

*Thursday,
16th October, 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,

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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 Thursday, the 16th October, 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*.

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

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 Bááb Khem Singh Bedi, C.I.E.

CENSUS BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to provide for certain matters in connection with the taking of the Census be taken into consideration. He said :—

“ Substantially this Bill remains just as it was drafted when I introduced it last July. A number of small alterations have been made by the Select Committee, but all these have been enumerated in its Report, and I think there are only four or five which require some further short explanation at my hands.

“ One of these amendments occurs in the first section. As originally drafted, only four clauses, those which now appear as the second, third and last two sections, were to be applied at once to the whole of British India ; Local Governments were left to extend the other sections or not as they thought fit. The Committee considered this an unnecessary and unreasonable distinction. The law is one which ought to be in force in all India even though there are very few places in which it is likely that effect will have to be given to the penal provisions. When a census-officer has to fill up a schedule, he must have power everywhere to ask the appropriate questions and to demand answers ; and, when a schedule is handed to a householder to be filled in, there ought to be the same sanction in every

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province to compel him to do what is needful. Most of the other clauses are merely permissive, and they will not be made compulsory by their extension to the whole country.

"The second provision to which I would refer is sub-section (d) of section 4. At the instance of the Madras Government the word 'Secretary' has here been inserted, and the same Government proposed to add to 'sarais, hotels,' &c., the words 'choultry and cart-stand'. The word 'cart-stand,' however, would not be understood in other parts of India, and it appeared to the Committee that the term 'sarai' includes everything of the nature of a choultry or cart-stand (as understood in Madras) to which it would ever be desirable that the provisions of section 4 should be applied. Sarai is defined in Act XXII of 1867 as meaning any building used for the shelter and accommodation of travellers, and as including, in any case in which only part of a building is used as a sarai, the part so used of such building.

"The additions made to section 5 hardly require explanation. Various Local Governments have suggested that there are certain classes of persons or local bodies in their respective territories, over and above those originally specified in the section, who may with advantage be required to give assistance towards the taking of the census. These have accordingly been inserted.

"Section 6 empowers a census-officer to ask all such questions as by instructions issued in this behalf by the Local Government, and published in the official Gazette, he may be directed to ask. The Judges of the High Court at Calcutta have expressed an opinion that the questions ought to be prescribed in the Act itself and not left to the Local Government; but this is not the course followed in British legislation. The Census Acts for both England and Scotland allow such questions as may be directed in instructions issued by the Secretary of State and as are necessary for the preparation of the schedules. The instructions vary slightly in different provinces of this vast country, having to be adapted to local circumstances and prejudices. They have all been carefully settled, and show that the prescribed questions are really necessary for the preparation of the schedules. In this connection I may mention that, following a very general recommendation, the exemption of a woman from the necessity of giving her husband's name has been extended in section 7 so as to cover the name of any other person whose name custom may forbid her to mention.

"Lastly, clause (e) of section 10 prescribes a punishment for the removal or obliteration before 31st March, 1891, of any letters, marks or numbers affixed to

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premises for the purposes of the census. It was proposed to insert here the words 'without sufficient cause,' but we came to the conclusion in Committee that section 11 (3), as now revised, will afford all necessary protection against unreasonable prosecutions. No prosecution under the Act can now be instituted without the special leave of the Local Government or of some officer specially authorised by the Local Government in this behalf. We may rest assured that such leave will not be given in respect of any act for which the accused person is able to show a sufficient excuse."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved that the Report of the Select Committee on the Bill to amend the Indian Emigration Act, 1883, be taken into consideration. He said :—

"This Bill as referred to the Select Committee consisted of three clauses, now numbered as sections 5, 7 and 8. The Council will remember that there were two objects with which the Bill had been prepared. The first was to do away with the necessity for an entirely fresh survey of the hull and machinery of a duly certified steamer, whenever it is proposed to employ it for the purpose of carrying emigrants. The second was to place emigration to British North Borneo, carried on through the agency of the Government of the Straits Settlements, on the same footing as emigration to those Settlements and the adjoining Native States. The clauses dealing with these matters have been generally approved, and the Committee has retained them exactly as they were drafted, and recommends that they may be passed into law.

