

**Wednesday,
27th May, 1885**

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

Jan.-Dec., 1885

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1885

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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.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 27th May, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., 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 W. W. Hunter, LL.D., C.S.I., C.I.E.

TARIFF ACT, 1882, EXCISE ACT, 1881, BENGAL EXCISE ACT, 1878,
AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, be taken into consideration. He said :—

“The Bill, as originally introduced, has been circulated for the opinions of Local Governments, who have all signified their agreement in it, and nothing further need be added to what was said on the introduction of the Bill in regard to its scope and aims. Advantage has been taken, however, of this opportunity to amend certain sections of the Sea Customs Act; the object of the amendments being two-fold. In the first place, under the Sea Customs Act, as it at present exists, country-distilled spirit intended for export must be taken from the distillery direct to the customs premises and there warehoused; and delay sometimes occurs before it can be exported, during which the manufacturer has to pay storage-duty. The object of the amendment of the sections (145 and 149) of the Sea Customs Act is to prepare the way for local legislation, having for its object the enabling the exporter to store the spirit in his own warehouses pending export.

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"Section 207 of the Sea Customs Act has also been amended so as to include within its provisions other ports than those of Calcutta and Bombay; so that the facilities given to the Port Trusts of Calcutta and Bombay by that section may be extended to similar bodies in other places."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the Madras Civil Courts Act, 1873, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Sir A. Colvin and the Mover.

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 *Fort St. George Gazette* in English, and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

The Hon'ble MR. ILBERT also introduced the Bill to make better provision for the Superintendence of Government Wards in the Central Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Mr. Hunter and the Mover.

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 *Central Provinces Gazette* in English, and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

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[*Mr. Ilbert.*]

REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble Mr. ILBERT also moved for leave to introduce a Bill to amend the Registration Act (III of 1877). He said:—

“The main object of this Bill is to exempt from registration certain debentures issued by joint stock companies. The Council are doubtless aware—and a good many investors have learnt to their cost—that the term ‘debenture’ is applied by joint stock companies to forms of securities differing materially in their character. In some cases a debenture issued by a joint stock company is a mere acknowledgment of indebtedness, giving the holder no higher rights than those of an ordinary creditor. In other cases a debenture gives the holder a distinct charge or lien over specific property, and places him with reference to that property in the same position as a mortgagee. I need hardly say that the latter class of debenture constitutes a much better security than the former. The mode in which debentures of the latter class are issued varies, but the commonest, and perhaps the most satisfactory, mode of issuing them is this: the company executes a trust-deed making over property to certain trustees for the benefit of the debenture-holders, and then, having done this, it issues debentures referring more or less explicitly to the trust-deed, and giving the holders of the debentures the benefit of the provisions contained in that deed. But it appears that, owing to certain provisions in our Stamp and Registration Acts, the issue of debentures in this form is attended with a good deal of trouble and expense, and that in consequence of this much less use has been made of them than might otherwise have been expected. Under the Stamp Act, until recently, not only the principal trust-deed but each of the debentures separately was liable to stamp-duty. Then, under the Registration Act, if the trust-deed created a charge on immoveable property, it would be liable to registration, and the debentures also, inasmuch as they would refer to a security consisting of immoveable property, would probably be liable to registration. I say ‘probably’, because the point is not free from doubt; but I understand that in practice debentures of this class have usually been registered as a precautionary measure. Now, we think that it would be quite sufficient if the principal trust-deed only were made subject to stamp-duty and registration, and that the debentures, in so far as they are merely ancillary instruments to the deed, may be exempted. Accordingly, by a notification in the Financial Department last year, debentures of this class were exempted from stamp-duty, and what we now propose to do by the present Bill is to exempt these debentures from liability for registration also, assuming that they are so liable under

the existing law. The exemption will be carefully drawn, and is not intended to include any debentures except those which are strictly ancillary to the principal trust-deed and do not create a charge on any property other than such as is comprised in that deed. That is the main object of the Bill which I am asking leave to introduce. We also propose to embody in it two other amendments of the Registration Act, but they are amendments of very small importance, and I need not trouble the Council with an explanation of them. When speaking on the Transfer of Property Bill last year, I intimated that there were other points with respect to which the Registration Act would probably need amendment. Those points are still under consideration, and I think that it would be inadvisable to impede the progress of the present short and simple measure by introducing into it matter which would certainly give rise to a good deal of discussion."

The Motion was put and agreed to.

BURMA COURTS BILL, 1885.

The Hon'ble Mr. ILBERT also moved for leave to introduce a Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure. He said :—

"It is proposed by this Bill to relieve the Recorder of Rangoon of a certain class of business which, in his opinion and in the opinion of the Chief Commissioner, may be advantageously disposed of by other agencies. I am sorry to be compelled to trouble the Council with a Bill for amending the Burma Courts Act after so short an interval from the date of the last amending Act, and at a time when a larger measure for re-constituting the Burma Courts is under preparation; but I am not yet in a position to introduce this larger measure, and in the meantime it is really very important that we should adopt every available expedient for preventing the accumulation of arrears in the Recorder's Court. I shall therefore ask the Council to pass this Bill as a temporary measure of relief pending the enactment of the more comprehensive measure which I hope to be able to introduce at no distant date. Under the Burma Courts Act the Recorder of Rangoon exercises an insolvency jurisdiction not only in Rangoon but in Moulmein, Akyab and Bassein. The insolvency cases which occur in these towns are usually of a very petty character, and may just as well be disposed of by local agency. Accordingly we propose that the Chief Commissioner should be empowered to make orders vesting the insolvency jurisdiction exercised in these towns in their Civil Judges subject

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[*Mr. Ilbert.*]

to appeal to the Special Court at Rangoon. We also propose to enable the Chief Commissioner to transfer cases from the Court of the Recorder to the Court of the Judicial Commissioner at times when there is special pressure of work in the Recorder's Court. And lastly, we propose by the Bill to repeal a paragraph in the Civil Procedure Code which applies exclusively to the town of Rangoon, and which excludes the application of Chapter XX of that Code—the chapter relating to insolvency—from a certain class of debtors in the towns of Rangoon, Moulmein, Akyab and Bassein. The present Recorder of Rangoon has expressed his opinion that the distinction made by this paragraph between those four towns and other towns of British India is quite unnecessary, and is apt to cause hardship to judgment-debtors in certain cases, and therefore he recommends that we should repeal it."

The Motion was put and agreed to.

CARRIAGE OF PASSENGERS BY SEA BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Sir S. Bayley be added to the Select Committee on the Bill to amend the law relating to the carriage of passengers by sea.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th June, 1885.

SIMLA;
The 29th May, 1885.

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