

*Wednesday,
4th September, 1889*

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
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 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 4th September, 1889.

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 Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

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 Bááb Khem Singh Bedi, C.I.E.

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

The Hon'ble MR. SCOBLE moved that the 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*) be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Mr. Evans, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Indian Merchandise Marks Act, 1889, be taken into consideration. He said :—

“The Bill authorizes Local Governments to use their discretion in extending, to any date before the 1st of November in this year, the time within which piece-goods, which have not their length correctly stamped upon them, may be imported into British India. The extension may be subject to such conditions as

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Local Governments may deem fit to impose, in order that no undue or unfair advantage may be taken of this relaxation of the law; and, as it is desirable that no unnecessary delay should take place in dealing with shipments at any port to which they may be consigned, Local Governments are empowered to delegate the power conferred upon them by the Bill to the Chief Customs-authority or any other competent officer at any port within their respective territories."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887. He said :—

"Forest law is still somewhat of a novelty in India, and it is not unnatural that classes which have long been accustomed to do as they like with forest-produce should find any restrictions or regulations irksome and oppressive. Still it has been necessary, in order to prevent the utter destruction of such forests as exist, and to secure a permanent supply of fuel, timber and other forest-produce for future generations, that the State should interpose and control the exercise of rights and privileges in selected areas; and I think the people are beginning to understand that the object which the Government had in view in constituting a Forest Department and enacting a forest law was, not merely to obtain a legitimate revenue to be expended for the good of the people at large, but also to improve and make secure the supply of some of the commonest necessities of their everyday life. My object in proposing to amend the law is by no means to increase the burdens or restrictions which have sometimes appeared oppressive, but only to make the intention of the law plain where it has been liable to misinterpretation; to introduce some more definite and liberal provisions in regard to what is known as shifting cultivation; to define, limit and control the action of Forest-officers in compromising petty breaches of forest regulations; and to enforce the responsibility of licensees for damage done to the forests by their servants."

"Section 2 of my Bill contains some revised definitions. In 'trees' I propose to include 'canes'. This is not a matter of much consequence, but

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bamboos have always been classed among 'trees', and it seems logical and proper to place canes and bamboos in the same category.

"The definition of 'timber' is not novel, for it has been taken from the Upper Burma Forest Regulation, and though the wording is somewhat different the sense is identical with that of the old definition in the Act of 1878.

"The definition of 'forest-produce' has been entirely recast, but the only substantial change is that it has been made to include all timber and produce of trees, wherever found. According to Act VII of 1878, although timber includes 'all wood', it is also a kind of forest-produce and as such must have been found in or brought from a forest. But the term 'forest' is itself very indefinite. Some authorities would restrict it to forests constituted as such under the Act. In its wider and popular sense it signifies a collection of trees, but it is not possible to predicate how many trees are necessary, or how close together they must be, to form a forest; and under the Act a perfectly bare area may be constituted a reserved forest—a forest *in posse*. Now, whatever ambiguity attaches to the term 'forest' must also extend to forest-produce, and therefore to timber when regarded as a kind of forest-produce. Timber in the abstract embraces all wood wherever produced: as forest-produce it must have been raised in a forest, and a forest, according to some, means a forest constituted under the Act, and, according to others, a collection of trees in greater or less contiguity. Under my definition, however, timber will have the same meaning throughout the Act: everywhere it will include all wood, wheresoever found.

"Now, the practical effect of this change will of course depend on the sense in which the term is interpreted in the different parts of the present Act. To make myself intelligible on this part of the subject, I propose to disregard the opinion that a forest should be understood to mean one constituted under the Act. In the first place, I think that narrow construction has no sufficient basis, and in the second, if I can show that the term 'timber' could never have been intended to be restricted to wood raised in a forest in the wider sense, *à fortiori* there can have been no intention to confine it to wood raised in a forest in any narrow or artificial sense. In my subsequent remarks therefore I shall generally speak of forests in the popular sense of the word.

"Now, obviously the change which I propose will make no difference in regard to forests constituted under the Act. Timber or any other produce raised in these are clearly forest-produce. The extension of the definition, therefore, will in no

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way enlarge the class of offences known as forest offences, punishable under the Act; for these, by their nature and definition, can only be committed in respect of a forest and not in respect of wood, &c., not found in or brought from a forest.

"Then comes Chapter VII, which empowers Government to levy a duty on all timber which is either (1) produced in British India and in respect of which Government has any right, or (2) which is brought from any place beyond our frontier. There is no reason, so far as I can see, why this power should be limited to wood produced in a forest. On the contrary, this chapter strongly confirms the view that such a restriction of the term 'timber' was never contemplated. It seems obvious from the use of the word 'place'—any *place* beyond our frontier—that the authors of the Act intended that all imported wood should be liable to duty. For how would it be possible to show that imported timber was the produce of a forest, even in the widest sense of the term? I think, however, that in this chapter, as well as in Chapter IX, there can be no question that the term 'timber' is used in its wider sense, and includes all wood, wheresoever found; it is only in Chapter VIII, where it has unfortunately been coupled with 'other forest-produce,' that its meaning can possibly be cut down to that of wood raised in a forest. Against this argument, however, may be set the probability that the framers of the Act used the term in Chapter VIII in the same sense in which they had just used it in Chapter VII and in which they were about to use it in Chapter IX.

"But now let us see to what Chapter VIII relates, for it is here only that I wish to effect any practical alteration. It vests in the Government the control of all timber in transit.

