

*Friday,
13th March, 1903*

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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ASSEMBLED FOR THE PURPOSE OF MAKING
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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 Government House, Calcutta, on Friday, the 13th March, 1903.

PRESENT :

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

His Honour Mr. J. A. Bourdillon, C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. T. Raleigh, C.S.I.

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

The Hon'ble Major-General Sir E. R. Elles, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Mr. Gopal Krishna Gokhale.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Mr. L. P. Pugh.

The Hon'ble Sayyid Husain Bilgrami.

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

The Hon'ble Sir M. C. Turner, Kt.

The Hon'ble Mr. G. C. Whitworth.

The Hon'ble Mr. R. F. Rampini.

The Hon'ble Mr. G. F. T. Power.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. A. W. Cruickshank, C.S.I.

His Highness Raja Sir Surindar Bikram Prakash Bahadur, K.C.S.I., of Sirmur.

His Highness Agha Sir Sultan Muhammad Shah, Agha Khan, G.C.I.E.

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

QUESTIONS AND ANSWERS.

The Hon'ble MR. GOKHALE asked:—"Will Government be pleased to state what steps, if any, have been taken by the Government of India to

[*Sir Denzil Ibbetson; Mr. Gokhale.*] [13TH MARCH, 1903.]

give effect to the recommendations made by the last Famine Commission (presided over by Sir Antony MacDonnell) in paragraphs 232-235 of their Report in the matter of Famine Orphans?"

The Hon'ble SIR DENZIL IBBETSON replied :—"The recommendations in question have been unreservedly accepted by the Government of India; and Local Governments have been directed to embody them in their Famine Codes, the revision of which is only awaiting the final decision of the Secretary of State upon certain questions of importance which have been referred to him."

The Hon'ble MR. GOKHALE asked :—"Will Government be pleased to state why the usual practice of publishing the Minutes of Evidence, recorded by important Commissions, has been departed from in the case of the last Famine Commission as also the Universities Commission. And in view of the fact that it is of great importance to the public—and especially to students of these questions—to have access to such valuable material, will Government be pleased to direct that the evidence recorded by these two Commissions be published at an early date?"

The Hon'ble SIR DENZIL IBBETSON replied :—"There are good reasons for which it has been found impossible to publish the evidence given before the Famine Commission of 1900, the Universities Commission, or the Irrigation Commission. The evidence offered to these Commissions consists of two parts, written and oral. The former includes an infinity of repetition; while, owing to the difficulty of obtaining competent short-hand writers in India, it is almost impossible to record the latter *verbatim*, and, in the case of the Universities Commission, nothing but an abstract was attempted. The bulk of the evidence is enormous, its publication *in extenso* would be very costly and involve great delay, while the reproduction of selected portions only would be open to obvious objections. The recent inquiries have been conducted in public, representatives of the Press being at liberty to attend, and abstracts of the evidence have regularly appeared in the newspapers. Finally, some of the witnesses stipulate that their evidence shall not be published. For these reasons, the Government of India are unable to reconsider their decision in the matter."

The Hon'ble MR. GOKHALE asked :—"Will Government be pleased to state whether any communication has been received from the Secretary of State for India in regard to the Conference recommended by the President of the United States in the matter of the future of silver. If any such communi-

[13TH MARCH, 1903.] [*Sir Edward Law; Mr. Raleigh; Mr. Arundel.*]

cation has been received, will Government indicate to the Council the nature of its contents?"

The Hon'ble SIR EDWARD LAW replied:—"The Government of India have not received any communication from the Secretary of State on the subject, nor have they information as to any communication having been received by the British Foreign Office from the United States Government in connection with the matter."

CODE OF CIVIL PROCEDURE.

The Hon'ble MR. RALEIGH presented the Report of the Select Committee on the Bill to consolidate and amend the Law relating to the Procedure of the Courts of Civil Judicature. He said:—"Since November last this Committee has been sitting almost daily, and I hope that the improvements to be effected in our Civil Procedure may bear some proportion to the labour which my Hon'ble Colleagues have devoted to the subject. The difficulties of our task are indicated in the Report and in the notes of dissent which three Hon'ble Members have recorded. It is impossible, within the compass of a speech in Council, to give any adequate account of the changes which the Committee propose to make in the Bill as referred, or even to indicate the points which will have to be re-considered when the Bill is taken up again next winter. The Bill is now reported for republication only."