"Of the other sections which the Committee has added to the Bill, the first and the last merely correct two clerical errors which have been discovered in the Act of 1883; these require no further explanation. The remaining sections deal with quite a new matter, and when I presented the Committee's Report a fortnight ago I briefly drew attention to this point and promised to explain it more in detail.

"As long ago as 1887 it was reported by the Governments of Madras and Bengal, which have most to do with emigration, that much trouble and delay are caused by that part of the Act of 1883 which requires an agreement to be pre-

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pared in triplicate for each intending emigrant. The Emigration Agents stated that the third copy is not required for transmission to the Colonies, and that a copy of the particulars registered under section 31 is sufficient for their purposes. And as far as the Protector is concerned, when 40 or 50 emigrants are registered on the same terms and at the same time, it is obviously more convenient for him to have a single list of them than 40 or 50 separate agreements. In these circumstances new sections 2, 3, 4 and 6 have been introduced into the Bill as revised, providing that agreements shall be executed in duplicate instead of in triplicate, and that any number of intending emigrants appearing with the same recruiter before the Registering-officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may execute for record in the Protector's office a single instrument of agreement instead of as many such instruments as there are intending emigrants.

“ These modifications of the law will not, in the Committee's opinion, involve any reasonable ground for complaint respecting the procedure under the Act as to the execution of agreements. Each emigrant will still receive for his own use a copy of his own separate agreement. The Protector will have a complete record of each man's contract. The Emigration Agents will get all such particulars regarding each registered emigrant as are really required. But the time and trouble now spent in preparing triplicate engagements will be saved, and the Protector and the Agents will be relieved of the custody of many cumbrous and unnecessary documents. Under section 31 each emigrant has to be separately examined apart from his recruiter, and it is only after he has satisfied the Registering-officer that he is going willingly and understands what he is about, that he can be registered. The execution of the contract takes place subsequently. I think therefore that there can be no risk in allowing it to be executed by several emigrants in batches.

“ Both the Governments concerned have seen the sections since I presented the Committee's Report and their approval has been signified to us by telegraph. The Madras Government has raised one objection under the impression that each emigrant would not get a copy of his own agreement, but this, as I have stated already, will not be the case.”

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

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INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend the Indian Salt Act, 1882, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed. He said that he had already explained the nature of the measure, which merely continued the existing practice. The Bill had met with no opposition on the part of the public, and the Select Committee had made only a verbal alteration in a single sentence, and reported that the Bill might now be passed as it stood. He need not therefore trouble the Council with any further remarks.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the 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 be taken into consideration. He said :—

“ The Bill has been generally approved and the only provisions which have been objected to are those which relate to appeals under the Oudh Rent Act, 1886. As that Act now stands, there are five grades of Courts of Revenue which alone can take cognizance of suits under the Act. These Courts are the Assistant Collector of the second class, the Assistant Collector of the first class, the Collector, the Commissioner and the Judicial Commissioner. The rule as regards appeals may be stated generally as follows. First appeals lie from the decisions of Assistant Collectors of the second class, to the Collector; from the decisions of Assistant Collectors of the first class and Collectors, to the Commissioner; and from the decisions of the Commissioner, to the Judicial Commissioner. Second appeals, when allowed by law, lie to the Judicial Commissioner. It is further provided in section 119 of the Act that the original or appellate decrees of a Commissioner or a Collector in suits of a certain description and of a value not exceeding one hundred rupees shall be final, unless a question of right to enhance or vary the rent of a tenant, or a question relating to a title to land or to an interest in land, has been determined by the decree or order. The Bill

