Thursday,
4th March, 1897

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXVI

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OF

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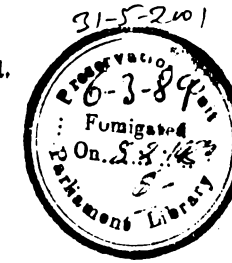

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., Cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 4th March, 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 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 Sir Lakshmishwar Singh, K.C.I.E., Maharaja Bahadur of Durbhanga.

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.

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

QUESTIONS AND ANSWERS.

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE asked:—

"(1) Have any enquiries been made with regard to the questions asked by me on the 19th of March, 1896, as to the restriction of age

on students seeking admission to the High Schools in the Hyderabad Assigned Districts?

"(2) If so, is there any objection to the papers being laid on the table?"

The Hon'ble SIR JOHN WOODBURN replied:—

"(1) Yes.

"(2) No. I lay the Resident's reply to our enquiry on the table."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU asked:—

"(1) Will the Government be pleased to state whether, since the disposal of the papers Nos. 975 and 976 of the Government of Madras, dated 13th August, 1883, any discussion or correspondence has taken place between the Government of India and the Secretary of State with reference to the settlement of land-revenue so far as the Madras Presidency is concerned?

"(2) If so, will the Government be pleased to place on the table the correspondence so far as it relates to the Madras Presidency?

"(3) Will the Government be pleased to state whether the despatch of the Secretary of State for India, No. 4 (Revenue), dated 8th January, 1885, did not relate solely to the North-Western Provinces, in which there were no prior pledges or declarations of policy and no question of revision of settlement?

"(4) Will the Government be pleased to state whether the Government of Madras or any other competent authority put forward for the Madras Presidency any proposals other than those contained in its orders Nos. 975 and 976, dated 13th August, 1883?

"(5) If the Madras Government or any other competent authority made any such proposals, will the Government be pleased to state their date and substance?"

The Hon'ble SIR JOHN WOODBURN replied:—

"*Questions 1 and 2.*—Since the disposal of the papers referred to, correspondence has taken place between the Government of India and the Secretary of

State with reference to the settlement of land-revenue, in which the Madras Presidency, together with the other provinces of India, has been concerned. The same objections exist to the publication of that correspondence as were explained in the answer given to the Hon'ble Member's questions 1 and 3 on the 25th February. No such correspondence of any importance has taken place in which the Madras Presidency alone has been concerned.

"*Question 3.*—The despatch referred to contained the Secretary of State's final orders in a discussion which related to the whole of India except the permanently settled tracts: it did not relate solely to the North-Western Provinces; and it dealt mainly with the question of revision of assessment of land-revenue.

"*Questions 4 and 5.*—During the discussion which was closed by the despatch of the 8th January, 1885, and to which the question is understood to refer, no proposals other than those contained in the Madras Government orders Nos. 975 and 976, dated the 13th August, 1883, were put forward for the Madras Presidency, either by the Madras Government or by any other competent authority acting in its behalf."

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the Bill, as amended, be passed. He said:—"The Bill is a Bill to assimilate the provisions of the Indian Act to those in the English Act in one particular respect, namely, in the case where a cheque is drawn on a bank and that bank fails. Now, with Your Excellency's permission, I desire to make a suggestion as to the course which should be pursued in order further to assimilate the Indian to the English law on the subject of negotiable instruments. In order to make my suggestion clear I must advert for a moment to the history of Legislation in England and in India. The main Indian Negotiable Instruments Act was passed in 1881. That Act applies in substance only to what may be called English instruments. It contains a saving for all usages as to hundis and other instruments in the native languages. Applying, as it does, only to English instruments, the

object of the framers was to codify the English Common Law as it existed in 1881. The Indian Act of 1881 reproduced as nearly as possible the English Common Law, and it passed through this Council without amending the rules of the Common Law. During the same year a codifying Bill was introduced in England. Its frame and of course its language differed from the frame and language of the Indian Act, but like the Indian Act its object was as far as possible to reproduce the existing Common Law without alteration. That Bill did not pass in 1881, but the next year it was introduced into Parliament and became law as the Bills of Exchange Act, 1882. In its progress through Parliament in England it was referred to two Select Committees, one in the Commons and the other in the Lords, and those two Select Committees introduced a series of changes and amendments in the Common Law rules. The principle on which they acted was that they introduced no contentious amendment, but they introduced all amendments on which the whole of the members of the Committees were agreed. The result of amending the law in England was to create a divergence between Indian and English law with respect to negotiable instruments. The English and Indian Acts alike are founded on the English Common Law, but by reason of the amendments made in the English Act the two laws have now diverged. This was found to be inconvenient in India, and in 1885 an amending Act was passed. The Indian Act of 1885 amended the Indian Act of 1881 in nine particulars, bringing it into line with the English Act in these nine particular cases. The present Bill, which I am now asking you to pass, amends the Indian Act in a tenth particular, and again, in this particular, brings it into line with English legislation. Since the Committee reported I have had a letter from Mr. Justice Shepherd of Madras. He calls my attention to the terms of section 66 of the Indian Act and says that its wording is ambiguous, and that it is doubtful how far that section corresponds with the English law, although he conceives, and the Court has held, that it was intended to lay down the same rule. Well, in addition to this I have had one or two other suggestions and I have read through the two Acts, and I find that on many points there still exist divergences. My friend Sir Griffith Evans mentioned one to me, namely, the effect of a verbal discharge of a Bill. There English and Indian law differ. I find again that the effect of a blank endorsement being followed by an endorsement in full is different in England and in India. I find again that the effect of a conditional acceptance is different in England and in India; and I find further that the rules as to crossed cheques somewhat differ in England and in India. And then comes the question whether this process of assimilation ought to be carried further. If we go on amending

