

Thursday,  
23rd October, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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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 under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

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The Council met at Government House, Simla, on Thursday, the 23rd October, 1884.

P R E S E N T :

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 O. 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.

The Hon'ble H. J. Reynolds.

PANCH MAHÁLS LAWS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the law in force in the Páñch Maháls. He said:—"This Bill has been prepared at the request of the Government of Bombay. The territory known as the Páñch Maháls is at present one of the scheduled districts in that Presidency, and the object of this measure is to regulationize it and to assimilate the law in force in it to that in the neighbouring Kaira district."

The Motion was put and agreed to.

OUDH ESTATES ACT, 1869, AMENDMENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to amend the Oudh Estates Act, I of 1869. He said:—

"This legislation is undertaken at the instance of the Government of the North-Western Provinces and Oudh, and of the associated body of the Oudh taluqdárs known as the British Indian Association.

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“ Act I of 1869 defines the rights of taluqdárs and others in certain estates in Oudh, and regulates the succession thereto. Sections 13 and 20 empower taluqdárs to make bequests of their estates under certain circumstances by wills executed not less than three months before the death of the testator, and registered within one month from the date of their execution. In the Preliminary chapter, ‘registered’ is defined to mean registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh.

“The practice which has since obtained among Oudh taluqdárs making a will under the Estates Act is to deposit the will in a sealed cover with the registrar; and until lately it was believed that this was all that the law required.

“In 1882, however, a case came in appeal before the Court of the Judicial Commissioner, in which—although the point was not put in issue in the Court of first instance—the Judicial Commissioner held that a will so deposited was invalid, so far as it affected the landed estate, because it had not been registered.

“This judgment was appealed to the Privy Council. Their Lordships ruled that the Judicial Commissioner was right; that under the rules of Act VIII of 1871—the Registration Act applicable—deposit was one thing and registration another; and that a will deposited under the provisions of that Act relating to the deposit of wills was not thereby registered within the meaning of the Oudh Estates Act.

“The Government of the North-Western Provinces and Oudh now urge that the consequences of this ruling are most important, since the procedure that it pronounces to be inadequate has been constantly acted on; and the President of the British Indian Association, in a memorial to the Lieutenant-Governor and Chief Commissioner, asserts that the taluqdárs were never led either by the civil officers or the legal advisers whom they consulted in such matters to suspect that the validity of wills formally deposited in the registration offices under sealed covers could be called in question.

“It is obvious that taluqdárs cannot be expected in future to register their wills open. If this be insisted on, sections 13 and 20 would probably remain a dead-letter.

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[ *Mr. Quinton.* ]

“Under these circumstances, it is considered advisable to amend Act I of 1869 so as to legalize the existing practice. This is done by the present Bill, and, as the omission to fulfil the requirements of the law which has taken place in the past would seem to have been unintentional and due to a prevalent and hitherto undisputed misapprehension of its meaning, retrospective effect has been given to the amendment, which covers all wills hitherto or at present only deposited and not registered, except wills already declared invalid by judicial decision or being questioned in a suit commenced before the date of the introduction of the Bill.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

#### EXCISE ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved for leave to introduce a Bill to amend the Excise Act, 1881. He said:—

“The Act is itself an Act to amend the law relating to the excise-revenue in Northern India, British Burma and Coorg. The few remarks called for at this stage of the Bill have reference, I would explain, to the North-Western Provinces and Oudh, but, should the Motion be accepted, the other Local Governments to whose territories the Bill is applicable will be given an opportunity of expressing their opinions upon it before the Council is asked to pass it into law.

“It has been prepared, at the instance of the Government of the North-Western Provinces and Oudh, in order to legalize a practice, which has prevailed in those Provinces since 1856, of employing officers of Police above a certain rank as Excise-officers for the prevention of smuggling. With the other branch of the excise-administration, namely, the collection of revenue, Police-officers have no concern whatever.

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“ Act X of 1871, which consolidated and amended the excise law in Northern India, British Burma and Coorg by its 46th section, corresponding to section 59 of Act XXI of 1856, enabled the Local Governments to confer on officers of the Police Department powers with respect to the seizure of, and search for, spirituous and fermented liquors and intoxicating drugs of every description, and the arrest of persons found in possession thereof. This power has been fully exercised up to the present time, and on it the Government has to rely for the prevention of smuggling, as no separate establishments are entertained for that purpose. Formerly a functionary styled the *Ábkári Dárogħa* was maintained in each district, but he was found to be more ornamental than useful, and after mature deliberation his office was abolished.

“ No doubt as to the legality of the practice arose till a short time ago, when a decision in a criminal case by the Judge of Agra led the Government to look closer into the question, and it then appeared that under the law now in force it was open to argument whether Police-officers could be employed on excise-duties.

“ That law, Act XXII of 1881, purported, as I have said, to amend the law relating to the excise-revenue in Northern India, British Burma and Coorg ; and its sixth chapter, which treats of officers and their powers, has no provision corresponding to section 46 of Act X of 1871 and section 59 of Act XXI of 1856, to which I have already referred. Section 2 of the Act, it is true, saves all powers conferred under the Excise Act of 1871, but it has been held that this must be read with section 20 of the Police Act, which prohibits the exercise of any authority by Police-officers other than that therein specified, and that nothing short of an Act of the legislature can now legalize their employment as Excise-officers.

“ It may be asked, how it comes that so important a point was overlooked for so long by the Government of the North-Western Provinces and Oudh ? The answer is that such an effect of Act XXII of 1881 was neither intended nor foreseen when that Act was passed.

