered in Select Committee.

The motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to repeal certain obsolete enactments and to amend and facilitate the citation of certain other enactments. He said:—"The object of the Bill is stated in the title. The Bill is an Assam repealing and amending Bill. It is a class of legislation with which Hon'ble Members are familiar, and the object is to enable the Legislative Department to publish a complete edition of the Assam Acts. The Bill in nowise differs from other Acts of the kind which are passed before the local codes are edited. There is only one feature in the present Bill which I ought to refer to. In accordance with modern English practice, we have given short titles to the Acts which did not previously possess them. The modern English practice is always to give an Act a short title, and I think it has its conve-

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[*Mr. Chalmers.*]

niences. In this Bill we have given short titles to those Assam Acts which have not already got them."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India and in the Assam Gazette in English.

The motion was put and agreed to.

The Council adjourned to Thursday, the 25th February, 1897.

J. M. MACPHERSON,

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

CALCUTTA ; }
The 11th February, 1897. }