INDIAN ELECTRICITY BILL.

The Hon'ble MR. ARUNDEL moved that the Report of the Select Committee on the Bill to make better provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes be taken into consideration. He said:—"My Lord, in moving that the Electricity Bill be taken into consideration, I beg leave to offer a few observations on criticisms that have been received since I presented the Report of the Select Committee to this Council.

"*Clause 4 (2) (c).*—With reference to the failure of a licensee to proceed with his undertaking, the insertion of the words 'not being a local authority' has been objected to as likely to encourage local authorities to take out licenses and do nothing with them. This is said to have been a most fruitful source of evil and delay in England. The reason for the addition is that no local authority can take out or take over a license except with the previous consent of the Local Government, which would have to be satisfied that the local authority

was in a proper position, financially and administratively, to work an electrical undertaking with success. There is therefore no question as to the status of the local authority as there is in the case of a private applicant, and no need to require a deposit or security. The Local Government in India exercises a much greater control over local authorities than the Board of Trade does in England, and there is no ground whatever for the apprehension expressed in the criticism.

“ *Clause 13 (3)*.—A limit of six weeks to a temporary aerial line is said to be insufficient. Arguments can be advanced for and against all arbitrary limits of time. The Select Committee consider that for a temporary aerial line erected as a makeshift in case of accident pending efficient repair or reconstruction of the regular supply line, six weeks is sufficient. There should be no difficulty in laying a temporary main which could be made permanent eventually.

“ *Clause 39 (3) (b)*.—This clause, which renders a licensee liable to fine if he fails to prevent any variation of pressure exceeding the limits prescribed by rules under the Act, is regarded with different feelings by the licensees and by the consumers.

“ The licensee objects to be held responsible for a failure which he may not be able to prevent. The consumer, on the other hand, urges that when he once has electric fans and lamps in his house, his punkahs and kerosine lamps are removed, and if the electric energy fails, he is left helpless in darkness and in heat. It is alleged that failure of energy may be due to the licensee endeavouring to supply more houses than his generating apparatus and supply-lines justify. It has been thought necessary that the licensee who lies under a duty to the public should have the strongest inducement not to permit failure under any circumstances. The rules under the Act will lay down the permissible variation of pressure, and the Magistrate may be trusted to dispose of a vexatious or unreasonable prosecution in the way it deserves.

“ *Clauses 3 (1) and 31 (1)*.—The question has been asked why railways and certain classes of tramways are excluded from the Bill. The answer is that railways and tramways under the Railway Act may now be worked by any motive power, including electricity, and that the companies working them need not be required to take out licenses.

“ *Clauses 5 (e) and 7 (2)*.—It has been asked how a Local Government would proceed if it purchased an undertaking. The Local Government could not, if it acquired an undertaking, appropriately issue a license to itself. It is diffi-

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[*Mr. Arundel.*]

cult to forecast the future, but it seems improbable that Local Governments will need to use the powers of purchase in respect of any ordinary undertaking, or that any occasion for using them can arise for the next forty-two years, except by failure of a licensee. The power of purchase by the Local Government is one that it is desirable to keep in reserve for unforeseen eventualities.

“*Clause 27.*—It has been objected that clause 27 does not sufficiently safeguard the owner of a telegraph or telephone line. Licensees under the Telegraph Act can, if necessary, be further protected by a rule requiring a licensee to give notice to the owner of the telegraph or telephone line, or by executive order to the telegraph authority, to communicate to such person any notice he may have received from a licensee. The point will be considered in the framing of rules under the Act.

