Wednesday,
27th August, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

Jan.-Dec., 1884

ABSTRACT OF THE PROCEEDINGS

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1884

VOL. XXIII

Published by the Authority of the Governor General

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1884

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 27th August, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Reports of the Select Committee on the Bill for the validation of decisions passed by certain Settlement-officers in the Panjáb be taken into consideration. He said:—"The original object of this Bill was to cure some formal defects in the appellate jurisdiction exercised by certain Settlement-officers—defects which it was apprehended might have the effect of invalidating their orders. Whilst the Bill was before the Select Committee it was pointed out to us that cases had also occurred in which Settlement-officers had exercised jurisdiction as Courts of first instance without having had that jurisdiction conferred on them in the precise manner required by law; and the Bill has been amended and modified so as to meet those cases also."

The Hon'ble Mr. BARKLEY said:—"With reference to this Bill I need only say that, while no steps had been taken when it was introduced to

call in question any of the appellate decisions as to the validity of which it was then proposed to remove doubts, a case has since occurred which illustrates the importance of putting an end to any doubts of this nature. In an appeal relating to a large extent of land, mostly culturable waste, which was heard in March last by a Bench of the Chief Court, it was contended on behalf of the Secretary of State for India, who was one of the parties, that the question of the ownership of the land in suit had become *res judicata* by a decree passed by the Settlement-officer as a Court of original jurisdiction more than ten years before. It turned out that the Settlement-officer had been empowered by notifications issued in 1869 to decide suits relating to land in two tahsíls of the district, but that the land in dispute was situated in another tahsíl, with regard to which no similar notification had been issued. It therefore became necessary to set aside the decision of the Commissioner of the division that the question was *res judicata*, and to remand the case for trial and decision on the merits of the claim. Thus, though the Settlement-officer's decision had not been appealed against, and the plaintiff, who was not aware of the defect in the jurisdiction of that officer, brought the fresh suit under the impression that a subsequent order, passed by that officer on an application to reopen the case, treated the question as one which had not been finally adjudicated upon, it was found necessary, when the defect came to light, to hold that the decision pronounced ten years before was passed without jurisdiction. Other questions were raised by the appeal which it therefore became unnecessary to decide, but, had the defect in the jurisdiction been removed, those questions might have been disposed of.

"As this case showed that there were instances in which the validity of original as well as appellate decisions was open to question owing to the necessary notifications not having been published, the Bill has been amended by the Select Committee so as to render valid any decisions of Settlement-officers which would have been valid if they had been duly invested with powers to decide suits or appeals relating to land, unless when such decisions have already been declared by a competent Court to be invalid. When the decision has been pronounced invalid by a competent Court, it will be seen that it is not proposed to give validity to it.

"Many decisions passed by Settlement-officers and in appeal by superior authorities are liable to be called in question on the grounds stated in the preamble to the Bill, and it cannot be doubted that it is expedient to put the validity of such decisions beyond dispute, and thus to prevent the renewal of

litigation with regard to questions which have already been judicially determined, and this in many cases after an appeal to a superior Court."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT also introduced the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma, and moved that it be referred to a Select Committee consisting of His Honour the Lieutenant-Governor of the Panjáb, the Hon'ble Messrs. Gibbs and Quinton, and the Mover, with instructions to report in a month. He said :—

"The principles which I have endeavoured to keep in view in framing this Bill are, first, that it is not necessary or expedient to make a crusade against gaming generally; secondly, that it is not expedient to make any greater changes in the existing law or procedure than are absolutely necessary for the purpose of bringing within the scope of the law a particular form of gaming which has proved to be a very serious nuisance; and, lastly, that the man whom we are particularly anxious to hit is the professional gambler. We do not wish to be hard on the ordinary players of the game, who include, as the Police Reports tell us, women and children.

"The Bill begins by enacting that the game of *ti* shall be deemed a lottery within the meaning of the Indian Penal Code. Of course, by doing this we do not intend to declare that the Judicial Commissioner was wrong in his view of the meaning of the existing law; we merely intend to make the game of *ti* when played within British Burma a lottery for the purposes of the Penal Code, and punishable as such. My reason for bringing the game within the Penal Code is that at the present moment in the town of Rangoon, where the Recorder's law prevails, this particular game is punishable under the Penal Code, and I am anxious to disturb the existing practice as little as possible. If, however, the authorities of British Burma should be of opinion that the remaining provisions of the Bill are sufficient for the purpose without this section, I should be quite willing to drop the clause or to substitute for it a clause declaring that the game of *ti* is not a lottery within the meaning of the Penal Code.

"Then the Bill goes on to say, in section 3, that the game of *ti* shall also be deemed gaming within the meaning of the Gambling Act of 1867, and the section contains some other provisions, the chief effect of which will be to make taking part in the game an offence whether the game is carried on in a public or in a private place.

"Then come two sections, which are aimed against the professional gambler. The first makes him liable to fine, and to six months imprisonment for the first offence, and two years imprisonment for a subsequent offence. The other gives Magistrates power to demand security from persons who notoriously earn their living or part of their living by gaming of this description."

The Hon'ble MR. BARKLEY said:—"Before the Motion is put, I wish to mention one point, which will, I think, have to be considered by the Select Committee, and on which it seems desirable that the opinion of the Chief Commissioner and other local authorities should be elicited before the Report of the Select Committee is presented.