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as introduced proposed to make the Board of Revenue the principal Court of Revenue in the place of the Judicial Commissioner: to divide, after the manner of the North-Western Provinces Rent Act, 1881, suits under the Oudh Rent Act into two classes, in one of which the ultimate Court of Appeal should be the Board of Revenue, and in the other the Judicial Commissioner. In the former class of suits it was proposed that appeals should lie from the Assistant Collector of the second class, to the Collector, and from the Assistant Collector of the first class and the Collector, to the Commissioner. There was to be no second appeal from the appellate decree or order of a Collector, but from the Commissioner a second appeal was to lie to the Board if the Commissioner reversed or varied the decree or order of the Court of first instance. In the latter class of suits, that is to say, the class cognizable by the Judicial Commissioner, the decisions of Collectors and Assistant Collectors of the first class were to be final, unless the value of the suit exceeded one hundred rupees, or a question of right to enhance or vary the rent of a tenant, or a question relating to a title to land or some interest in land, had been determined in the suit, in which case an appeal would lie to the District Judge or the Judicial Commissioner according to the value of the suit. It was also proposed by section 47 of the Bill to enact a provision conferring on the Board a power to call for the record of any suit in which the decree or order was not appealable, and to revise, if necessary, the decree or order. Thus, speaking generally, the Bill proposed to transfer from the Judicial Commissioner to the Board the final jurisdiction in a large class of suits, and to impose further restrictions on the right of appeal, but to compensate for this restriction by giving the Board an extensive power of revision.

“On further consideration the Lieutenant-Governor was of opinion that there were serious objections to the principle of restricting the right of appeal and at the same time making all unappealable cases open to revision by the Board. His Honour considered that the Board of Revenue was right in saying that ‘the result of declaring the orders and decisions of Assistant Collectors of the first class not open to appeal is not really to make those orders final, but to substitute an informal for a formal appeal.’ ‘Each application for review,’ he remarks, ‘necessitates calling for, and consideration of, the file of the lower Court, even though in the end the application may be rejected.’ The result of the system of barring appeals and allowing instead a revision by the Board of Revenue appears to be practically this, that disappointed suitors who cannot appeal apply to the Board for a revision of their cases, and the Board is thus led to spend in considering and revising petty cases time which might be more profitably employed. On

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the other hand, objection was taken by the Oudh Bar, the Talukdars and others to the proposed restriction of the right of appeal, and it was urged that Assistant Collectors of the first class in Oudh were not qualified as regards knowledge or experience to pass unappealable decrees. His Honour was accordingly of opinion that the section of the Bill conferring the power of revision on the Board should be omitted, and that the right of appealing from decrees and orders under the Rent Act should be enlarged. Sir Auckland Colvin proposed that, subject to the provisions of the Code of Civil Procedure, a first and second appeal should be allowed in all cases, subject to this exception, that there should be only one appeal from the original decree or order of a Collector in a suit of the class in which the Board of Revenue was to have jurisdiction and that that appeal should be allowed only on a question of law. His Honour also proposed that second appeals from the appellate decrees and orders of the Collector should lie to the Commissioner, as the Board would not be able to dispose of them with the promptitude required.

“These proposals, my Lord, have been adopted by the Select Committee after careful consideration. They do not appear to be open to objection, except as regards the proposal to divide the jurisdiction between the Revenue and Civil Courts, and against this proposal the Oudh Talukdars and others have advanced objections which, it must be allowed, have weight. It is said that the appellate system proposed is complicated, and therefore likely to cause trouble to the agricultural classes with whom the Act has to deal. It is, moreover, inexpedient to have two or more Courts of second appeal to decide finally questions of law arising under one Act. There is a probability that the different Courts will not always take the same view of the law, and it is more convenient to the people to have one Court of final appeal in all cases. His Honour the Lieutenant-Governor is, however, of opinion that it is most important that the Board of Revenue should be given the jurisdiction proposed. ‘Experience,’ he says, ‘has incontestably shown that no provisions in Act XVIII of 1873 (the North-Western Provinces Rent Act, 1873) have worked better than those by which the jurisdiction over applications was in the North-Western Provinces transferred from the Civil to the Revenue Courts. It is in cases similar to applications in the North-Western Provinces that the present Bill gives a second appeal to the Revenue Board. It may safely be said that the knowledge gained by this means of matters affecting agricultural tenures and the condition of the agricultural body has proved invaluable to the superior revenue-authorities, and that these provisions have completely fulfilled the objects with which they were introduced

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by the Legislature of 1873.' With regard to the objection that the different Appellate Courts may give conflicting decisions as to the law, His Honour, in reply to the British Indian Association of Oudh, remarks that no conflict of rulings has resulted under similar conditions in the neighbouring province.