the Indian Act in detail after detail it will become an almost intolerable patch-work. But there is an alternative course which might be taken, and that would be to adopt, once for all, the English Act, of course applying it only to what may be called English instruments and making the necessary saving for hundis and for one or two peculiarities of Indian law. For instance, we could not apply to India the English law of Bank Holidays; but I suggest for consideration whether it might not be convenient to have, once for all, the English Act. It is a question purely for the mercantile community, and not a question that concerns the Government in any way. It is not a question of theoretical convenience; it is a question of practical convenience. There are no doubt arguments both ways. On the one hand the merchants, since 1881, have got accustomed to the provisions of the Act of 1881. They know these provisions, and it might be inconvenient to them to find the same propositions of law stated in different terms. On the other hand the English Act has been adopted with hardly any modification throughout the Queen's dominions; it has been adopted in Canada; it has been adopted, I believe, in the whole of the Australasian Colonies, and in several other Colonies besides. It might make for mercantile convenience to have one law expressed in the same terms for the whole of the Queen's dominions. Decisions given in one country would then become authorities which could be quoted in another country, and we should have the benefit always of the Privy Council's decisions ruling throughout the Queen's dominions. It certainly is convenient in some ways that instruments like bills of exchange which circulate freely from one country to another should not alter their laws as they go. It is convenient that a bill drawn in England on Australia, or a bill drawn in India on England should be governed by the same law, both where it is drawn and where it is acceptable and payable; but, on the other hand, as I have said, it is a question for merchants to consider whether the inconvenience of having a new Act would outweigh the conveniences which I have pointed out. It is a question of practical convenience, and I hope we shall endeavour to obtain their opinion; and we shall certainly follow it. It is not a question to be determined on theoretical grounds, but is purely a question for the merchants to decide for themselves and for their wishes to be given effect to."

The motion was put and agreed to.

PROVIDENT FUNDS BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to amend the law relating to Government and other Provident

Funds. He said :—"The Report deals fully with the changes we have made. If, when the report has been in the hands of Members, they desire any further explanation, I have no doubt on behalf of the Committee I shall be able to go into the matter."

GENERAL CLAUSES BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to consolidate and extend the General Clauses Acts, 1868 and 1887.

The Hon'ble MR. JAMES said :—"It is with great diffidence that a layman like myself ventures to join issue with the Hon'ble Legal Member on a point of law, but I trust that when the Council has heard me it will consider that I have justification for doing so. I object to the new definition of good faith on several grounds. In the first place it is inconsistent with the Penal Code, and the passing of it will stultify the Council. In one law we shall say, as we have said for 35 years, that good faith shall not be pleaded without due care and attention, in another that, if done honestly, there may be negligence. The result of the amendment must be that the old definition will disappear from the Penal Code which will so far be emasculated. The alternative, I understand, is, that in every place where the word 'good faith' occurs in the Penal Code we must insert words like the following: 'Whenever with good faith and with due care and attention'. But will not that be a contradiction in terms? Substitute for 'in good faith' the words of the new definition proposed, and how will it run? Whoever does an act (in fact honestly, whether there be negligence or not) with due care and attention. In the second place, I object to amending so well-known a provision of law, which has worked well for the last 37 years, without it can be shown that it has worked badly. The Bench, the Bar, the Magistracy all know it, and I say, that as practical men, we should leave well alone. Thirdly, I maintain with the greatest deference to the Hon'ble Member that the old definition is, whatever may be thought in England, a far better one as a practical working rule and more suited to India than the new one. Everyone who knows anything of India is also aware that negligence is the thing that a Native caught *flagrante delicto* always pleads: 'Huzur main ne bhul kya', and how admirable they are at pleading honesty. To take an instance: most of us know how terribly fond many classes of Natives are of making false accusations against respectable men or against persons whom they envy or dislike, out of pure spite. The law now says: 'It is not defamation to

prefer in good faith an accusation against any person.' The amendment will enable the common slanderer and blackmailer to get off scot-free. His defence will be 'I admit that I did not take any steps to test the truth of the accusation, but I heard it from a respectable man in the bazaar' whose name I do not know. I have been negligent, but I thought, if the accusation were true, I ought to bring it to notice. My only sin is negligence; I acted in good faith honestly. My motive was unimpeachable.' He will get off.

