

*Thursday,
24th July, 1890*

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,

1890

VOLUME XXIX



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1891

*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 Thursday, the 24th July,
1890.

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 Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.F.

The Hon'ble Sir A. R. Scoble, Q.C., K.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 R. J. Crosthwaite, C.S.I.

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

CENSUS BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to provide for certain matters in connection with the taking of the Census be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Crosthwaite and the Mover, with instructions to report after two months.

The Motion was put and agreed to.

PETROLEUM ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to amend the Schedule to the Petroleum Act, 1886. He said :—

“ In one sense this is a very simple measure, but at the same time it is of so extremely technical a character that it will only be really intelligible to

[*Mr. Hutchins.*]

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experts in physical science. I trust the Council will be satisfied with a very general explanation of the amendments proposed. It would require a lecture in chemistry and a series of practical illustrations with a proper apparatus clearly to demonstrate wherein the old schedule is defective and how the defects are to be remedied.

“Section 4 of the Act defines the flashing point of petroleum to be the lowest temperature at which it yields a vapour furnishing a momentary flash when tested in accordance with the directions contained in the schedule. This schedule was originally prepared in England by Sir F. Abel, Dr. Warden of Calcutta and Mr. Redwood, but it was modified at Dr. Warden's instance by the insertion of provisions, (1) that no flashing point obtained should be accepted unless it was at least 8° above the temperature at which the testing commenced, (2) that when a flash occurs on the first application of the flame the next test should commence at a temperature lower by 10° . It was subsequently objected that this procedure would soon bring the temperature down below the limit of 40° to which the Abel apparatus is graduated, and it would consequently be impossible to determine the legal flashing point of highly inflammable oils. A reference on this point has been made to Sir F. Abel, and the result is that a further slight modification must be made in the directions.

“As now drafted, the schedule has been finally approved by Sir F. Abel and our scientific advisers in this country, and I trust the Council will accept it in reliance on their eminent authority. I have only to add that, since any oil flashing below 47° is to be condemned as dangerous, it is not necessary to determine with exactitude any flashing point below that temperature. All that is required is to make sure, before condemning the oil, that it really flashes below 47° , and this will be ascertained beyond doubt by applying the test at 46° three times in succession.”

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 be taken into consideration at the next Meeting of the Council, when he would explain the urgency of the matter.

The Motion was put and agreed to.

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[*Sir David Barbour.*]

PAPER CURRENCY ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Paper Currency Act, 1882. He said :—

“ The amendment which it is proposed to make is a very simple one.

“ Under the provisions of the existing law, the whole amount of the coin and bullion received for currency notes is retained as a reserve to pay these notes, with the exception of such an amount, not exceeding six crores of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, may from time to time fix. The amount of coin or bullion which is not retained as a reserve may be invested in securities of the Government of India.

“ The amount at present invested in securities of the Government of India is in round numbers six crores of rupees, being the maximum amount which can be invested under the law as it now stands, and the investment was raised to this figure in 1877-78. Since that time the total note circulation has largely increased. In 1877-78 the minimum circulation of the year was Rs. 11,13,00,000; in 1888-89 the minimum circulation was Rs. 14,82,00,000; in 1889-90 the minimum circulation was Rs. 14,96,00,000; and, according to the latest return, the actual circulation was as much as Rs. 18,00,00,000 on the 7th of the present month. Under the circumstances the time has clearly arrived when it is expedient to increase the limit of investment. The Bombay Chamber of Commerce, the Calcutta Chamber of Commerce and the Madras Chamber of Commerce have all expressed themselves in favour of raising the legal limit of investment from six to eight crores of rupees. The Government of India is also of opinion that this may safely be done, and the Secretary of State for India in Council has given his approval.

“ For my own part I think that if we err at all in this matter it is on the side of caution rather than of rashness, and I believe that there will be no opposition from any section of the public to a measure which is well within the limits of safety, and which will ultimately add eight lakhs of rupees yearly to the public revenue.”

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

[*Sir David Barbour; Mr. Crosthwaite.*]

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The Hon'ble SIR DAVID BARBOUR 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.