"The Local Government may make rules, *inter alia*, to prescribe routes, to require passes, and to provide for the stoppage of timber on which there is reason to believe that any royalty or fee is due, or which it is desirable to mark. Now, it is obviously desirable to mark private wood in order to distinguish it from Government wood. It is also for the benefit of private owners, or for the owners of wood which was not or cannot be shown to have been produced in a forest, that it should be marked once for all: otherwise, unless the rules and the whole chapter is to be a dead letter, the wood must remain liable to perpetual stoppages for examination as to whether some fee or royalty is not due on it. Again, what can be the use of establishing routes unless the transit of all wood passing along them can be subjected to control? It seems to me, therefore, that there is much internal evidence that even in this chapter timber was intended to be understood in its wide and natural sense, and not in that restricted and artificial sense derived from its inclusion as a kind of forest-produce.

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" But we are not dependent on internal evidence only. In his speech of 6th March, 1878, Sir Theodore Hope, who was in charge of the Act when it was passing through this Council, observed :—

' Finally, we extend regulations regarding the control of timber in transit (to be applied only where necessary) which have worked well in Burma and are quite as protective of the interests of *private timber-owners* and merchants as they are of those of Government.'

" There is no doubt that these old Burma regulations applied to all wood wherever produced, and there are many other passages in the debates and in the departmental records showing that the intention was to subject all timber in transit to the same control, wherever the necessity for any control existed.

" In most of the provinces rules have been made upon this footing. According to the law in force in Madras and in Burma, there is no doubt that the power of transit control extends to all timber. It is only the Government of Bombay that has found itself constrained to adopt the narrower interpretation, and there it was speedily discovered that such a construction rendered all attempt at control futile and ineffectual, for directly any wood has been conveyed outside a forest it can be passed off as the produce of a private holding with little risk of detection.

" I claim therefore that this new definition will, as regards timber at all events, merely make clear what has all along been the intention of the legislature, and place beyond controversy the practice which exists in every province but Bombay, and without which effectual control is impracticable. As regards other 'produce of trees,' such as India-rubber, mohwa flowers and myabolams, precisely the same obstacles to efficient control exist, and it follows that they should be put on the same footing as timber, though of course they too will only be brought under regulation where such a course is proved to be really required. I may note here that the Upper Burma law goes much further than my proposal, for it gives complete power of control over every kind of forest-produce in transit, and not merely over 'trees and the parts or produce of trees.'

" I now pass on to the other provisions of my Bill. Section 3 requires no explanation. The object of section 4 is to give greater liberty, while a forest ~~is under settlement~~, especially to those classes which practise 'shifting' cultivation. The present law forbids fresh clearings absolutely: it is proposed to allow the Settlement-officer to permit them at his discretion.

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"Section 5 also relates to shifting cultivation. It does not seem to call for any remark except that it has been taken from the law in force in Burma, where it has been found to work satisfactorily.

"Section 6 makes some small verbal changes in Chapters VII and VIII, consequent on the new definition of 'forest-produce' with which I have already dealt at sufficient, if not excessive, length.

"Section 7 demands a few words of explanation, though it is clearly for the benefit of the people. The compounding of offences is in general open to objection, but petty offenders against the forest law have always been allowed the option of making reasonable amends in money, and so escaping the very serious trouble and annoyance of a formal prosecution before a perhaps distant tribunal. Act VII of 1878 allows such a person to make compensation for any damage which he may have committed, but in the majority of these minor offences there has been no damage, or at all events no appreciable damage; the commonest case of all is an attempt to evade dues which, *ex hypothesi*, has been frustrated. Under the present law, therefore, a man must either be let off scot free, or be prosecuted; there is no third course. In view of this difficulty the word 'offence' was substituted for 'damage' in the special forest legislation of 1881, 1882 and 1886 for certain provinces; and there is reason to believe that, even in provinces governed by the general Act, the practice has been to compound petty offences quite irrespective of the question of damage. I now propose to put matters on a correct, and as far as possible on a uniform, footing. Accordingly section 7 authorizes the levy of compensation for any damage done or dues sought to be evaded, while, to prevent exorbitant demands, I have embodied in the section an executive order passed by my hon'ble friend the Lieutenant-Governor of the North-Western Provinces, that no more than ten times the damage or due shall in any case be exacted.

"The necessity for section 8 is, I think, sufficiently explained in the Statement of Objects and Reasons, but perhaps it will be made clearer by a concrete example—one which actually happened in Burma and has in fact suggested the introduction of this provision. A man had taken out a license to boil cuto, which, among other conditions, provided that no tree below a certain size should be felled and that he should be liable to prosecution for a breach of the conditions of the license. The men employed by him felled some 2,700 undersized trees, and he was prosecuted for abetment of their act and convicted. The conviction, however, was quashed by the Judicial Commissioner, who decided, no doubt rightly, that the lessee could only be held criminally responsible for the acts of his servants

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upon proof of his own personal instigation or connivance. Such proof it is obviously impossible to furnish in the great majority of cases, and yet it is reasonable to say that the employer, who receives the produce and benefits by the act which he has covenanted not to permit, ought to be made responsible for the injury to the forest which his labourers entered under cover of his license. To effect this it is proposed to bind him under a penalty and to take power, in the event of a breach, to levy the amount as an arrear of land-revenue: The provision has been adapted from section 25 of the Opium Act, 1878.

"The remaining sections of my Bill merely embody similar provisions to those mentioned above in the special Forest Acts in force in Burma and Upper Burma."

The Motion was put and agreed to.

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

The Hon'ble MR. HUTCHINS 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 September, 1889.

S. HARVEY JAMES,

SIMLA ;
The 6th September, 1889. }

Secretary to the Government of India,

Legislative Department.