"I am told that the new definition is needed, so as to bring the law of India into harmony with the law that the Privy Council at home have to administer, namely, with the very latest decisions of the House of Lords. My Lord, every Sunday, or at least whenever we Christians hear the Litany, we pray that the Almighty may endue the Privy Council, and all the Nobility with grace, wisdom and understanding. I humbly think that, if when trying Indian cases the Privy Council forgets that it has to decide them by Indian law and not English, they must be past praying for. But the Hon'ble Mr. Chalmers surely would not have us believe that eminent men like Lord Hobhouse and Sir Richard Couch have forgotten their Penal Code. Even if they did, there are learned Parliamentary Counsel to remind them of it. One day we shall have them objecting to the Mitakshara and Mayuka and all Native laws, for the same reason that the House of Lords does not recognise them. In any case, if confusion will be caused by diversity of definition, surely it is better that it should be confined to a few eminent persons on the Privy Council rather than that the great mass of those who have to carry out the law in India shall be puzzled by a new, and as I think dangerous, doctrine.

"And my Lord, I go still further and submit that the very reason brought forward, that we are always to bring our Indian law into the same lines as the English, is unsound. Of course I am not referring to highly specialised laws, like the Negotiable Instruments Act. What did that emiment Judge, Sir James Fitzjames Stephen, whose chair the Hon'ble Mr. Chalmers is now so ably filling, say of the Indian Penal Code? He said 'It is the criminal law of England, clothed' and in its right mind'. The object of our Legislature in India has been to pick out all that is best in the great amorphous mass of English law discarding what is judged wrong or unsuitable to India. We have the great authority of Lord Macaulay for our present definition We have had a succession of able Legal Members, like Sir Henry Maine, Lord Hobhouse, Sir James Stephen, Sir Andrew Scoble, and none of them dared to lay a sacrilegious finger on this definition. It is wonderful indeed what very little alteration the Penal Code has needed. More justification, I submit, is required than that.

the present House of Lords has endorsed a maxim that did not commend itself to Lord Macaulay or any of his successors until now. If we are to alter our law every time the House of Lords rules something or other, whether it suits us in India or not, our law will soon be in a pretty state.

"Yes, my Lord, I traverse the position utterly that we ought to, or as a matter of fact that we do always, carry out English principles into our law. We try and import its spirit of fairness no doubt, but the result of our attempt to follow its principle is not always happy. Look at the law as to debtor and creditor, and the mortgaging of ryots' lands. If this is the kind of justice which English principles lead us to, let us have no more of it. Why, in the Evidence Act you have what, I am told, is an absolute violation of English principles. Look at section 133: 'a conviction is not illegal merely because it proceeds upon the uncorroborated evidence of an accomplice.' What is more, England herself is now beginning to take a leaf out of our own book. In England, an accused used to be entreated by the Police and Courts to hold his tongue lest he should say anything likely to injure his chance of escape. In India for years we have taken the sensible course of allowing the Judge or Magistrate to examine an accused fairly, to ascertain if he can account for the damaging evidence against him or offer any valid explanation, and if he fails, of course the Court draws its own conclusion. And now the English Legislature has followed India, and allows accused persons to give evidence in English Courts on oath. I almost believe that, if we are not in too great a hurry to alter it, we shall some day find Parliament copying our definition of 'good faith' too. *Ex Oriente lux*, as it always has been.

"My Lord, as we are dealing with the subject of General Clauses, may I be permitted to make an appeal to this Council in general, and to the Legislative Department in particular, to make the language of the law generally less ambiguous? I am free to admit that the drafting of our laws is done in the most excellent good-faith; that it is done in fact very honestly, and that the element of negligence is here certainly conspicuous by its absence. It is certain also that no law can provide for every conceivable case, and one of the uses of the Superior Courts of course is to clear up doubts and interpret on occasion. But the example of the Penal Code shows how transparently clear it is possible to make a law. When any ordinary man of business is informed that other Codes are not capable of similar interpretation and, as I have been gravely told lately, that a study of House of Lords' judgments or digesting twenty pages of an English text-book is necessary to ascertain the meaning of a common

phrase, it must be admitted that there is something wrong. These text-books are not, remember, in the hands of a vast majority of those who have to administer the law in the mufassal, and to supply them on even a moderate scale would involve a very great cost. Still there is an irresistible tendency amongst lawyers, as in every learned profession, to make esoteric rules of its own, not understood by the vulgar. And once let them get outside the Codes within which the Legislature wishes to fence them, they go wandering about at their own sweet will in the tangled jungle of English text-books and English case-law, till one is fairly driven to doubt of what use the Codes may be. They excuse themselves by alleging that the language of the Codes is ambiguous. I should like to quote an example.