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh. He said :—

“Owing to difficulties which had arisen in the revenue administration of the Benares Division and in the judicial and revenue administration of the province of Oudh, a Committee was appointed by the Lieutenant-Governor and Chief Commissioner to consider the question of reorganizing the existing divisions in the North-Western Provinces and of making such changes in the administration of Oudh as would facilitate the conduct of the business of the judicial and revenue departments. The proposals contained in the report of the Committee have been in the main approved by the Local Governments and by the Government of India, and the measure which I now ask leave to introduce is intended to give effect to these proposals.

“In the North-Western Provinces it has been found that the Benares Division is too extensive a charge for one Commissioner, and it is, therefore, necessary to reduce the size of that division, and consequently to reorganize other divisions. The Benares Division includes seven districts with an area of 18,337 square miles, and a population according to the census of 1881 of nearly 10 millions. The Allahabad Division, which has the next largest area and population after the Benares Division, contains an area of 13,745 square miles with a population of 5½ millions. The work, therefore, which the Benares Commissioner has to dispose of considerably exceeds that which devolves on any other Commissioner. The number of appeals in rent-cases, for instance, is in the Benares Division almost equal to the total number of such appeals in the Meerut, Agra and Rohilkhand Divisions taken together, while the partition and other revenue cases are far more numerous than in any other division except Allahabad.

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It has consequently been found necessary twice within the last three years to appoint an Additional Commissioner to clear off the arrears of business which had accumulated. In consequence, moreover, of the increase of railway communication throughout the division, there is every reason to expect that the work of the Commissioner will increase.

“ It has been decided, therefore, to separate the three important districts of Gorakhpur, Basti and Azamgarh from the Benares Division, to create a new division containing those districts, to transfer the district of Jaunpur from the Allahabad to the Benares Division, and to make the latter division consist of the five permanently-settled districts of Benares, Mirzapur, Ghazipur, Ballia and Jaunpur. The transfer of the Jaunpur District from the Allahabad to the Benares Division will enable the Local Government to abolish the Jhānsī Division. At present this division, which comprises the districts of Jhānsī, Jalaun and Lalatpur, is a scheduled district under the Scheduled Districts Act, 1874, and is administered somewhat after the manner of a non-regulation province, the Commissioner exercising civil and criminal judicial powers, and the districts being administered by Deputy Commissioners and Assistant Commissioners, who besides their revenue and magisterial functions have also the powers of Civil Courts. Hitherto, mainly owing to the fact that the division lies to the south of the Jumna and that it is difficult of access in the rainy season, it has been thought desirable to maintain it as a separate division. The difficulty of access has, however, disappeared owing to the opening of the Indian Midland Railway and the construction of a bridge across the Jumna at Kalpi. The Jhānsī Division has now been brought into immediate contact with the rest of the North-Western Provinces, and it can conveniently be administered by the Commissioner of Allahabad.

“ Having regard to the area of the Jhānsī Division, its population and the duties which the Commissioner has to perform, His Honour the Lieutenant-Governor is of opinion that it is now unnecessary to maintain it as a separate division. It has therefore been decided to abolish the Commissionership, to remove the Jhānsī Division from the list of scheduled districts and to unite it to the Allahabad Division, placing it under the same laws as are in force in that division. The result will be that the Jhānsī Courts Act, 1867, will be repealed, the civil judicial powers now exercised by the revenue-officers will be withdrawn and transferred to the regular Civil Courts to be established in the Division, and the criminal jurisdiction now exercised by the Commissioner will be exercised by

[*Mr. Crosthwaite.*]

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the Sessions Judge. His Honour also considers that the small and unimportant district of Lalatpur, which is not far from Jhānsī and is connected with it by rail, may safely be reduced to a sub-division of the Jhānsī District.

“ To give effect to these proposals Part I of the Bill amends (section 3) the North-Western Provinces Land-revenue Act, 1873, so as to empower the Local Government, with the previous sanction of the Governor General in Council, to create new, or abolish existing, divisions or districts, and to alter the limits of any division or district. This will enable the Local Government, with the proper sanction, to alter the limits of the Benares Division, to create a new division consisting of Gorakhpur, Basti and Azamgarh, to abolish the Jhānsī Division, to unite the territories now included therein to the Allahabad Division, and to reduce Lalatpur to a sub-division.

