

*Friday,*  
*12th March, 1886*

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  
THE 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 on Friday, the 12th March, 1886.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., 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.

Major-General the Hon'ble T. E. Hughes, R.A., C.I.O.

The Hon'ble Peãri Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN presented the Report of the Select Committee on the Bill to amend the law relating to Government Securities.

CRIMINAL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871, be taken into consideration. He said :—“This Bill was introduced as a Bill to amend the Criminal Procedure Code with respect to certain minor points, and, in the form in which it has left the Select Committee, it still answers to that description. The alterations made in the original clauses of the Bill are few and unimportant. The Committee received numerous suggestions for amending other parts of the Code besides those touched by the Bill, and some of these suggestions appear to be well worthy of the attention of the legislature. But, except in a very few cases, the Committee did not think it would be desirable

to recommend their adoption without giving further notice to the public, and it was not, in the opinion of the Committee, worth while to delay the passing of this Bill for the purpose of further publication. Accordingly the new sections only make amendments which appeared to the Committee to be clearly desirable, and not to raise any questions of principle."

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.

#### INDIAN TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to facilitate the construction and to regulate the working of Tramways be taken into consideration. He said :—"The Report shows that this measure has not undergone any material change in its passage through the Select Committee, and there is only one point to which I need refer in bringing the revised Bill before the Council. The Bill has been criticized for not containing any precise definition of the term 'tramway'. Now we all have a general notion of what is meant by a tramway as distinguished from a railway, but if you were to try the experiment of framing a definition which should include all undertakings to which the present Bill ought to apply, and should exclude all undertakings to which the Indian Railway Act ought to apply, you would find the task one of great difficulty. The great bulk of undertakings lie clearly on one side or the other of the dividing line, but there are certain undertakings about which my friends in the Public Works Department would tell you that it was by no means easy to say whether they should be classed as tramways or as railways. All that can be said is that, when a so-called tramway is constructed exclusively within the limits of a town or populous place, it is pretty certain to belong to the kind of undertakings to which this Bill is intended to apply, but that if it passes beyond those limits it is apt to fall into the category of light railways. Accordingly the Bill provides that, when any part of a proposed tramway is to traverse land which is not included within the limits of a municipality or cantonment, it is not to be constructed without the consent of the Government of India, in order that the Public Works Department may have an opportunity of determining, with reference to the circumstances of each particular case, to which of the two categories the proposed works ought to be treated as belonging."

The Motion was put and agreed to.

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[*Mr. Ilbert; Sir Stewart Bayley.*]

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

The Motion was put and agreed to.

#### ...PETROLEUM BILL.

The Hon'ble SIR STEWART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Petroleum Act, 1881, be taken into consideration. He said :—“ The alterations which the Select Committee have introduced in this Bill since it was previously before the Council are for the most part of a technical nature, and I need not trouble the Council with them in detail. They were considered by the Home Department in communication with Dr. Warden and Professor Pedler, who are the Calcutta experts in this matter, and in the light of a letter from Sir Frederick Abel, which has been made a paper to the Bill. The Home Department accepted the advice of these experts, and the Select Committee have made alterations in the Bill on these strictly technical points in accordance with that advice. I would refer those interested to the Report of the Select Committee for the reasons of them in detail.

“ There were one or two other points upon which we have made alterations which may be considered rather as administrative than belonging to the technical portion of the matter. The first of these is in regard to import and transport. The Select Committee have provided means of dealing with the difficulties likely to arise out of the definitions given in the Bill of ‘ import ’ and ‘ transport ’. For instance, oil might be produced in portions of British India, say, in Assam or hereafter in Quetta, and transported into other parts of British India, which may yet need testing and regulating; on the other hand, oil once imported into a part of British India and properly tested, if it should go by sea to another part of British India, will not need a second testing; and the Select Committee thought the best way of dealing with this question was to give the Local Governments power to make rules by which they could treat oil already tested and imported from one part of British India to another as if it were transported, and transported oil as imported in order to meet these special cases, and at the same time to give power to the Local Governments, such as Assam and Burma, where petroleum is produced, to have it properly examined and tested there before being transported into other parts of British India.

“ Then the Select Committee made a slight alteration in regard to the sampling of cargoes; they have left that to be done by rules to be passed by the Local Governments, enabling them if necessary to break up the cargo into

separate lots for the purpose of testing it where it is supposed that the cargo is not homogeneous. The Committee have also given powers to the Local Governments in special cases to provide for a second or additional testing. The Select Committee have also carried out a suggestion of the Bombay Government with reference to repealing those portions of the Municipal Acts which deal with petroleum so as to avoid the clashing of authority, and they have also introduced a suggestion of that Government to give power to Port Trusts to regulate their own fees for the storage of petroleum.

