

*Friday,
4th November, 1898*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
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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., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 4th November, 1898.

P R E S E N T :

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

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

The Hon'ble M. D. Chalmers.

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

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

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

BURMA LAWS BILL.

The Hon'ble MR. CHALMERS moved that the Bill to declare the Regulations of the Bengal Code and Acts of the Governor General in Council now in force in Upper Burma and to make certain provisions regarding the law in Burma and other matters be taken into consideration. He said:—"When I introduced this Bill I explained its purport. The object of it is threefold. In the first place, it seeks to bring the law of Upper Burma in certain respects into conformity with the law of Lower Burma; in the second place, for the future it seeks to put Upper Burma on the same legal footing as Lower Burma, so that legislation which applies to British India as a whole will automatically apply to Upper Burma instead of having to be extended to it expressly; and, thirdly, it seeks to express clearly the laws which are now in force in Upper Burma. Many of those laws have been contained in notifications and do not appear on the face of the Statute-book itself. This Act will give an authoritative statement of the laws which are now, and which for the future will be, in force in Upper Burma and will facilitate the new edition of the Burma Code. Since the Bill was introduced we have had communications with the Government of Burma, and they have suggested, and in consultation with them we have arranged to insert, further amendments. I do not think that any of them require to be discussed in detail, but if any Member raises any point, I shall be happy

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to answer it. I do not, however, propose in moving the amendments to say anything about them."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that sub-clause (3) (*d*) of clause 4 of the Bill be omitted.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that in clause 5 of the Bill, after the word "administrative," the words "including revenue" be inserted.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the following amendments be made in clause 12 of the Bill, that is to say:—

- (1) that the word "and" at the end of sub-clause (1) (*c*) be omitted ;
 - (2) that the word "and" be added at the end of sub-clause (1) (*d*) ; and
 - (3) that the following sub-clause be inserted after sub-clause (1) (*d*), namely:—
- "(e) modify the system of taxation in the Shan States and regulate the assessment and collection of the revenue therein."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the following amendments be made in the first schedule to the Bill, that is to say:—

- (1) that the whole of the entry referring to Regulation XI of 1812 be omitted ;
- (2) that in column 4 for the word "Ditto", where it first occurs, the words "So much as is unrepealed" be substituted ;
- (3) that after the entry referring to Act XIV of 1882 the following be inserted, namely:—

XVIII	The Burma Steam-boilers and Prime-movers Act, 1882.	The whole Act.
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- (4) that in column 4, for the word "Ditto", where it occurs in the entry referring to Act XX of 1882, the words "So much as is unrepealed" be substituted ;
- (5) that after the entry referring to Act XIV of 1897 the following be inserted, namely:—

1898	11	The Indian Paper Currency Act, 1898	Ditto.
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(6) that after the entry referring to Act VI of 1893 the following be added, namely :—

„	IX	The Live-stock Importation Act, 1893	. Ditto.
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The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that in the second schedule to the Bill, in THE LIST OF OFFENCES therein set forth, the following be inserted at the beginning, namely :—

148 | Rioting armed with deadly weapon.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the following amendments be made in the third schedule to the Bill, that is to say :—

(1) that after the entry referring to Act II of 1876 the following be inserted, namely :—

1877	XIII	The Burma Embankment Act, 1877	. In section 7, clause (a), after charge insert or of which he is the owner.
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(2) that after the entry referring to Act XIX of 1881 the following be inserted, namely :—

1882	XVIII	The Burma Steam-boilers and Prime-movers Act, 1882.	In section 18, after clause (a) insert :— (aa) for delegating to Commissioners all or any of the powers conferred upon him by sections 3 and 9;
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(3) that after the entry referring to Act XXII of 1883 the following be inserted, namely :—

1887	XV	The Burma Military Police Act, 1887	. In section 1, sub-section (2), after and add applies to every member of the Burma military police-force, wherever he may be : and
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(4) that in column 4, in the entry referring to Regulation IX of 1887, after the words "Upper Chindwin" the following be inserted, namely :—

After Bhamo, insert Myitkyira.

(5) that in column 4 to the entry referring to Regulation XIV of 1887 the following be added, namely :—

After section 14 add :—

14A. (1) Whoever holds a *pwe* in any village without a license granted by the Deputy Commissioner, or by an officer appointed by the Deputy Commissioner in this behalf, or promotes the holding of, or takes part in, a *pwe* held without such license, shall be punished, on

Penalty for holding, promoting or taking part in, unlicensed *pwe*s.

conviction by a Magistrate, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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(2) No fee shall be paid on the application for, or on the issue of, the license required by sub-section (1).