"The Code of Civil Procedure says that if a usurer, say one in one of the famine tracts, who has a special desire to possess his indebted neighbour's vineyard, which is mortgaged to him, puts in an application for foreclosure, the District or Sub-Judge 'may' sell him up, his fields, his wife's ornaments, all but a pair of bullocks, his plough and the materials of his house. Or Shylock 'may' apply to put the debtor in prison, a threat that only occasionally fails to bring the most recalcitrant debtor to his knees. You would think that in time of famine especially, the Court would have some discretion in a case of the kind. The Court 'may' sell up or imprison the debtor. You would think that the Legislative Council of the day meant, when it passed the section, that the Court 'may' do it, if it seems the just and proper thing to do. Not a bit of it—'may' is here mandatory and means 'must'. The Court may very likely find some ingenious way out of it. It will say to the usurer, 'Really, I think my old edition of Maxwell on this subject "may," that is, "must" be wrong. I will send home for the latest edition and adjourn the case for six months.' On the other hand, there is a section (326) of the Code of Civil Procedure authorizing a Collector to represent to the Court that a sale of property is objectionable, and the Court then 'may' authorize the Collector to provide for the settlement of the decree. Does 'may' here mean 'must'? Oh, no—It means, 'May if the Court likes'; and I have known a Court snub the Collector and say that it doesn't like. The Hon'ble Mr. Chalmers himself has admitted that if we want 'may' to mean 'may,' we must insert after it always the words 'if he so pleases.' Well, instead of altering the definitions of the Penal Code, cannot the Legislative Department have the old Acts examined, and put interpretation clauses in them, to say what the ordinary words mean, instead of telling men to go to text-books, which the Government of India does not supply, and which are not law in India? If only half the labour spent in going over.

and over the Acts, to pick out and repeal redundant but perfectly harmless expressions, such as 'Be it enacted,' 'for the purposes of this Act,' 'section so and so is repealed,' were devoted to making the Codes more intelligible, I doubt if I should have had any occasion to make these remarks.

"My Lord, I know that my hon'ble friend on my left is burning to say, of course in Parliamentary language, 'What has the like of thee to do with the interpretation of Codes—*ne sutor ultra crepidam.*' But, my Lord, I believe that what I say represents the views (be they right or wrong) of hundreds of your ablest servants administering the laws far away in the mufassal. They are the real rulers of the country whose convenience has to be considered. The multiplicity and gravity of their duties strains them nigh to the breaking-point and this Council has no right to add unnecessarily to the burden by meekly accepting the position that the interpretation of common terms in the Indian law is to be looked for outside the Statute-books. I appeal therefore to the Hon'ble Mr. Chalmers with the strongest possible confidence, not to bewilder the Civil Service of all ranks by needlessly altering the Penal Code which they so thoroughly understand. Speaking in their name I would respectfully press him to consider this as their prayer:—'Do not consider yourself bound to introduce every "dictum" or every "obiter dictum" of the English Courts of Law into India. Don't legislate over our heads. Cast out all expressions you can from the Indian law which necessitate references to English law-books. Strive to prevent the Upas-tree of English or Indian case-made law spreading. If the Courts decide that the law does not mean what plain men of intelligence, reading it, would understand, pray alter it and make it more clear. See if you cannot make a distinction between laws for the Presidency-towns where you have a highly complex mercantile system, based on English modes of doing business, and where there are solicitors and barristers who understand them, and for the mufassal,—in a word, for places that differ as widely as the Sind Frontier Regulation does from the Negotiable Instruments Act. In addition, try and make a simple just law of debtor and creditor, to stop the rampant mischief going on up-country. Then, indeed, when you retire you will carry with you the admiration and respect of the Civil Service, and, far more than that, the eternal gratitude of the people of India.'"

The Hon'ble SIR HENRY PRINSEP said:—"It was not my intention to trouble the Council with any observations of my own to-day, although I had some intimation that my hon'ble friend on my right (Mr. James) intended to address the Council on this subject; but as he has specially referred to me I only

wish to make one observation for his own special information with reference to the use of the word 'may' in the particular instance which he has cited. He seems to object to the interpretation which the Courts have put on that particular word in the way of holding that it imposes an obligation on the Courts to act, and he seems to think that when the law says that a Court may sell certain property in execution of a decree, it imposes no obligation.

"In the instance mentioned the Courts have very properly held that, although the word 'may' is here used by the Legislature, they are bound to act and have no discretion. They are under an obligation to discharge a public duty. The word 'may' is used rather than 'shall' not to indicate an absolute discretion in regard to such action, but as more appropriate than the imperative word 'shall' which would probably raise difficulties in the minds of some officers in applying such laws as the law of limitation which would restrict the action of a Court. But the Courts are bound to act unless so restrained and to execute decrees even by sale of the debtors' property. Personally I have some sympathy with the Hon'ble Mr. James in the observations he has made in regard to the use of the words 'good faith,' but as I understood from the discussion in the Committee that it was not intended in any future codification of the Penal Code to alter the law in this respect, I did not think it necessary to make any objection."

