

*Friday,
18th January, 1901*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XL

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

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1902

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 Government House, Calcutta, on Friday, the 18th January, 1901.

PRESENT:

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir John Woodburn, K.C.S.I., Lieutenant-Governor of Bengal.

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

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

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

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. F.G. Law, K.C.M.G.

The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.

The Hon'ble Kunwar Sir Harnam Singh, Ahluwalia, K.C.I.E., of Kapurthala.

The Hon'ble Mr. J. Buckingham, C.I.E.

The Hon'ble Mr. H. F. Evans, C.S.I.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Sir Allan Arthur, Kt.

The Hon'ble Mr. P. M. Mehta, C.I.E.

The Hon'ble Sir A. Wingate, K.C.I.E.

The Hon'ble Mr. D. M. Smeaton, C.S.I.

The Hon'ble Mr. H. J. S. Cotton, C.S.I.

The Hon'ble Mr. C. W. Bolton, C.S.I.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. R. P. Ashton.

The Hon'ble Mr. R. H. Henderson.

NEW MEMBERS.

The Hon'ble MR. MEHTA, the Hon'ble MR. ASHTON and the Hon'ble MR. HENDERSON took their seats as Additional Members of Council.

INDIAN PORTS BILL.

The Hon'ble MR. RALEIGH moved that the Bill further to amend the Indian Ports Act, 1889, be referred to a Select Committee consisting of the

4 PORTS; AMENDMENT OF CENTRAL PROVINCES CIVIL COURTS; AMENDMENT OF ADMINISTRATOR GENERAL'S ACT, 1874.

[*Mr. Raleigh; Sir Charles Rivaz.*] [18TH JANUARY, 1901.]

Hon'ble Sir Charles Rivaz, the Hon'ble Sir Edward Law, the Hon'ble Rai Bahadur P. Ananda Charlu, the Hon'ble Sir Allan Arthur and the mover.

The motion was put and agreed to.

CENTRAL PROVINCES CIVIL COURTS (AMENDMENT) BILL.

The Hon'ble MR. RALEIGH moved for leave to introduce a Bill further to amend the law relating to Civil Courts in the Central Provinces. He said:—"By the Central Provinces Civil Courts Act, 1885, section 12, the Chief Commissioner is empowered to invest any person with all or any of the judicial powers of a Commissioner, and the person so invested is designated Judicial Assistant to the Commissioner. The title is no longer appropriate, for the Commissioner has ceased to take judicial work on the civil side. The Chief Commissioner proposes that the Judicial Assistants should in future be called Divisional Judges, and that he should himself be empowered to fix the limits of the divisions to which they are assigned. I now ask leave to introduce a Bill to give effect to this proposal. I ought perhaps to say that other amendments in the Civil Courts Act are in contemplation, and that we may before long ask the Council to repeal and re-enact it. In the meantime, we propose to make the textual amendments set forth in the Bill."

The motion was put and agreed to.

The Hon'ble MR. RALEIGH introduced the Bill.

The Hon'ble MR. RALEIGH moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Administration thinks fit.

The motion was put and agreed to.

ADMINISTRATOR GENERAL'S ACT (AMENDMENT) BILL.

The Hon'ble SIR CHARLES RIVAZ moved for leave to introduce a Bill further to amend the Administrator General's Act, 1874. He said:—"The question of affording relief to the Native Christian community in India in respect of the disadvantages to which they are at present subjected through the unequal operation of the law relating to probate and administration, has for

some time past engaged the attention of the Government of India. The position of Native Christians in this matter is explained in the Statement of Objects and Reasons attached to the Bill which I have asked leave to introduce, and I need not repeat what is said therein. When the Court-fees Amendment Act was under discussion in this Council two years ago, the grievances of the Native Christian community in regard to their liability to payment of succession-duties were noticed by several Hon'ble Members, and a promise was made on behalf of the Government of India that the representations then made should receive careful consideration. The Local Governments were accordingly consulted.

