

*Wednesday,  
11th August, 1886*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XXV**

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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

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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 11th August 1886.

PRESENT :

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, Bart., G.C.B., C.I.E., V.C.

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 Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

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

The Hon'ble Colonel W. G. Davies, C.S.I.

UPPER BURMA LAW BILL.

The Hon'ble MR. ILBERT moved that the Bill to declare the law in force in Upper Burma be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin and the Mover, with instructions to report within six weeks.

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 thinks fit.

The Motion was put and agreed to.

SUITS VALUATION BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. He said :—

“ This is a little Bill of no great importance, and its main object is to provide means for determining the value of land where it is necessary to ascertain that value for the purposes of jurisdiction.

“ The institution-fee payable under the Court-fees Act in suits for the possession of land is computed according to the value of the land, and in order to facilitate this computation the Act lays down certain rules of a somewhat arbitrary character, under which the value of the land is declared to be a particular multiple of the revenue charged or chargeable upon it. Under the various Civil Court Acts the jurisdiction of the inferior Courts is usually limited by reference to the value of the subject-matter of the suit. One of these Acts—the Madras Civil Courts Act of 1873—directs that, where the subject-matter of a suit is land, its value shall, for the purposes of jurisdiction, be fixed in the manner provided by the Court-fees Act for the purpose of determining the institution-fee. The other Civil Courts Acts do not contain any similar direction, but it appears to be a very common practice in all the provinces to treat the value of land for court-fee purposes as being also its value for jurisdictional purposes. The practice is not strictly warranted by law, and is opposed to some rulings of the Bombay High Court, but there is a great deal to be said in favour of it on the score of convenience.

“ However, under the rules laid down in the Court-fees Act, land is, in many parts of the country, including the Madras Presidency, assessed at something very much below its net market-value. This does not much matter for the purposes of court-fees, because the Government has not the slightest intention or desire to increase the amount of those fees ; on the contrary, it would reduce them if the financial situation permitted. But the Madras Government tells us that the effect of applying the court-fees rules for the purpose of determining jurisdiction is to bring within the jurisdiction of some of the inferior Courts land-suits of a class which those Courts were not intended, and indeed are not qualified, to deal with ; and accordingly that Government desires to substitute some other rules which would bring out a valuation more in accordance with the facts. But unfortunately we are not in a position to touch the Court-fees Act at present, and we do not desire to interfere with the practice which is observed in provinces other than Madras, unless and until it is shown to produce inconvenient results. Under these circumstances we propose to meet the wishes of the Madras Government as far we can by authorising Local Governments, after consulting their High Courts, and with the previous sanction of the Government of India, to frame rules for determining the value of land for jurisdictional purposes. If the Madras Government thinks fit to frame such rules, the rules will, when they come into force, supersede the provisions of the Madras Civil Courts Act to which I have referred. Whether other Local Governments will consider it worth while to frame such rules

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on the subject I do not know, but, if they do, the rules framed by them may, whenever the time comes for amending the Court-fees Act, be of material assistance in helping the Government of India to lay down principles of computation which will bring out results more in accordance with the facts than those embodied in the old Act. I repeat, however, that there is no intention to do anything which will directly or indirectly raise the amount of institution-fees payable in suits relating to land.

“ This is the main object of the Bill. The Bill contains one or two other minor provisions to which it is not necessary for me to refer at the present stage.”

The Motion was put and agreed to.

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

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

#### INDIAN EVIDENCE ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872. He said :—

“ The object of this Bill is to supply what I cannot but think was merely an accidental omission in dealing with the Act of 1872. Section 125 of that Act is as follows :—

‘ No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence.’

“ This provision of the Indian law follows that of the English law, but the English law goes somewhat further by giving to Revenue-officers the same protection as is here given to Magistrates and Police-officers. In England not only is it the case that witnesses may not be compelled to disclose, but they are not even permitted to be asked, the names of those from whom they received information as to frauds on the revenue. The law is perfectly clear on this point. For instance, I will read a passage from Bell's well-known *Laws of Excise*, which states the law on the subject as follows :—

‘ It is a rule of evidence applicable to criminal cases, and the same rule has always been held to apply to penal informations at the suit of the revenue, that a witness is not permitted

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to disclose privileged communications brought to his knowledge for the furtherance of justice. "This is not the privilege of the witness, but may be justly called a public privilege, and is observed on a principle of public policy and from regard to public interests" (1 *Phil. Ev.* 272). Hence "those questions which tend to the discovery of the channels by which the disclosure was made to the officers of justice are not permitted to be asked" (*Rex v. Hardy*, 24 Howell's S. T. 753—Eyre, L. C. J.). "If the name of the informer were to be disclosed, no man would make a discovery, and public justice would be defeated" (*Id.*, p. 814—Buller, J.). In the case of *Attorney-General v. Bryant* it was held that a witness for the Crown could not be asked "Did you give the information?" (15 M. & W. 169).'

"I have not been able to ascertain from the records of the Legislative Department why the English law with respect to the disclosure by Revenue-officers of the source of information as to the commission of offences against the revenue was not incorporated in the Indian Evidence Act of 1872. It is possible that some reason may be suggested, but until a reason is forthcoming I cannot help thinking that the omission must have been purely accidental. The Government is given to understand that the omission has caused serious inconvenience, and is even said to be seriously impairing the efficiency of the Excise and Salt Departments of the Bombay Presidency. Accordingly, we propose to amend section 125 of the Indian Evidence Act of 1872 by the inclusion of Revenue-officers, and thus to assimilate the Indian to the English law upon this point."

The Motion was put and agreed to.

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

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 18th August, 1886.

S. HARVEY JAMES,  
Offg. Secretary to the Govt. of India,  
Legislative Department.

SIMLA ;  
The 13th August, 1886.

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Note.—The Meeting fixed for the 28th July, 1886, was subsequently postponed to the 1st August 1886.