“The only other point which I consider it necessary to mention is that the Select Committee, instead of making a separate Bill, have consolidated into one Act the Petroleum Law with the alterations which are contained in this Bill.”

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to consolidate and amend the law relating to Guardian and Ward. He said:—“The law of British India on the subject of guardians and wards, so far as it has been reduced to shape by the legislature, is to be found in a single Act applying, approximately, to European British subjects, and in several Acts and fragments of Acts and Regulations applying to persons who are not European British subjects.

“In the territories subject to the jurisdiction of the chartered High Courts the charters of those Courts provide for appointing guardians of European British minors, and, to a certain extent, of other minors also. But some years ago it was found that there was a gap in the law with respect to appointing guardians for European British minors in those parts of the country to which the jurisdiction of the chartered High Courts does not extend, and it was in order to fill that gap that my predecessor Sir A. Hobhouse introduced and passed the European British Minors Act of 1874 (XIII of 1874). This Act applies, speaking roughly, to European British subjects (I say ‘speaking roughly,’ because the definition of the class to which the Act applies does not correspond

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[*Mr. Ilbert.*]

quite precisely to the definition of European British subjects in the Criminal Procedure Code), and extends to those parts of British India which are not within the jurisdiction of the chartered High Courts. It declares the power to appoint a guardian by will or other instrument; it prescribes the procedure to be observed on an application to the Court for the appointment of a guardian; and it lays down a few simple general rules, taken from the English law, with respect to the considerations to be observed in the appointment of guardians by the Court, and to their powers and duties when appointed by the Court or otherwise.

“Thus with respect to European British subjects we may say that the law as to the appointment, powers and duties of guardians is to be found either in the charters of the High Courts and in the principles of English law and rules of procedure observed by those Courts, or in the European British Minors Act of 1874, which to some extent codified those principles and rules.

“The legislation with respect to the guardianship of minors not belonging to this class, that is to say, with respect to Hindus and Muhammadans generally, is, as I have said, to be found in several Acts and fragments of Acts and Regulations. There is an Act of 1858 (XL of 1858) which was passed for the Bengal Presidency and which has been declared to be in force in the Punjab, Oudh, British Burma and elsewhere. There is an Act of 1864 (XX of 1864) which applies to the Bombay Presidency, and which follows with some variations the Bengal Act of 1858. For Madras there does not appear to be any single Act corresponding to the Bengal Act of 1858 and the Bombay Act of 1864, but several scattered provisions relating to guardians are to be found in the Regulations and Acts applying to the Madras Presidency. Then there is a general Act of 1861 (IX of 1861) extending to the whole of British India. And lastly there are the numerous local Acts constituting Courts of Wards for the different provinces and defining their powers and duties.

“The legislative proposals which I am now about to make originated in some correspondence which took place between the Government of India and the Government of Bombay in the year 1881. The Bombay Government directed attention to certain defects in the Act of 1864, and suggested an amendment of the Act in order to remove difficulties which had been experienced in the administration of minors' estates under its provisions. (I may explain that the Act of 1864, though applying only to the Bombay Presidency, is an Act of this Council and therefore can only be amended by

this Council.) The Legislative Department was compelled to admit the justice of the Bombay criticisms, but found, on looking into the matter, that several of them were applicable to the Bengal Act also, and that there was room for material improvement both in the form and in the substance of the different Acts relating to guardians in force in different parts of the country. The conclusion to which I myself was disposed to come when I first took up the subject was that the best way of dealing with it would be—

- (1) to extend the European British Minors Act to the whole of British India, including the Presidency-towns, and to make it applicable to all the classes to which the Indian Succession Act applies; and
- (2) to repeal the Bengal and Bombay Minors Acts and the corresponding Madras enactments and to supersede them by an Act which should extend to the whole of British India.

“Thus there would be two general Acts, one applying to persons who, speaking broadly, are under English law, and the other to persons, like Hindus, Muhammadans and Buddhists, whose family relations are governed by personal laws differing materially from the English law.

“Before, however, bringing any such proposals before the Council I thought it advisable to consult Local Governments about them; and accordingly the Government of India issued a Resolution on the 17th October, 1882, asking for the opinions of Local Governments and Administrations on certain points which were discussed in the Resolution. Some time elapsed before we obtained the replies to these inquiries, and the reply of the Calcutta High Court did not reach us until last year. I mention this, not by any means for the purpose of complaining of the High Court, because I know how difficult it is for the Judges to find time for considering intricate legislative proposals, but merely for the purpose of explaining the interval which has elapsed since the issue of the Government Resolution of 1882.

