

*Wednesday,  
28th August, 1889*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXVIII**

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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,

1889

VOLUME XXVIII



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1890.

*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 Vict., Cap. 67.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 28th August,  
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P R E S E N T :

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

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

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

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

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

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Muhammad Ali Khan.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*) be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Bábá Khem Singh Bedi and the Mover, with instructions to report within two months.

The Motion was put and agreed to.

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881  
AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*).

He said :—

“ This Bill deals mainly with the office of Administrator General of Bengal, and its principal provisions will only come into effect upon the occurrence of a vacancy in that office.

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“Under Act II of 1874, an Administrator General was constituted for the Presidency of Bengal, which, for the purposes of the Act, was declared to include—

- (1) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab;
- (2) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, British Burma, Ajmere and Merwára, Assam, and the Andaman and Nicobar Islands;
- (3) such of the dominions of Princes and States in India in alliance with Her Majesty as the Governor General of India in Council might, by notification in the Gazette of India, from time to time direct.

“This definition seems comprehensive enough, but in practice it has not proved so. The addition of other territories to the Indian dominions of the British Crown is not provided for, and the object of section 7 of the Bill is accordingly temporarily to extend the operations of the Administrator General of Bengal to Upper Burma and to British Baluchistan.

“But while the definition is not wide enough in this sense, it seems to the Government of India to be too wide on other grounds. It is greatly to the credit of the present occupant of the post that he has been able to discharge its wide-spread duties not only without complaint but to the satisfaction of those with whom he has had to deal. So long as he retains his office it is not proposed to make any change in his field of action. But it is clear that he must work to a great extent by deputy; and it has been well pointed out by a high authority that it is very desirable that ‘the responsible officer should be himself the real person who exercises effective control over the estates in his charge, and not merely the head of a routine office, leaving all or most of the practical power in the hands of local subordinates.’ To secure this object, an alteration of the law is necessary, and section 10 of the Bill empowers the Governor General in Council, upon the occurrence of a vacancy in the office of Administrator General of Bengal, to divide the unwieldy Presidency now under his charge into Provinces having Calcutta, Allahabad, Lahore and Rangoon as their respective centres and appoint a separate officer for each Province. This division will carry with it the further convenience of permitting applications for

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administration to be made to the local High Courts, and thus, it is hoped, saving expense and trouble to the parties interested.

"It is not proposed to make any change in the qualification for the office, to which, as at present, members of the English or Irish Bar, or of the Faculty of Advocates in Scotland, will continue to be appointed; and it is believed that the emoluments of the post in the newly constituted Provinces will be about equivalent to those which attach to the corresponding appointments in Madras and Bombay, and sufficient to attract the services of men of equal ability to the present incumbents. The researches of the Finance Committee disclosed the fact that in the years 1883-85 the Administrator General of Bengal derived an average annual income of Rs. 65,553 from his office; in later years it has been even greater. In Madras and Bombay, though the fees amount to only about one-fourth of this sum, thoroughly competent officers are secured. In both the last-named Presidencies, however, the Administrator General also holds the appointment of Official Trustee under Act XVII of 1864. This is permitted by section 9 of the Administrator General's Act, and it seems desirable that the two offices, wherever they exist, should, as a rule, be amalgamated. The Bombay Government reports 'the post of Official Trustee has for some years been held in this Presidency with that of Administrator General and the duties efficiently performed by a barrister, who also practises at the Bar.' A similar arrangement was proposed in Madras by Sir Charles Turner in 1878, and the two offices are now held in that Presidency by one and the same person. The only difficulty in the way of securing this combination generally lay in the fact that one appointment was in the gift of Government, and the other in that of the Chief Justices of the High Courts at the Presidencies. This difficulty has been overcome by the surrender by the Chief Justices of their patronage—a surrender for which I here desire to tender them the acknowledgments of the Government of India; and sections 1 to 5 of the Bill are framed to carry out the arrangement which has been thus satisfactorily effected.

"Section 8 is merely to correct an ambiguity in section 5 of Act IX of 1881, which I am sorry to say has led to some misprinting of the statute-book.

~~more~~ "A more important and quite independent matter is that dealt with by sections 6, 9 and 11 of the Bill. It not unfrequently happens that a person not having his domicile in British India dies leaving assets both in British India and in the country of his domicile, his estate being administered by one

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executor or administrator in British India and by another in the country of domicile. It has been held by very high authority that in such cases a receipt given by the executor or administrator in the country of domicile is not a valid discharge to the executor or administrator in British India for any residue or surplus of the Indian estate which he may desire to remit for distribution among those entitled thereto outside British India, but that he must himself distribute the assets in question among them. This is a very inconvenient and expensive process, which, in the case of small estates, is almost prohibitive; and the Bill therefore proposes to legalize, on certain conditions, the transfer of surplus Indian assets to the duly authorized representative of the estate in the country of domicile, if he is willing to receive and distribute them. The many small estates which pass through the hands of the Administrators General will derive special advantage from this relaxation of the existing law in their favour."

The Motion was put and agreed to.

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

The Hon'ble MR. SCOBLE 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.

### MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to amend the Indian Merchandise Marks Act, 1889. He said:—

"One of the provisions in that Act requires that piece-goods imported into British India should have stamped upon them the number of yards and fractions of a yard contained in each piece, and, in order to save shipments on the way or under order, a clause was introduced into the Bill by which the time within which goods not so stamped might be passed through the custom-houses of British India was extended to the 1st August, 1889. That date was not the date originally fixed by Government, but it was settled by the Select Committee, chiefly at the instance of the mercantile members of that Committee; and it was then considered by them, and by the Committee generally, that the time thus allowed would be ample. Representations have, however, been made by the Chambers of Commerce

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of Calcutta, Madras, Rangoon and Karáchi that the time has not proved sufficient, although, as far as Bombay is concerned, it has been found to be ample. There may be circumstances attaching to the importation of goods into the other ports that do not attach to Bombay; and I therefore ask Your Excellency's permission to move for leave to introduce a Bill to amend the Act in that respect by giving Local Governments power, on their being satisfied of the propriety of the action, to extend the time to any period up to the 1st November of this year."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE then introduced the Bill and said that at the next meeting of the Council, which, with His Excellency's permission, he would ask to fix for next week, he would move that the Bill be taken into consideration.

The Council adjourned to Wednesday, the 4th September, 1889.

S. HARVEY JAMES,

SIMLA ;  
The 30th August, 1889. }

*Secretary to the Government of India,  
Legislative Department.*