The Hon'ble SIR GRIFFITH EVANS said:—"I do not desire to make any lengthy observations upon what has fallen from the Hon'ble Mr. James. It is not necessary to have any debate when a Report is presented, but it is sometimes convenient that observations should be made, and I think it was very convenient that the Hon'ble Mr. James should make the remarks that he did now in order to draw attention in time instead of reserving them for the time when they really will have to be debated, that is the time when the consideration of the Report comes on. No vote is taken upon the presentation of the Report and no conclusion can be come to to-day.

"What I wish to say in this matter of the definition of 'good faith' in the General Clauses Acts is this. It is not really a matter of such great importance. It is merely a question really of what meaning those words shall bear in Acts drafted in future when there is no special definition given for them. In all future Acts it will be open to the Council either to insert the words 'good faith' without anything added to them, or without any restriction to them, in which case they will bear the meaning which is set down in the present clause, that is to say, that it will mean an act done honestly, though it may be negligently,

but, if for the purpose of any Act, as, for instance, the Penal Code, it is thought desirable to insist upon something more than honesty in order to constitute 'good faith,' it will be open to the Council always to have a special definition in that Act, and when the Penal Code is amended, it will, of course, be necessary to consider whether it is at all desirable to make any alteration in the present definition. If the Penal Code is re-enacted with the special definition of 'good faith,' which it now contains, that definition will override the definition in the General Clauses Acts, because the definitions in the General Clauses Acts are all governed by the clause which says that certain words are to mean so and so, unless the contrary is expressed, or unless the context compels a contrary interpretation. So that it is really a question of convenience as to whether we should put in any definition of good faith at all in the General Clauses Acts, and the matter will be open for discussion whether it is worth while to do so. The two courses that we can adopt when we come to the consideration of the Report are either to adopt the definition in the Bill or to leave 'good faith' without a definition in the General Clauses Acts and to put in special definitions in special Acts. Even now, if we were to pass an Act without any definition in the General Clauses Acts connected with transfers of property, and so on, using the words 'good faith,' the definition given in the Penal Code would not help the matter at all. We should have to refer to the context, to the meaning of the words in ordinary English, and to the Privy Council decisions and to the House of Lords' decisions, and might find the Privy Council decisions are not exactly the same as the House of Lords' decisions. It is purely a matter of convenience whether we should, when it comes to the discussion of this Report, retain this provision in order to give a fixed meaning to 'good faith' when used in future without qualification, or whether we should leave it without a general definition, bearing in mind that, if no special definition of good faith is inserted, and that, if we should use the words 'good faith' in an Act connected with the transfer of property or other matters, it would not be open to anybody to interpret that word by the aid of the Penal Code definition which is a special one. As I say, it is a matter of convenience and not a matter of cardinal importance, but the Hon'ble Member may rest assured that no one will dream of altering the definition in the Penal Code without consideration and without coming to the conclusion that that definition should be altered.

"As regards the exhortation which Mr. James has addressed to the Legal Member of Council to clear up those various ambiguities with regard to 'may' and 'shall,' I will leave it to the Legal Member to answer those observations."

The Hon'ble MR. CHALMERS said:—"I am much obliged to my friend Mr. James for his able and amusing remarks, first of all on this particular Bill, secondly, on Legislation generally, and thirdly on the legal profession at large. I do not propose to follow him the whole way through, but, although I listened with interest and attention to what he said, I must say that, as far as I am at present advised, I wholly disagree with him, and I am not convinced by his arguments. I wish particularly to deal with the definition of 'good faith' in the first instance. My friend Mr. James appealed to me not to introduce English law into India. I deny that this has anything to do with introducing English law into India. I plead guilty to introducing the English language into India for this purpose, and nothing more. It is not a question of law; it is a question of language. Those definitions that we give here are simply *primâ facie* definitions of the meaning of words. They lay down the meaning words will have in future Acts if the contrary is not expressed, and if there is nothing repugnant in the context or subject matter. It is a pure question of language. We are only dealing with the *primâ facie* meaning of a word. It is exactly to avoid those discussions in Court which my friend referred to that these definitions have been put in. We cannot, as Mr. James suggests, define every word in the English language that is used in an Act. You must limit your definitions somewhere, but there are certain common words which are continually occurring in Act after Act, and it is convenient to have a *primâ facie* meaning for them, that is to say, the meaning they should bear unless they are specially interpreted. As to 'good faith,' I admit, of course, that we have in this definition departed from the definition given by the Indian Penal Code. Now I think that may be justified on many grounds. In the first place the definition in one Act has absolutely no bearing on the use and meaning of a word in another Act. There is no clearer principle than that, if you put a definition into an Act, you put it in for the purpose of showing that you are using the word in that Act in a particular and peculiar sense. The fact that in future Acts 'good faith' will mean that a thing is done honestly whether a thing is done negligently or not, will in no wise affect the Penal Code or the construction of the Penal Code. Then comes the question of expediency. Why should we depart from the definition given by the Penal Code? I think there are various reasons for this. In the first place, as I say, our Acts are passed in the English language, and ultimately India is governed by English Statutes. It is inconvenient in the mass of Acts—I am not speaking where there is a special definition, but where we do not define—it is inconvenient that we should have a common ordinary English word used in a sense different to that in which it is used in English Statutes and different to