“ The Statement of Objects and Reasons makes no mention of any alteration of the law as regards the excise-functions of Police-officers ; it is not alluded to in the speeches of the Hon'ble Member in charge of the Bill—the then Legal Member ; and the Report of the Select Committee is altogether silent upon it. Mr. Whitley Stokes did not include it in the substantial alterations made by the Bill, and appears to have thought that it was a matter to be regulated by executive order, and that any legislative provision on the subject was superfluous. As occasionally happens, an effort to attain brevity brought about obscurity.

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It is impossible to suppose that a power on which Local Governments mainly relied for preventing injury to the excise-revenue by smuggling was thus taken away by a side wind, or that, if this result of the Bill had been contemplated, it would have been allowed to pass without comment from the Governments affected by it while the Bill was being carried through Council.

“The Bill on the table merely restores to Local Governments the power which they possessed under the previous law, which some of them at least have been exercising up to the present time in the belief that they had never been deprived of it.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette*, the *Panjab Government Gazette*, and the *Central Provinces and British Burma Gazettes* in English and in such other languages as the Local Governments think fit.

His Excellency THE PRESIDENT :—“ I should like to ask one question with regard to the Bill. I understand from the remarks of Mr. Quinton that the Bill has been introduced at the request of the Government of the North-Western Provinces and Oudh. I suppose that it will not be extended to the Panjab, the Central Provinces or British Burma unless the Governments of those Provinces desire that it should be so extended ? ”

The Hon'ble MR. QUINTON :—“ The draft Bill does not provide for that.”

His Excellency THE PRESIDENT :—“ You mean that before the Bill passes out of Select Committee and comes on finally in Council the views of those Governments will be received ? ”

The Hon'ble MR. QUINTON :—“ Yes, my Lord ; certainly.”

The Motion was put and agreed to.

#### INDIAN RAILWAYS BILL.

The Hon'ble Mr. Hope moved for leave to introduce a Bill to amend and consolidate the law regulating the construction and working of Railways. He said :—

“ We have at present, as the Council are aware, a certain amount of law relating to railways. This law, however, may be said to be not only of a very

[ *Mr. Hope.* ]

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scant and meagre nature, but also to relate almost exclusively to the actual conditions of the working of railways as between the Railway Companies and the public; that is to say, it chiefly relates, speaking very broadly, to various acts on the part of one or the other, all of which conduce more or less to the satisfactory carrying on of the railway business from day to day. Besides this, however, there are many other branches of the question which our law—I can only speak broadly in a sketch of this kind—does not touch at all. I may illustrate these branches by mentioning some of them, namely, the nature of the numerous obligations of a Company in constructing a line and also in working it, in order to ensure its safety and convenience; to secure due accommodation for landholders on both sides of the line and protection of their rights; to enforce proper enquiries into the various questions, or the accidents, which may arise; to regulate rates and fares so that the public shall not be at the mercy of the Companies as powerful monopolists; to provide for the systematic keeping of accounts in the interests both of the Government, which, I am sorry to say, still very often has to guarantee the Railway Companies, and also of the shareholders themselves. All these and various other matters, of more or less importance, have hitherto been provided for in the best way possible in the contracts between the Government and the Companies, or by departmental rules and regulations. As regards State Railways, however, such matters have been entirely within the discretion of the Executive Government. These contracts have been found in the course of years to be often incomplete or obscure; each new railway which has been established or guaranteed has got for itself a separate contract, the result being that there is a very considerable amount of difference in each regarding matters of the same nature, which ought to be dealt with uniformly in all cases. Besides this, we have been urged by several of the large Railway Administrations to introduce an Arbitration Act for the settlement of differences which occasionally arise between them, owing principally to the large increase in the interchange of railway traffic in India, which is likely still to develop further with the growth of our railway systems. Experience has also shown the necessity for a compulsory reference to arbitration in certain cases, where the continuance of disputes is likely to be prejudicial to the interests of the public.

“This is, I think, a general description of the Bill which I am moving for leave to introduce, sufficient to satisfy the Council that some legislation is desirable.

“As regards the further steps to be taken, I have only to say that it is not contemplated to introduce the Bill at the present time. The rough

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draft of the Bill has been prepared in the Public Works Department, and all provisions in the existing contracts and in Indian Acts or English Statutes or Bills which appeared suitable have been embodied in it. What is contemplated is that this draft shall be referred to the various Local Governments, Chambers of Commerce and Railway Administrations throughout India before its introduction into the Council. I hope to be able, if the Council agree to the Motion now before them, to introduce a considerably amended draft in the course of the current session at Calcutta, after we have received and considered the various opinions which are to be called for on the measure in the manner I have indicated."

The HON'BLE MR. ILBERT said :—

"My hon'ble friend Mr. Hope has explained that the draft which he proposes to circulate for criticism is merely a rough draft prepared by the Public Works Department.

"It has not yet been considered in the Legislative Department, and it will have to be very carefully scrutinised in that Department before it is introduced into this Council. I have read the draft somewhat hastily, and have made some suggestions as to the form and arrangement of the clauses; but the Bill raises a good many difficult questions, some of which I should like to have a further opportunity of considering, and which the Council will be in a better position to consider after the draft has received that external criticism to which Mr. Hope has explained that he proposes to submit it."

His Excellency THE PRESIDENT said :—

"The remarks that have fallen from my hon'ble friends, Mr. Hope and Mr. Ilbert, will show that in giving my assent to the introduction of this Bill I am in no way committed to any provisions which it may contain, and which, as Mr. Hope has explained, are at present only in rough draft, and therefore not in a condition to be submitted to me. I entirely agree that it is desirable to consolidate and amend the law relating to railways in this country in various ways; and I am very glad to find that Mr. Hope proposes to consult public bodies and persons interested in railways, either as shareholders, managers of companies, or on behalf of the public, before the Bill is introduced into this Council. It will, of course, before its introduction, be submitted to my successor, Lord Dufferin, who will by that time have assumed