“*Clauses 32 and 33.*—It has been urged that all engineering and electrical technical matters arising out of the Act as well as out of the rules should necessarily be referred to an Advisory Board. It is only in Provinces where electrical undertakings are in progress that the necessary experts can be found to be members of an Advisory Board, and it was therefore necessary to make the provisions of the Bill permissive. I may say, however, that if the Bill is passed by this Council, an Advisory Board will be appointed as soon as it comes into effect, and I anticipate that every Local Government will appoint one as soon as the progress of electrical undertakings renders the need of expert advice apparent.

“Since I presented the Report of the Select Committee, a strong desire has been expressed by a number of firms interested in the Bill that it should be passed into law without further delay. The Act, when passed, however, cannot be allowed to come into effect until the rules under it have been framed. In order to meet the wishes of those interested in the matter, it has been arranged that, on the passing of the Bill by this Council, a Committee shall assemble, to consist I hope of the same gentlemen who will be appointed members of the Advisory Board as soon as the Act takes effect and thus secure continuity of action. This Committee will at once draw up rules under the Act, and, after the rules have been examined by the Government of India, they will, under the provisions of the General Clauses Act, be published for three months, and, as finally approved, will come into effect by notification at the same time as the Act itself. Any new rules, or any alteration of rules, that may be necessary, will then fall under the consideration of the Advisory Board.”

The motion was put and agreed to.

[*Mr. Arundel; Sir Montagu Turner; Sir Denzil Ibbetson.*] [13TH MARCH, 1903.]

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

The Hon'ble SIR MONTAGU TURNER said:—"In their letter of 11th September, 1902, to the Government of Bengal, the Bengal Chamber of Commerce wrote in reference to the Bill as follows: 'What is wanted in this country is a liberal and enlightened Act equally applicable to all areas and companies and under which electrical enterprises will develop. The Committee would desire respectfully to urge upon Government that great care should be taken to avoid reproducing the disastrous restrictions which have so far fettered the development of electrical industry and enterprise in England.' The Select Committee have kept this expression of opinion carefully before them, and have done their utmost to produce a Bill which will encourage the development of electrical undertakings throughout this country, at the same time having due regard for the interests of others. For, in connection with this Bill, there are various interests to be considered; the interests of the licensees, of the consumers or the public at large, the local authorities and the Local Governments. With such varied and at times opposing interests, it would be impossible to produce a Bill giving complete satisfaction to all concerned, and I contend that the present Bill should be considered satisfactory under all the circumstances mentioned. It must also be remembered that we have to legislate not only for the Presidency-towns, but also for the smaller towns in India where municipal life is at present in its infancy.

"I attach great importance to clauses 32-34, which provide for the appointment of Advisory Boards, whose primary duty it will be to assist the Government of India and the Local Governments in the making of rules for the working of electrical undertakings throughout India. But beyond this their services should be availed of, and doubtless will be availed of, in many technical questions which require the knowledge of experts for their satisfactory solution."

The motion was put and agreed to.

PROVIDENT FUNDS (AMENDMENT) BILL.

The Hon'ble SIR DENZIL IBBETSON moved that the Report of the Select Committee on the Bill further to amend the Provident Funds Act, 1897, be taken into consideration. He said:—"I have nothing to add to the observations which I made when introducing the Bill and presenting the Report of the Select Committee."

The motion was put and agreed to.

[13TH MARCH, 1903.] [*Sir Denzil Ibbetson; Sir Edward Law;*
Sir Montagu Turner.]

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INDIAN PORTS (AMENDMENT) BILL.

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

The motion was put and agreed to.

The Hon'ble SIR EDWARD LAW moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INDIAN PAPER CURRENCY (AMENDMENT) BILL.

The Hon'ble SIR EDWARD LAW moved that the Bill further to amend the Indian Paper Currency Act, 1882, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR MONTAGU TURNER moved that for sub-clause (3) of the new section 17 of the Indian Paper Currency Act, 1882, proposed to be substituted by clause 2 of the Bill, the following be substituted, namely:—

- “(3) A currency note for any amount exceeding five rupees shall be payable only—
- (a) at an office of issue of the town from which it was issued, and
 - (b) in the case of notes issued from any town not situate in Burma, also at the Presidency-town of the Presidency within which that town is situate.”