that by which it has been interpreted by English Courts and different to its use in ordinary language. Then, again, there is another cardinal rule that, in defining terms in common use, you should, as far as possible, keep to the ordinary and popular meaning of those terms. Now I think in the English language generally good faith is opposed to bad faith. I think we should hesitate to say that a man—I am speaking of a man in common life and not from the Penal Code point of view—but we should hesitate to say that a man who acted negligently acted in bad faith. Of course, there may be such negligence as to be evidence of bad faith. There may be a question of inference as to whether he acted in good faith or merely negligently. The two things in common language appear to be perfectly distinct. It is one thing to say a man acted in bad faith, and it is quite another and a different thing to say he acted negligently. Now as to the Penal Code my friend Mr. James is very much afraid that, if the Penal Code should be consolidated and re-enacted, its force will be weakened by reason of this definition existing in the General Clauses Acts. I think his fears are quite groundless. In the first place this Act is not retrospective. In the second place, if eventually we consolidate the various enactments amending the Penal Code, we should pursue one of two courses. I am assuming, of course, that we did not wish to change the law. One course would be to re-enact the Code and the definition of the Code. There would be nothing unusual in that. We should keep the old Indian Penal Code definition; throughout the Statute-book each special Act has its special definitions. There would be nothing anomalous in keeping the old definition of 'good faith' in the Penal Code, if it were convenient. I am inclined to think that a good many people would say that would be a convenient course to follow. But then there would be another course. We could omit the definition of 'good faith' given by the Penal Code, and then of course this definition would automatically apply, but we could not omit the words of the old definition in the different parts of the Indian Penal Code in which the expression 'good faith' is employed. You must read this old definition of 'good faith' into every section of the code where the term 'good faith' applies. Let me take section 79, which provides that 'nothing is an offence which is done by any person who is justified by law or who by reason of a mistake of fact and not by reason of a mistake of law in *good faith* believes himself to be justified by law in doing it.' Now I quite agree that, if we simply reproduce those words and repeal the definition, we shall be altering the law, but not consolidating it. We could not do that. What we should do would be this: We should have to insert in addition to the term 'good faith' the words which are omitted from the old definition. We should have to insert on the face of the Code that

'nothing is an offence that is done by any person who is justified by law or who by reason of a mistake of fact and not by reason of a mistake of law in *good faith and without negligence* believes himself to be justified by law in doing it.' Now it seems to me that if we did that it would have exactly the opposite effect to what the Hon'ble Mr. James fears. I think a Court which would hesitate to convict a man of bad faith, would not shrink from saying: 'Well undoubtedly you were negligent, and that brings you within the law, and I convict you on the ground of negligence.' My impression is that, if the existing definition were written out in full in the Code, that the law would rather be strengthened than weakened.

"Let me take another class of cases. The term good faith is used continually throughout the Statute-book. Let me remind you of a case where we used it the other day. In passing what is commonly known as the Plague Act, we put in a section protecting officers who acted in good faith. We protected them in respect of anything done or in good faith intended to be done under that Act. What is the interpretation to be put on good faith there? Is it to have that special interpretation which my friend Mr. James desires for it, or is it to have the interpretation which I think a right and fair one? If the case came up now it would have to be argued out in Court and, if a reference were made to the Penal Code, it would have no application to it. On the other hand, reference would no doubt be made to the English decisions and to the meaning of the words as used in English Statutes. I think the fair meaning is the meaning which we propose to give in this Bill. You know what pressure there is thrown upon officers now; how they are harried and pressed and overworked and overburdened in dealing with plague in Bombay. What we have done, if the English law and the English language is to be followed, is to protect the officer who may unintentionally, perhaps, go beyond his powers or outside his powers. We protect him if he acts in good faith. I admit that under that Plague Act the interpretation of 'good faith' is doubtful, but I should like for the future to put that interpretation beyond all doubt. I should like to protect the overstrained officer who really has done a thing *bonâ fide* and in good faith, even though the Court might say he has acted somewhat negligently. It is not only in the Penal Code that 'good faith' occurs; it occurs also in the English law, and it occurs in mercantile transactions. The rule laid down by clause (20) has been laid down in England unequivocally since 1836, and it is very inconvenient as I say in mercantile transactions where the transactions are between two countries that a different law should apply as between one country and another. There is nothing to prevent us in future legislation from

imposing liability on a man who has acted in good faith, but negligently. But when we wish to impose such a liability I think it is better to do so expressly. There are numerous cases where a man ought to be held liable for negligence, but then it is better to say so in terms. To pass away from that definition, I do not know whether I have satisfied my friend Mr. James or not, but at any rate I think I have satisfied him that there is a good deal to be said on both sides.