“ The removal of the Jhānsī Division from the list of scheduled districts and the assimilation of the law in that division to the law in force in the Allahabad Division are provided for by sections 4 and 7 of the Bill. The provisions required for pending cases owing to the repeal of the Jhānsī Courts Act, 1867, and the extension to the Jhānsī Division of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, are contained in section 8 of the Bill.

“ With regard to Oudh it is proposed to transfer to the Board of Revenue of the North-Western Provinces the powers and duties now conferred on, and performed by, the Chief Commissioner as the Chief Controlling Revenue-authority.

“ At present the Chief Commissioner of Oudh discharges in respect of Oudh most of the duties performed by the Board with regard to the land-revenue administration in the North-Western Provinces. Appeals in partition cases, for instance, are decided by him; the ultimate decision in all matters involved in the administration of the land-revenue lies with him; and the direction of the machinery of the revenue administration is immediately in his hands. There can be no doubt that these various duties, some of them being of a judicial nature, cannot be performed satisfactorily by the Lieutenant-Governor and Chief Commissioner who administers both the North-Western Provinces and Oudh. For the due discharge of such duties an amount of direct personal attention and supervision is required which it is impossible for the head of a large Government to give. Already the Departments of Excise, Stamps, Income-tax and Treasuries in Oudh have been made over to the Board of Revenue, and it is proposed to complete the transfer of business and to make the Board of Revenue of the North-Western Provinces the Board of Revenue of the North-Western Provinces and Oudh.

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“Accordingly sub-section (1) of section 10 of the Bill provides that the Board of Revenue constituted under the North-Western Provinces Land-revenue Act, 1873, shall be also the Board of Revenue of Oudh and shall hereafter be designated the Board of Revenue of the North-Western Provinces and Oudh. Sub-section (3) of the same section makes the Board the Chief Controlling Revenue-authority in Oudh; and sections 11 and 12 and sections 14 to 29 (both inclusive) make in the Oudh Land-revenue Act, 1876, the amendments which are required to transfer from the Chief Commissioner to the Board the powers and duties which in revenue matters are conferred on, and performed by, the Board in the North-Western Provinces. Care has been taken to preserve the special powers of the Chief Commissioner and the Governor General in Council in the settlement of taluqdari maháls and the powers of the Chief Commissioner with regard to annulling the settlement of such maháls for arrears of revenue.

“The next proposal with regard to Oudh is to relieve the Commissioners of their judicial functions, and to place them and the District Judges as nearly as possible on the same footing as officers of corresponding designations in the North-Western Provinces. There are at present in Oudh four divisions which are each composed of three districts; and the duties of a Commissioner have been described as follows:—The Commissioner supervises the proceedings of the district officers in all matters connected with the revenue in its various branches, and with the executive administration generally, and he is the channel of communication between the district officers and the Government. In certain cases appeals lie to him: in nearly all he is competent to revise and control. In respect of all that class of litigation between agricultural tenants and their landlords which is excluded from the jurisdiction of the ordinary Civil Courts and which is disposed of by Courts of Revenue under the Oudh Rent Act, the Commissioner exercises a wide appellate jurisdiction. In addition to these duties he is also the Sessions Judge for his division, and in that capacity he has to try as a Court of Session the most serious of the criminal cases and to hear criminal appeals.