“ In the course of the consideration of the subject, three proposals were put forward for achieving the end in view. The first of these was to exempt Native Christians from the operation of sections 187, 190 and 239 of the Indian Succession Act. The objection to adopting this suggestion was that, owing to the provisions of the Succession Certificate Act of 1889 and of the Hindu Wills Act, the position of the Native Christian community relatively to other members of their race would be affected in a somewhat anomalous way. Another suggestion was that the limit of exemption from payment of duty on probates and letters of administration should be raised from its present figure Rs. 1,000 to Rs. 5,000. Such action, however, while sacrificing a certain amount of revenue, would leave the grievance in question entirely untouched in so far as it affects well-to-do members of the Native Christian community, and would only partially improve the position of the remainder. The third proposal, which was put forward by the Madras Government, was to exempt Native Christians from the provisions of certain sections of the Administrator General's Act. This has been accepted by the Government of India as seeming to be the simplest and most effective method of dealing with the question, and it has accordingly been embodied in the present Bill. The exemption thus proposed will do for Native Christians what was done for Parsis by Act IX of 1881 ; it will relieve the community from the interference of the Administrator General in certain cases, and will enable them to avoid taking out probate, and therefore to escape payment of probate-duty, in cases where an estate is amicably distributed. The action thus proposed will not, I must admit, owing to the complex character of our scattered legislation on the subject of probate and administration, place Native Christians on terms of absolute equality in every respect with other Natives of India, but the Government of India consider that it will be a substantial and adequate recognition of the grievance which they are pledged to, as far as possible, redress.”

[Mr. Raleigh.] [18TH JANUARY, 1901.]

The Hon'ble MR. RALEIGH said :—" My hon'ble colleague has remarked upon the scattered nature of our legislation. With Your Lordship's permission I will endeavour to put together a few of the fragments, and to give some further explanation of the measure now to be introduced.

" We had before us several projects for the amendment of the law. It was proposed to raise the limit below which probate-duty is not leviable. The proposal had some attractions for my Department, because it would only have been necessary to alter a figure in the schedule to the Court-fees Act. But we felt, as the Council will probably feel, that this would not have been a direct answer to the memorials which were before Government. We should have given the petitioners relief, not because they were Christians following Native usages, but simply because they were poor.

" We turned to the proposal which we now recommend for adoption. The payment of probate-duty is in many cases compulsory, because, if the parties do not take out probate or letters of administration, the Administrator General is authorised and required to intervene. Payment is rendered optional, in a large class of cases, if the parties are exempted from the provisions of the Administrator General's Act. This concession has been made to Hindus, Muhammadans and Buddhists, and finally to Parsis. We propose now to extend it to Native Christians.

" If the proposal is adopted the effect will be to relieve the parties from paying duty in all cases where an estate is amicably got together and distributed. Even in this litigious country, one may express the hope that the great majority of Christian estates are and will continue to be distributed without litigation.

" It will still be necessary to take out probate or administration in all cases where an executor, legatee or next of kin has to prove his right in a Court of Justice. We do not ask the Council to accede to the proposal that Native Christians should be exempted from sections 187 and 190 of the Indian Succession Act. We recognise that it may be considered oppressive if we say, as the law now says, to members of a Native community, ' Even if you are distributing an estate amicably, and in accordance with your own usages, we shall bring in the Administrator General and make you pay the duty.' But there is no obvious injustice in saying, ' If you cannot collect and distribute your estates without invoking the aid of our Courts, you must comply with our law of administration.'

" There is also a special reason which would make it difficult to exempt the memorialists from section 187. That section has been incorporated in the

7 *AMENDMENT OF ADMINISTRATOR GENERAL'S ACT, 1874.*
[18TH JANUARY, 1901.] [*Mr. Raleigh; Sir Charles Rivaz.*]

Hindu Wills Act, which applies to Lower Bengal and to all Presidency-towns—that is, to those parts of India in which a Native, whether Hindu or Christian, is most likely to die testate and leaving property. We cannot well exempt the Christian in cases where the Hindu is made to pay. If then we gave a general exemption from section 187, we should have to qualify it by excluding all cases analogous to the cases which are governed by the Hindu Wills Act. The form of our legislation would be rather confusing; its practical result would be to some extent illusory. We should give a concession with one hand, and take away a valuable part of it with the other.

“Complaint has been made in regard to the power given by section 239 of the Indian Succession Act to the District Judge to intervene and to retain possession of property until probate or administration is taken out. But the power is to be exercised only on the application of a person interested, or when the Judge himself thinks it necessary to intervene. The words ‘for the protection of the property’ are sufficient to give the Judge a discretion. If there be any class of cases in which the intervention of the Judge involves hardship to any party, an exemption from this particular section may be given by the Executive Government under section 332.

“The Bill which my hon'ble colleague has asked leave to introduce will not simplify the law, nor will it place the members of all religious communities on a footing of perfect equality. We can only do that by making persons of all religions pay the same duties; but to take this course would involve the withdrawal of privileges long enjoyed and not unsuited to our administrative traditions. The Bill now to be introduced will give, as we contend, an appreciable measure of relief and will give it in those cases which are best entitled to our favourable consideration.”

The motion was put and agreed to.

The Hon'ble SIR CHARLES RIVAZ introduced the Bill.

The Hon'ble SIR CHARLES 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.

The Council adjourned to Friday, the 1st February, 1901.

CALCUTTA; }
The 18th January, 1901. }
J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.