"Then with regard to the use of the terms 'may' and 'shall.' That is a matter which cannot very well be dealt with in an enactment. The only possible enactment would be an enactment to say that the English language should have the same meaning in England as in India and in India as in England. What the Courts in England (and I take it the Courts in India have held the same) is this, that *primâ facie* where the word 'may' is used it gives an option, but where a public officer is empowered to do a particular thing for the benefit of the public, he is in the position of a trustee, and there may be a duty outside the Act itself and he is bound to carry it out. Where there exists a duty outside the Act itself, then although a power is given he is bound to exercise it. That was the principle laid down in the House of Lords in the Bishop of Oxford's case. I argued that case myself and I argued strongly to the contrary and was beaten, but the law in England at any rate puts the rule upon an intelligible basis. I do not see how any legislation can affect that. You may have a duty outside the Statute itself, and that duty must be obeyed. The construction of 'may' as 'must' has only a real application in the case of public officers exercising a public trust. Then my friend Mr. James appeals to me generally to give up all ordinary legislation and introduce a law of debtor and creditor which will bring in the millennium. I am afraid I am sceptical as to my power to do that. I have spent much of my life as a Judge at home in dealing with cases of debtor and creditor there, but certainly no legislation can give common sense, and no legislation can prevent the needy from borrowing money to meet his present necessities at a high price which he shall have to pay for dearly in the future. I agree that we ought seriously and carefully to consider any proposition that is put before us, but as long as human nature is human nature, I do not think we can bring about any very startling change, or make poor men provident by paper Acts and Statutes. Legislation may make rich men poor, but I doubt if it can ever make the poor rich."

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved that the Bill to amend the Indian Emigration Act, 1883, be taken into consideration. He said:—"The

amendment is a very simple one. It alters only one section of the Indian Emigration Act, and as I explained to the Council last Thursday, its object is only to extend to Sarawak certain privileges in the matter of emigration which are enjoyed by the adjoining Straits Settlements."

The Hon'ble MR. REES said:—"The natives of India, who leave their country for the Straits Settlements and the adjoining territories, belong almost exclusively to the southern districts of the Madras Presidency, and this Bill provides for the extension of the comparatively free system, which is fortunately permitted in regard to the Straits Settlements and its protected Native States, to other neighbouring countries, in the administration of which the Government of India has confidence, which obtain their supply of labour from India through the agency of the Straits Immigration Department. For instance, Raja Brooke's Kingdom, which I abstain from calling by its name on account of the wide difference of opinion which prevails as to its proper pronunciation in the Malay archipelago and in other parts of the world.

"I have been familiar for many years in India with the classes, which the Bill will affect, and have also had some opportunity in the Straits Settlements of studying their position in that country and of enquiring into their circumstances in localities for labour in which they are recruited through the agency of the Straits Government. I may therefore be permitted to express the belief that the proposed extension will be to the advantage of the localities in question in the farther east to which these emigrants will proceed. It will also be to their own advantage. They will leave the Coromandel coast for that of Borneo, which much resembles the rich coast of Malabar, and they will return enriched by their savings.

"In spite of the very large increase in recent years of emigration to Burma, and in a less degree to the really more foreign country of Assam, and notwithstanding the steady flow of emigration to Ceylon, the population of Madras is still the most homekeeping in India. It is very slow to move in large numbers to a new field. Any measure, such as this which facilitates movement to a country in which the demand for Indian labour is in excess of the supply, must be advantageous. In the Straits and adjoining territories the Tamil cooly is highly valued and well cared for, just as he is on the plantations of south India. On the Madras tea and coffee estates he has grown accustomed to good pay and to good treatment, and as he is not likely to go farther and fare worse, there is no occasion for over solicitude in his behalf on the part of the Government. While the conditions of emigration from India to the Straits

were under consideration, a Governor of the latter province said it would be as easy to keep flies from honey as to keep the Tamil cooly from the Straits. Subsequent experience has proved the correctness of this view, and free passengers leave for the Straits annually in thousands. The present Bill will facilitate the flight of the flies to the honey, and provide a new, large and fertile field for its collection."

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN moved that the Bill be passed.