(6) that after the entry referring to Regulation III of 1889 the following be inserted, namely :—

1891	VI	The Upper Burma Towns Regulation, 1891.	<p>After section 7 add :—</p> <p>7A. (1) Whoever holds a <i>phwe</i> in any village without a license granted by the Deputy Commissioner promoting or taking part in, unlicensed <i>phwes</i>, or by an officer appointed by the Deputy Commissioner in this behalf, or promotes the holding of, or takes part in, a <i>phwe</i> held without such license, shall be punished, on conviction by a Magistrate, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.</p> <p>(2) No fee shall be paid on the application for, or on the issue of, the license required by sub-section (1).</p>
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(7) that after the entry referring to Regulation V of 1892 the following be inserted, namely :—

1896	I	The Upper Burma Civil Courts Regulation, 1896.	<p>To section 12 add :—</p> <p>(4) The period of limitation for an appeal to the Divisional Court under clause (b) of sub-section (3) shall be sixty days, and in the computation of that period and in all other respects the limitation of the appeal shall be governed by the provisions of the Indian Limitation Act, 1877.</p> <p>To section 15 add :—</p> <p>The period of limitation for an appeal to the Court of the Judicial Commissioner under this section shall be ninety days, and in the computation of that period and in all other respects the limitation of the appeal shall be governed by the provisions of the Indian Limitation Act, 1877.</p>
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The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that from the fourth schedule to the Bill the whole of the entries referring to Act XXVI of 1854 and Regulation VI of 1896 be omitted.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the following amendments be made in the fifth schedule to the Bill, that is to say :—

(1) that after the entry referring to Act XX of 1853 the following be inserted, namely :—

1854	XXVI	Making better provision for the education of male minors subject to the superintendence of the Court of Wards.	The whole Act, in so far as it applies to Burma.
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- (2) that in column 4 to the entry referring to Act XV of 1879 the following be added, namely :—

In section 56, the proviso.

In section 67, *the word new in each of the places in which it occurs.*

- (3) that after the entry referring to Act XX of 1882 the following be inserted, namely :—

1884	XVII	The Burma Municipal Act, 1884 . . .	The whole Act.
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- (4) that after the entry referring to Act XVIII of 1888 the following be inserted, namely :—

„	XIX	Amending the Burma Municipal Act, 1884.	The whole Act.
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- (5) that in column 4, for the entry referring to Act XII of 1891 the following be substituted, namely :—

So much of the first schedule as relates to Acts XVII of 1884 and XIX of 1888, and so much of the second schedule as relates to Acts XIX of 1881 and XVII of 1884.

- (6) that after the entry referring to Act XIX of 1891 the following be inserted, namely :—

„	XXI	Amending the Lower Burma Municipal Act, 1884.	The whole Act.
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- (7) that after the entry referring to Act IX of 1894 the following be inserted, namely :—

„	XIV	Amending the Burma Municipal Act, 1884.	The whole Act.
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- (8) that in column 4, for the entry referring to Regulation IX of 1874 the following be substituted, namely :—

So much of the first division (*Acts*) of the schedule as relates to the Female Infanticide Prevention Act, 1870, and so much of the second division (*Bengal Regulations*) of the same as relates to the Bengal State Offences Regulation, 1804, and the Bengal Foreign Immigrants Regulation, 1812.

- (9) that after the entry referring to Regulation I of 1896 the following be inserted, namely :—

„	VI	Amending the Upper Burma Civil Courts Regulation, 1856.	The whole Regulation.
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The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the Bill, as amended, be passed.

The motion was put and agreed to.

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GLANDERS AND FARCY BILL.

The Hon'ble MR. RIVAZ moved for leave to introduce a Bill to consolidate and amend the law relating to Glanders and Farcy. He said :—“ The main object of this Bill is to give to Inspectors, who are appointed under the Glanders and Farcy Act, more general powers than they possess at present in respect of entry into, and inspection of, stables and other places, with a view to the seizure of diseased horses. It is also proposed to make the Act capable of application to any dangerous epidemic disease among horses other than glanders or farcy, but with the proviso that a horse which is found to be affected with any such other notified disease need not be immediately destroyed. And, as the Act of 1879 has been already twice substantially amended, it is considered desirable to repeal it altogether, and to re-enact it with the alterations now proposed.”

The motion was put and agreed to.

The Hon'ble MR. RIVAZ introduced the Bill.

The Hon'ble MR. RIVAZ 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.