“The system under which one officer is the chief executive authority in a division and also exercises civil and criminal judicial functions has been found to work well in the early, and what may be called the non-regulation, stage of a province, when the laws are simple and the work is light. But when the province becomes developed and passes out of the non-regulation stage, when the law becomes more complicated and the work heavier, it is extremely difficult to carry on such a system satisfactorily. On the one hand, the Commissioner has to listen to the exhortations and admonitions of the Local Government with regard to his executive work; on the other hand, the chief judicial authority

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requires him to dispose of his judicial work promptly and regularly, and finds fault if there is a delay in the trial of sessions cases or in the hearing of appeals. The pressure of judicial work becomes so great that the Commissioner cannot give the requisite amount of time and attention to the administrative business of his Division, and it is found that to meet the requirements of the executive and judicial administrations it is necessary to separate the executive and judicial functions discharged by the Commissioner. His Honour the Lieutenant-Governor considers that the time has now arrived when this separation should be carried out in Oudh. The relief which will thus be afforded to the Commissioners will enable the Local Government to reduce the number of divisions to two, but it will be necessary at the same time to increase the number of District Judges. It is proposed also, in order that Munsifs and Subordinate Judges in Oudh may be able to assist the District Judge more effectually, to confer upon them a jurisdiction similar in extent to that exercised by the same classes of officers in the North-Western Provinces. With the object of relieving Commissioners of some of the judicial functions which they have to discharge under the Oudh Rent Act, 1886, it has been decided to amend that Act so as to confer on District Judges appellate jurisdiction in rent cases similar to the like jurisdiction exercised by District Judges in the North-Western Provinces, and to confine the jurisdiction of the Commissioner and the Board to that class of rent-cases which has been found by experience to be most suitably dealt with by the Revenue-authorities.

"To carry out these proposals the Bill (section 13) inserts in the Oudh Land-revenue Act a section (4B) empowering the Chief Commissioner, with the previous sanction of the Governor General in Council, to create new, or abolish existing, divisions. Sections 33, 34 and 35 amend the Oudh Civil Courts Act, 1879. The ordinary jurisdiction of the Munsif is raised from suits of a value not exceeding Rs. 500 to suits of a value not exceeding Rs. 1,000, while power is given to the Local Government to extend the jurisdiction of a Munsif to suits of a value not exceeding two thousand rupees, and the jurisdiction of a Subordinate Judge to all suits cognizable by the Civil Courts. Provision is made (section 34) for appeals from the decrees of a Subordinate Judge upon whom this extended jurisdiction may be conferred, and a power, similar to the power conferred on the High Court by section 21 (4) of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, is given to the Judicial Commissioner to direct that appeals from a Munsif shall be preferred to a specified Subordinate Judge. Section 35 of the Bill amends section 27 of the Oudh Civil Courts Act, 1890, so as to give the District Judge in Oudh the same jurisdiction under the

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Indian Divorce Act as is conferred by that Act on District Judges in the Regulation Provinces.

"The amendments which it is proposed to make in the Oudh Rent Act are contained in sections 37 to 51 (both inclusive) of the Bill. By section 39 of the Bill the Board is made a Court of Revenue in the place of the Judicial Commissioner in section 109 of the Act. Section 119 of the Act is amended by section 44 of the Bill on the lines of section 189 of the North-Western Provinces Rent Act, 1881, so as to make the decrees and orders of a Collector or Assistant Collector in a specified class of suits final, except in certain cases in which an appeal is allowed to the Judge or the Judicial Commissioner according to the value of the suit. Generally the rules regarding appeals have been assimilated to the rules under the North-Western Provinces Rent Act, 1881; power is given (section 47) to the Board to revise cases in which no appeal lies and to review its own orders, and to the Commissioner and the subordinate Courts to grant a review of judgment in cases which are not appealable.

"I need not, my Lord, detain the Council with a fuller examination of the Bill. Various slight amendments which do not require explanation have been made in enactments in force in Oudh so as to effect the transfer of the duties of the Chief Controlling Revenue-authority from the Chief Commissioner to the Board; and I may mention that the Act is divided into three Parts which can be separately put in force, Part I relating to the North-Western Provinces, Part II relating to Oudh, and Part III relating to both the North-Western Provinces and Oudh. Part I contains the legislation required for the North-Western Provinces, Part II the legislation required for Oudh, and Part III provisions regarding the Board of Revenue which will, under section 10 of the Bill, be the Board of Revenue of the North-Western Provinces and Oudh."

The Motion was put and agreed to.

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

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 31st July, 1890.

S. HARVEY JAMES,

SIMLA;
The 25th July, 1890.

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Secretary to the Government of India,

• *Legislative Department.*