The motion was put and agreed to.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to amend the Indian Stamp Act, 1879. He said:—"The object of the Bill is to carry out two amendments in the Stamp Act. These two amendments relate to different subjects and are in no wise connected with each other. The first of them relates to documents which evidence the indebtedness of municipalities and other local authorities. When these local authorities issue public loans they issue to their creditors debentures and bonds in certain forms. Afterwards for the convenience of these creditors and for the purposes of transactions on the money-market in sale of those debentures, they carry out the steps which are known as renewal, consolidation and subdivision of those debentures; that is to say, they issue a new debenture in lieu of an old one; they sometimes issue a new debenture in lieu of more than one old one and they sometimes issue more than one debenture in lieu of an old one. According to the strict reading of the General Stamp Act, every debenture so issued, even if it is only a renewal in substitution for an old one, requires a stamp-duty to be paid upon it. As a matter of fact, in order to the convenience of business, we introduced a practice which is not in strict conformity with the Stamp Act, but it enables the business to be carried out, and the Government at the same time to levy the proper duty; that is to say, we tell the local authority that, if you pay up a half per cent. which is the rate of duty required upon the total amount of your loan, we will issue a notification under a certain section of the Act, which will exempt from all stamp-duty in future, not only the original debentures which are issued, but all debentures which in future may be issued in substitution for the original

ones. These notifications are very numerous, and in fact when we issued a consolidated notification two or three years ago, the mere enumeration of the bonds covered by these numerous exemptions occupied a few pages of the Gazette. But the fact remains that at present no debenture-holder of a municipality or District Board can absolutely know whether the document he holds is of legal validity, unless he turns up these notifications to ascertain whether or not his particular bond is enumerated among the exemptions. The object of the Bill, which I ask leave to introduce, is to apply to this practice of the Government of India the force and validity of law. The provision is that when a municipality or local authority raises a loan it shall pay to us the duty upon that loan, and that the debentures which it issues shall be exempt from all further duty. Moreover, we apply this law not only to future debentures but to past ones, and we word the Bill in such fashion that debentures are valid whether they actually bear stamp-duty or not, although the municipality, if it happens to have issued any debentures without stamp-duty, remains liable for the stamp-duty. After long enquiries we have found that, taking the whole of India together, nearly every existing debenture has been exempted, and there is, I think, only one small outlying municipality in Madras which has omitted to observe the provisions of the law, and which, I dare say, we shall have to call upon to pay up the ₹10 or ₹20 which it owes to us in respect of this omission.

"The second amendment which this Act introduces relates to a class of documents which have, ever since the last general Stamp Act was passed, entirely escaped the proper duty payable upon them. Article 60 of the General Stamp Act provides that a five-rupee stamp shall be the maximum chargeable in respect of the transfer of any interest secured by a bond, lease, mortgage-deed or policy of insurance. In the Stamp Act, which was in force before this Stamp Act of 1879 was passed, the word 'lease' did not occur, and nobody can find out how that word 'lease' came to be inserted in this new Stamp Act. The Bill of that time was in charge of Mr. Cockerell, and a few months after the Act had passed, his attention was drawn to the operation of this article when he happened to be inspecting the office of the Collector of Madras. He found that a transfer or conveyance of an estate of very large value which was held under a lease (as many of the tea and coffee estates are held under a lease from Government), was dealt with as a transfer of an interest secured by a lease. A pure conveyance of this sort ought obviously to bear a conveyance stamp which comes to about one per cent. on the whole value. He expressed his surprise that this article of the Stamp Act had been interpreted in this way, and stated what of course he knew to be the case, having been in

charge of the Bill, that it was intended for an entirely different purpose, and that this particular document on which only a five-rupee stamp had been paid was, in his opinion, really a conveyance on which a much higher stamp should have been paid. The question was, a short time after that, referred to the High Court of Madras and afterwards also the opinion of the High Court of Calcutta was taken on a similar question. They held, as they were bound to hold, in interpreting a law of taxation in the strictest sense, that a document of this sort was under the law stampable only with a stamp of five rupees. This was brought to the notice of the Government at the time, and it was decided that the point should be taken up when a general amendment of the Stamp Act came under consideration. I may mention also that at two subsequent periods two very eminent firms of solicitors have equally drawn our attention to this provision of the law, and pointed out that the result of it was that a pure conveyance of a valuable property, instead of being stamped, as under the Stamp Acts of other countries it would have been stamped, with a conveyance duty, was let off with the very small duty of five rupees only. I believe that we have under this provision of the law lost revenue which may be estimated by tens of lakhs of rupees. I would not ask the Council to pass an Act of the present kind for the simple purpose of enabling us to levy any new duty with the object of enhancing the stamp-revenue. The object we have in view is to remedy what is a distinct error in the law of 1879 and to remove from it a provision which makes the duty leviable on an important class of transactions, quite different in principle from that which is levied in England and other countries where stamp-duties are levied. The remedy we propose is simply the restitution of this particular Article 60 to the form it had before the Act of 1879 came into force, namely, by cancelling in it the word 'lease'; and we define in another part of the article that the transfer of a lease which is made by way of assignment and not by way of under lease, that is to say, that the transfer of a property which is held in leasehold tenure, is to be stamped in the same way as a conveyance is stamped."

The motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND introduced the Bill.

The Hon'ble SIR JAMES WESTLAND 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 11th March, 1897.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 5th March, 1897.

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