He said:—“The Bill, so far as it extends the convertibility of five-rupee notes, will commend itself to the mercantile community, but, inasmuch as clause 3 curtails the convertibility of notes exceeding Rs. 5 in value, I consider it a retrograde step. It is a suggestion on which the interested public bodies should have an opportunity of expressing their views.”

The Hon'ble SIR EDWARD LAW said:—“I regret to be unable to accept the view of the Hon'ble Sir Montagu Turner as to any retrograde step having been proposed. But the particular clause to which the Hon'ble Member refers, and with reference to which he has proposed an amendment, deals

[*Sir Edward Law; Sir Denzil Ibbetson.*] [13TH MARCH, 1903.]

with a question which is not immediately or necessarily connected with that of the introduction of the universal five-rupee note. I therefore am prepared to accept his amendment on behalf of Government, leaving the question which is now postponed to be dealt with in the Bill which we contemplate introducing for the general amendment of the Currency Act, at a future date—probably next session."

The motion was put and agreed to.

The Hon'ble SIR EDWARD LAW moved that the Bill, as amended, be passed.

The motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble SIR DENZIL IBBETSON moved for leave to introduce a Bill to make better provision for the organization and administration of municipalities in the Central Provinces. He said:—"My Lord, the Municipal Act at present in force in the Central Provinces was passed in 1889, or thirteen years ago. On the whole, it has worked satisfactorily; and it is not now proposed to make any radical changes in the municipal law and practice of the Province. But, as was to be expected, experience of its operation has disclosed certain defects and omissions which it is desirable to remedy or supply. It is proposed therefore to recast the present Act, and at the same time to introduce certain provisions taken from the municipal law of other Provinces, which have been found to work well in practice, and which are suited to the local conditions. It is, for instance, proposed to follow the example of several other Provinces, and provide for those small rural towns to which an elaborate municipal organization is unsuited a simple system of local taxation and sanitary control.

"The Bill which I am about to ask leave to introduce contains no startling innovations, nor even any radical departure from the existing law. In many respects, indeed, provisions which are new so far as the law is concerned, simply reproduce already existing practice to which it is desirable to give direct legal sanction. As the marginal references will show, almost every section finds its counterpart in one or other of the existing Municipal Acts. Above all, it has been the aim of the drafters to keep the proposed law as simple as possible, since it will apply for the most part to towns of no great size or importance."

The motion was put and agreed to.

The Hon'ble SIR DENZIL IBBETSON introduced the Bill.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, together with the Statement of Objects and Reasons relating thereto, 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.

VICTORIA MEMORIAL BILL.

The Hon'ble SIR DENZIL IBBETSON moved for leave to introduce a Bill to provide for the erection and management of the Victoria Memorial at Calcutta. He said :—“ My Lord, Hon'ble Members will remember that just two years ago His Excellency the Viceroy presided at a public meeting in Calcutta which had been convened for the purpose of considering the best method of commemorating the life and reign of Her late Gracious Majesty Queen Victoria. At that meeting a subscription for this purpose was set on foot, and a Provisional Executive Committee was appointed to receive the money which might be collected.

“ The Chiefs and people of India responded liberally to the appeal, and a sum of some 50 lakhs has already been promised. Meanwhile, it has been decided that the Memorial shall take the form of a stately Hall to be erected in Calcutta ; an architect of eminence is elaborating the design ; and the moment is approaching at which it will become necessary to apply to this purpose the funds which at present stand to the credit of an impersonal account upon which no one has authority to draw, and to proceed with the actual erection of the Monument.

“ Till now the proceedings have been so far informal that they have rested upon no legal basis. It has now become necessary to provide by legislation for the vesting of the moneys which have been subscribed and of the building which is to be erected, in a legally constituted body of Trustees who shall have power to authorize the necessary expenditure. Two courses were possible : to vest the property in two or three gentlemen who should be appointed for the technical purposes of the trust, and to arrange outside the Act for the erection and management of the Memorial ; or, to constitute a larger and more representative body, with whom should rest both the technical property and the executive control. The latter is the course that has been adopted in the case of the British Museum in London and of our own Indian Museum in Calcutta, and it was felt that no better precedents could be followed. This, therefore, is the object of the Bill which I ask leave to introduce.