"Section 2 of the Bill puts a local interpretation upon one of the provisions of the Indian Penal Code, which is a general law. It must of course be admitted that in India we cannot always avoid having local interpretations of general enactments, as the High Court of one province is not bound by the decisions of the High Court of another, and, therefore, when one High Court puts a construction upon any provision of the law, that construction, so long as it is not adopted by the other High Courts, becomes a local interpretation. If different local interpretations are thus put upon the same law, and the question involved is one of much importance, it usually becomes necessary for the legislature to intervene to amend the law, so as to put its meaning beyond doubt. But, though we may thus have judicial constructions of the same law which are in conflict, and each of which is authoritative in a particular province, it cannot be denied that this is an evil. It causes uncertainty as to what the law is, not only in other provinces, but in that where the question has been decided, as it is always possible that the High Court may be asked to reconsider its former decision in the light of the arguments which have led another High Court to a different conclusion. And, when the authoritative interpretations adopted in different provinces are in conflict, the Courts of at least one province must be administering a law different from that which the legislature would have prescribed, had its attention been drawn to the point with regard to which the difference exists.

"But, if it is necessary to ask this Council to interpret any of the provisions of a general law, it can do so by an enactment which will be co-extensive with the law to be explained, and I think that this course should be adopted, unless very strong reasons can be shown for giving the explanation a local application only. A local interpretation by the legislature may give rise to the same uncertainty as to what is the law elsewhere as that which may result from a judicial interpretation by the High Court of a particular province. It may be argued, on the one hand, that the legislature has explained its own meaning, and that this explanation must carry great weight in provinces other than that for which it was given, and, on the other hand, that, if the explanation was intended to be of general applicability, it would not have been included in a law extending to one province only, and that the legislature must have had some reason for thus limiting its effect to a single province.

"If the latter argument prevails, the High Court of any other province would have to determine the interpretation of the enactment irrespective of the interpretation put upon it by the legislature for another province, and may be led to adopt a different interpretation. It may thus be decided, in case this measure becomes law, that the game known as *ti* is not a lottery in the ordinary sense of the term, and that, though it must hereafter be deemed a lottery within the meaning of section 294A of the Indian Penal Code in British Burma, it cannot be so deemed in Calcutta or Assam. There would then be a conflict between the statutory interpretation of the law for one province and the judicial interpretation of the same law for another.

"Such a conflict should be avoided if possible, and I think it should be suggested—the suggestion, indeed, has already been made by my hon'ble friend the Legal Member—for the consideration of the Chief Commissioner whether it is necessary to retain section 2, considering the extension given to Act III of 1867 by sections 3 and 5, and the additional provisions contained in sections 4 and 6. If his reply is in the affirmative, and the Select Committee is satisfied by the reasons given, I would ask the Select Committee to consider whether section 2 should not be declared to extend to all India.

"I do not propose to discuss the question whether the *ti* game, which has been described by my hon'ble friend at our last meeting, is a lottery in the ordinary sense of the word. Apparently, different conclusions have been come to on this point by the superior Courts of British Burma at different times, and I have not the advantage of knowing the grounds on which those conclusions were based. I have no doubt that the legislature can, if necessary, give

the word an artificial sense. But, if the game is not a lottery in the ordinary sense of the word, it should, I think, be considered, before it is declared by law to be a lottery, whether the object aimed at cannot be accomplished in some other way. In an Act of 1872, no longer in force, the legislature explained the expression 'Native State' in such a way that a learned Chief Judge of one of the High Courts was unable to persuade himself that it could have meant what it said, and there is always some risk in using words in an unusual sense when this can be avoided."

The Hon'ble MR. ILBERT said:—"The point raised by my hon'ble friend Mr. Barkley will doubtless be considered, and ought to be considered, by the Chief Commissioner of British Burma and by the Select Committee, and I have already expressed my willingness to drop section 2 in case it should be considered unnecessary by the local authorities.

"Meanwhile, all I need say is that the Bill only extends to British Burma, and that its effect is not to put an authoritative interpretation upon the Penal Code, but merely to make a certain kind of game when carried on within a particular province an offence punishable under a certain section of the Penal Code."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration might think fit.

The Motion was put and agreed to.

BURMA STEAM-BOILERS AND PRIME-MOVERS BILL, 1884.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882. He said:—"The object of this Bill is to amend the Burma Steam-boilers and Prime-movers Act, 1882, in such a maner as to provide for the grant of certificates to engine-drivers, authorizing them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power. Under the Act as it at present stands, certificates can be granted to engineers of the first and second classes only, and all boilers and prime-movers must be in charge of engineers of one or other of these classes. The Board of Examiners appointed under the Act have recently represented to the Chief Commissioner that these provisions

cause unnecessary hardship to a class of Native drivers who can be trusted to manage, and actually do manage, small engines. It would be misleading to give these men engineers' certificates of any class, inasmuch as they are in no sense engineers. On the other hand, it is only fair to them and the small mill-owners who employ them that they should be eligible for some sort of certificate and be permitted to take charge of boilers and prime-movers attached to engines of low horse-power. Under these circumstances, the Board suggest that the Act should be amended in such a way as to authorize the grant to such persons, when found competent, of engine-drivers' certificates, which will empower them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power, and they point out that there is a precedent for the grant of such certificates in the Inland Steam-vessels Act, 1884, sections 28 and 29. The suggestions have received the support of the Chief Commissioner."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th September, 1884.

SIMLA;
The 29th August, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla,—No. 423 L. D.—29-8-84.—310.