“The opinions which have been received in response to this Resolution have been of the greatest possible value, and they have been most carefully studied in the preparation of the measure which I am asking leave to introduce. In some respects they have induced me to modify the conclusions to which I had previously been disposed to come. For instance, whilst desiring to make the general law uniform in the different provinces, I originally thought it would be best to have two Bills, one providing the law for persons under the Indian Succession Act and the other for all other classes of persons. The proposal to make the law uniform in the different provinces has been generally approved;

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[*Mr. Ilbert.*]

but several high authorities, among whom I may mention Sir C. Turner, the late Chief Justice of Madras, Sir C. Sargent, the Chief Justice of Bombay, Mr. Justice West, our Advocate General, Mr. Paul, and the Advocate General of Madras Mr. O'Sullivan, thought that our original proposals did not go far enough in the direction of uniformity, and that it would be possible and preferable to have one law for all classes of the population. On further consideration I think that they are right. Of course nothing can be further from my intention than to interfere with Hindu family customs or usages or to force Hindu or Muhammadan family law into unnatural conformity with English law. But on looking into the European British Minors Act, which was framed with special reference to the requirements of what may be called English minors, it appeared to me that almost all its simple and general provisions were applicable, or might with a little modification be made applicable, to Hindu and Muhammadan as well as to English guardians; and I was very glad to be told by my friend Mr. Mandlik, who has been looking at the draft Bill from the Hindu point of view, that he agrees with me about this.

“Accordingly what I have done has been to take as my model the European British Minors Act, which is the latest and fullest of the Indian Acts relating to guardians, and to frame on its lines an Act applicable as a whole to all classes of the community, but containing a few provisions limited in their application to particular classes. If the Bill is sent to a Select Committee it will doubtless, whilst before the Committee, undergo careful scrutiny on behalf of the several classes to whom it is to apply; and should it turn out that any of its provisions are unsuitable to any of those classes, it will be easy to modify them or to further limit their application. In the meantime I need only repeat that it is not intended by this measure to make any alteration in Hindu or Muhammadan family law.

“The Bill will supersede and repeal the Acts of 1858 and 1864, the general Act of 1861, the Madras enactments to which I have referred and the European British Minors Act of 1874. But it will not repeal or supersede the enactments relating to the different Courts of Wards. The provisions of those enactments are intimately connected with the administrative machinery of the different provinces; and it would be either impossible, or at least very difficult, to supersede them by a general Act applying to the whole of India. They will be accordingly left outstanding. The Bill will relate only to such guardians as are appointed or recognized by the ordinary Civil Courts, and there will be an express saving for the jurisdiction and authority of the different Courts of Wards.

[*Mr. Ilbert ; Rao Saheb V. N. Mandlik.*] [12TH MARCH, 1886.]

“There will also be a saving for the powers of the chartered High Courts under their respective charters. The Act will apply to those High Courts in the exercise of their original jurisdiction, and I should myself have preferred to enact, as in section 150 of the Probate and Administration Act, 1881, that when proceedings are taken in the High Court with respect to the appointment or control of a guardian they should be taken under the new Act and not otherwise. We should thus sweep away a good deal of vague and antiquated law, and substitute for it a set of rules which would, I believe, be quite as easy to work, and certainly more easy to ascertain. However, in deference what appear to be the views of the High Courts on this point, the Bill will provide that the jurisdiction of the High Courts under their charters is to be maintained alongside of their jurisdiction under the Act.

“It will be necessary to supplement this Bill by making certain amendments in that chapter (XXXI) of the Civil Procedure Code which deals with suits by and against minors, but those amendments will be made by a separate measure which is now in course of preparation.

“I may have an opportunity at a later stage of explaining the more important provisions of the Bill which I am asking leave to introduce: at present I am only concerned to show that a case for legislation has been made out.”

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—“As the Hon'ble Mr. Ilbert has kindly referred to the part I have taken in going over the draft of this Bill, I wish to say that I think, generally speaking, that its provisions are suitable, and that any difficulties which may present themselves may be further considered in the light of further representations. There is, however, one important point, namely, that of united Hindu families and the guardians of minors who form members of such families. I believe that a recent decision of the Privy Council has introduced some difficulty in the matter of guardians so appointed. I have no doubt that that difficult point will be further considered and suitably provided for when the Bill goes to a Select Committee.”

The Motion was put and agreed to.

The Council adjourned to Friday, the 19th March, 1886.

S. HARVEY JAMES,

*Offg. Secy. to the Govt. of India,  
Legislative Department.*

FORT WILLIAM ; }  
The 16th March, 1886. }