CARRIERS BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to amend the Law relating to Carriers. He said :—“ For some years past we have had complaints from the River Steam Companies regarding the pressure of the existing law upon them. They complain that they are put in an unfair position. They are sued for the loss of goods or for damage to goods entrusted to them long after the loss or damage has occurred. By the very nature of their employment the witnesses who could disprove negligence are a shifting class who do not stay very long with the companies, and by the time the action is brought they have not the evidence necessary to meet the claim though they feel that they have a perfectly good defence to it. We were pressed to alter the burden of proof and to legislate to this effect, namely, that, when an action was brought against a carrier for damage to or loss of goods, the onus of proving that the damage or loss was caused by the negligence

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of the carrier should be thrown on the consignor or consignee who sued the carrier. We, of course, considered their representations and consulted a large body of mercantile opinion on that question, and we have come to the conclusion that we cannot go so far as that. It may be hard for the carrier to disprove negligence, but if we shifted the burden of proof it would, of course, be absolutely impossible for the consignor or consignee affirmatively to prove negligence. He can call no witness of his own who could prove negligence. We think the law in that respect cannot be altered, but there seems to be a considerable body of mercantile opinion in favour of making the law press less hardly upon inland carriers. We could hardly legislate for river steam vessels alone. They are after all only one class of carriers, but we think that some relaxation of the law may be made in favour of carriers as a whole.

“The present Bill contains two provisions. The first is this, that, when a carrier is to be sued for the loss or damage or non-delivery of the goods entrusted to him, the plaintiff must give him notice of action within six months of the time when the loss or damage first came to the complainant’s knowledge. He need not bring his action within six months, but must give notice of his claim. And then the second clause provides that the action itself must be brought within a year. We think that will be a fair relaxation of the present law. It will give carriers timely notice of the claims which are made against them, and will enable them to retain, if necessary, the evidence which they may have to rebut the charge of negligence. This Bill will, of course, be considered in Calcutta, where we shall have the benefit of mercantile opinion on its provisions, and it will be referred to a Select Committee on which mercantile opinion will be represented.”

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 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.

CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

The Hon’ble MAJOR-GENERAL SIR EDWIN COLLEN moved for leave to introduce a Bill to make better provision for securing house-accommodation

[*Major-General Sir Edwin Colleen.*] [4TH NOVEMBER,

for officers in cantonments. He said:—"For many years past we have had under consideration the question of house-accommodation in cantonments. In the early days of the British dominion in India, the camps, stations and posts of the field army developed into cantonments where troops were stationed in garrison. These cantonments were localities set apart for the troops, and were intended for their use only, but, as time went on, non-military persons were permitted to reside in cantonments under the regulations of the day; land was occupied, and houses were built for the accommodation of officers and for other purposes, under the rules and conditions prevailing at the time.

"In later years, owing to various circumstances, great difficulties have been experienced in working the regulations applicable to cantonments, and the difficulties of finding suitable accommodation for officers—especially for those obliged to live in a particular part of cantonments—have much increased.

"The whole question has been exhaustively considered by officers specially appointed, by committees, and by other authorities; it has been discussed in every possible aspect, and the investigation has spread over a great many years. The present Bill is the outcome of that discussion; the objections raised have been carefully considered, and we have recognised that the conditions of ownership and tenancy must be governed by the regulations in force when any particular house was built. But as cantonments are and were intended for the occupation of troops, and as the whole of the land belongs, as a general rule, to the State, and houses were built in many cases by persons who had no status in cantonments, not for their own use, but as a source of profit, we consider that it is not inequitable to lay upon house-owners the burden of proving that they hold their grants under special conditions, and ought not to be subjected to the provisions which convenience and military requirements dictate in a locality which has been set apart for military purposes. The necessity for securing house-accommodation for the military and civil officers of the Government is essential, but we have endeavoured to safeguard the interests of the house-owners, and to remove any reasons for complaint on the part of the latter.

"It will be observed that in the Bill the Cantonment Rules have at present been indefinitely referred to, inasmuch as that, though prepared and published for criticism some time ago, they have not yet come into force. It is intended, however, to bring them into operation before the Bill becomes law. These rules will provide fully for the matters dealt with in the Bill so far as grants made under them will be concerned. Consequently, I may point out that the operation of the Bill will be practically restricted to past grants only. •

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[Major-General Sir Edwin Colten.]

“The Statement of Objects and Reasons deals fully with the important clauses of the Bill, and I need not at the present moment say more than that the proposed legislation is greatly required, and that I believe it will place the relations of landlords and tenants in military cantonments on an equitable basis, and will be a valuable remedial measure for what is now a most unsatisfactory state of things.”

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN introduced the Bill.

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN 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 *sine die*.

SIMLA ;
The 4th November, 1898. }

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