"It must be admitted, I think, that the experience in matters relating to the agricultural classes which the Board gains by supervising the Rent Courts is of great advantage to the revenue-administration, while, on the other hand, the knowledge acquired by the Board in its executive capacity enables it the better to understand the questions which come before it for judicial decision in suits between landlords and tenants. It is a case in which the union of executive and judicial functions is calculated to work well in the interests of both suitors and the agricultural classes generally. The Local Government was also of opinion that there was a tendency in the Judicial Commissioner's Court to regard appeals under the Rent Act as business of less importance than the civil and criminal cases; that a Revenue Court would both be able to dispose of rent appeals at once, and would in the ordinary course of its work consider the early disposal of such appeals as a matter of paramount importance. The Committee, after fully considering the question, decided to be guided by the strong opinion expressed by His Honour the Lieutenant-Governor, supported, as it is, by that of the majority of the experienced officers who have been consulted. Accordingly the provisions regarding the division of the appellate jurisdiction between the Board and the Judicial Commissioner have been retained in the Bill, and the sections regarding appeals have been amended in accordance with the recommendations of the Local Government.

"To prevent as far as possible the difficulties and delays which are apt to arise with respect to questions of jurisdiction in rent cases, especially where appeals lie in one class of those cases to Revenue Courts and in other classes to Civil Courts, the Select Committee has, with the concurrence of the Lieutenant-Governor, inserted in the Oudh Rent Act sections taken from the North-Western Provinces Rent Act, 1881. The provisions of these sections will, it is hoped, lead to the prompt decision of questions as to jurisdiction, and prevent the mischief of suitors being referred by the Revenue to the Civil Courts and then by the Civil to the Revenue Courts.

"Of the minor amendments made in the Bill I need only notice the following. First, by sections 28 to 31, both inclusive, of the Bill as now amended we have, at the suggestion of the Local Government, made the Board of Revenue

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the Court of Wards for Oudh. The Deputy Commissioner is now the Court of Wards for his district, but it is considered that, as the revenue-administration of Oudh is now to be transferred to the Board, that body should be the Court of Wards for Oudh as it is for the North-Western Provinces.

"Secondly, with regard to the Civil Courts in Oudh, we have, on the recommendation of the Local Government, provided in section 39 of the Bill as now amended that appeals from Subordinate Judges shall in suits of a value exceeding five thousand rupees lie to the Judicial Commissioner. The rule will thus be in accordance with the rule contained in the Bengal, North-Western Provinces and Assam Civil Courts Act as to appeals from Subordinate Judges. By section 40 of the Bill section 24 of the Oudh Civil Courts Act has been amended so as to enable the Local Government to invest Munsifs with the powers of a Court of Small Causes in suits not exceeding one hundred rupees in value. As that Act now stands, Munsifs in Oudh can only be invested with such powers in suits not exceeding fifty rupees, and it is considered that it is expedient that the law in this respect should be the same as that in force in Bengal and the North-Western Provinces.

"As strong representations have been made with respect to the amendment of the law regarding second appeals from the Civil Courts in Oudh, I may mention that this matter is being considered with reference to the constitution of the Judicial Commissioner's Court, and has not, therefore, been dealt with in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that in section 35 of the Bill, as amended, for the words "the same Act" the words "the latter Act" be substituted. He said that the amendment was merely a verbal one and required no explanation.

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE then said :—"I propose, with Your Excellency's permission, to move the next two amendments which stand on the list together, as they both relate to the same matter. The first amendment is that after section 35 of the Bill, as amended, the following section be inserted in the Bill as section 36, namely :—

New section substituted for section 36, Act IV of 1878.

'36. For section 8 of the Oudh Local Rates Act, 1878, the following shall be substituted, namely :—

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"8. (1) Suits for the recovery from co-sharers, under-proprietors, permanent lessees or tenants as aforesaid of any sum on account of any such rate, and suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Courts of Revenue in Oudh as though such suits were suits mentioned in section 108, clause (15), (16) or (17), of the Oudh Rent Act, 1886.

"(2) Appeals from decisions in such suits shall be cognizable in accordance with the provisions of the said Act as though they were decisions in suits mentioned in section 108, clause (15), (16) or (17), of the said Act";

and that the numbering of the sections in the Bill be amended accordingly.