[Sir Denzil Ibbetson.] [13TH MARCH, 1903.]

“Two only of the five clauses of which the Bill consists, appear to call for any comment from me. Clause 2 prescribes the constitution of the body of Trustees. It will consist of certain high officials, of two personages of high rank to be chosen by the Viceroy as representing the Chiefs and Nobles of India who have so liberally subscribed to the Memorial Fund, of the President and Chairman of the two bodies, most representative of the Calcutta community, and, under sub-clause (h), of a number of members to be nominated from time to time by the Trustees with the approval of the Governor General, who shall represent the general body of subscribers.

“When this body of Trustees is once fully constituted, it will fairly represent all the interests concerned. Should, however, the objection be taken that until the representatives who are to be nominated under sub-clause (h) have been appointed, the majority of the Trustees by whom they must be selected will be official, the answer to such a criticism, if any answer be required, is that no other course is really open to us. The only alternative would be that they should be appointed either by the Governor General or by the Government of India. This being so, it is unavoidable that the first selection should be made by an incomplete body constituted in the manner which I have just described. Of course, when the Trustees hold their first meeting for the purpose of this selection, due attention will be paid by them to the proper representation of all interests, and a preponderating claim will be possessed by those who have already so freely and generously given their services in the work hitherto undertaken in connection with the Memorial.

“The other provisions of the Bill which call for a word of comment are those of clause 5, which vest in the Governor General in Council the power of making rules to carry out the purposes of the Act. Here, again, no other course seems open to us. I think all Hon'ble Members will agree with me that the fewer formal rules we have, the better, since every such rule that is added to the number, *pro tanto* fetters the discretion and the freedom of action which it is essential that the main body of Trustees and its Executive Committees should enjoy. It is on this basis that the few simple rules which are appended to the Statement of Objects and Reasons have been framed. But it is impossible to say, until actual experience teaches us, exactly what rules will be required, or how any particular rule will work; and it is almost certain that, as soon as the actual building is begun, it will be found necessary to make alterations and additions in the present draft. So long as the rules are merely rules under an Act, this can be done at any moment. But it is impossible to be constantly tinkering a Statute.

[13TH MARCH, 1903.] [Sir Denzil Ibbetson; The President.]

“As for the draft rules themselves, they are not properly before the Council, being published merely in order that the public, who are so closely interested in the scheme to which their subscriptions are to be devoted, may see how it is proposed in the first instance to exercise the power conferred by clause 5 of the Bill. But I may perhaps say a word in explanation of rule 8, which prescribes that the Committees which the Trustees may appoint from among their number shall at least include a Building Committee. Even in the present preliminary stage, His Excellency the Viceroy has found it necessary to constitute a small body of this nature in order to assist and advise in the preparatory arrangements. And if some such body was needed then, it will be more than ever necessary when the actual work of erection is taken in hand. There will then be an infinity of small details to be settled with the architect, the engineer, and the various contractors, which can be promptly and effectively dealt with only by a small Committee of practical men, resident on the spot and keenly interested in the success of the undertaking. It will be impossible to define precisely the powers and duties of this Committee until the general scheme of operations has been decided upon by the Trustees. But, when that has once been done, it will be easy to add the necessary provisions to the rules.”

The motion was put and agreed to.

The Hon'ble SIR DENZIL IBBETSON introduced the Bill.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India and in the local official Gazettes in English. He said:—“The Bill is so simple that it is not thought necessary to refer it to a Select Committee, and I propose to ask the Council to pass it into law on the first convenient opportunity.”

The motion was put and agreed to.

ADJOURNMENT OF COUNCIL.

His Excellency THE PRESIDENT:—“The next meeting of Council will be on Wednesday, the 18th instant, for the introduction of the Budget only. We shall then have a meeting on the Friday following for legislative purposes.”

The Council accordingly adjourned to Wednesday, the 18th March, 1903.

J. M. MACPHERSON,

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

CALCUTTA; }
The 17th March, 1903. }