"The second amendment is that after section 59 of the Bill, as amended, the following section be inserted as section 61, namely:—

"61. In section 16 of the North-Western Provinces and Oudh Kanungos and Patwaris Act, 1889, there shall be inserted after the word and figures "section 108" the word and figure "clause (2)";

and that the numbering of the sections in the Bill be amended accordingly."

The object of these two amendments is to bring the law in Oudh regarding the recovery of rates under the Oudh Local Rates Act and the Kanungos and Patwaris Act into conformity with the law in the North-Western Provinces. Suits for the recovery of these rates are both in Oudh and the North-West made cognizable as suits under the Rent Act, and the amendments are intended to place these suits under the same class of rent-suits in both provinces, namely, under the class in which the appeal lies to the Judge and the High Court. It may cause inconvenience and error if the appeal in Oudh lies to the Board while in the North-West it lies to the District Judge. The amendments are approved of by the Local Government."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that for section 61 of the Bill, as amended, the following section be substituted as section 63, namely:—

"63. (1) Notwithstanding anything in section 152 of the North-Western Provinces Rent Act, 1881, or in section 128 of the Oudh Rent Act, 1886, the Board of Revenue of the North-Western Provinces and Oudh shall for the disposal of cases under those Acts sit in such place or places in the North-Western Provinces or Oudh as the said Lieutenant-Governor and Chief Commissioner may, by notification in the official Gazette, appoint in respect to cases under either of those Acts.

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“(2) For the disposal of cases other than those referred to in sub-section (1) the said Board may, subject to the orders of the said Lieutenant-Governor and Chief Commissioner, sit in any place in the North-Western Provinces or Oudh that the Board thinks fit.”

He said :—“ Section 53 of the Bill as introduced, following the North-Western Provinces Land-revenue Act, provided that the Board of Revenue might, subject to the orders of the Lieutenant-Governor, sit in any place in the North-Western Provinces or Oudh. This section was amended in Committee by section 61 of the amended Bill, as it was considered that, having regard to the extensive jurisdiction which it is proposed to confer on the Board, the place or places where the Board should sit for the disposal of business should be fixed by the Local Government, so as to secure that the convenience of the public convenience should be sufficiently consulted. His Honour the Lieutenant-Governor, however, is of opinion that it will not be practicable, considering the nature of the business which the Board has to dispose of and the fact that the Board has to proceed on tour in the cold weather, to fix places where alone business can be transacted. I think that as regards revenue work it will be best to allow the Board to sit where it thinks fit, subject to the orders of the Lieutenant-Governor. It would be found inconvenient if the Board, having made a local inquiry in a settlement case, for instance, was compelled to proceed to some other place in order to record a decision. With regard, however, to rent cases it was considered that the Board, being a Court of second appeal, and having only to decide questions of law, should sit at some place or places convenient to the public and of which the public have sufficient notice. It should be possible for suitors who wish to have a question of law decided by a Court of final appeal to have the case argued by counsel and regularly heard. It is proposed therefore to amend section 61 of the Bill so as to provide that the Local Government shall fix the place or places where the Board is to sit for the disposal of cases under the Oudh or North-Western Provinces Rent Act, and that for the disposal of all other cases the Board may, subject to the orders of the Lieutenant-Governor and Chief Commissioner, sit at such place as the Board thinks fit.”

The Hon'ble SIR CHARLES ELLIOTT said :—“ I should like to say one word with regard to the section which it is proposed to substitute, I see no objection to it, and I understand that it completely meets the objection raised by the Lieutenant-Governor; but I should like it to be understood that the meaning of this section is not that it is feared by the Council that the Board of Revenue would, if it were not prevented by any law, sit in such places as would be incon-

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venient to the public or the suitors engaged in the appeals heard by them, and that the section in question is meant more to legalise and proclaim an habitual practice than to imply restraint by law on anything which they would be likely to do."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE then moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to repeal certain obsolete enactments and to amend certain other enactments. He said:—

"It is one of the functions of the Legislative Department from time to time to publish editions of the Acts and Regulations in force in British India, so that officials and the public generally may have in a compact form the body of statute law applicable to British India generally, or to particular Provinces, revised and corrected so as to show the latest amendments introduced by the various Legislative Councils. In the course of preparing these editions it is found that some enactments have become spent by lapse of time, or inapplicable by change of circumstances, and that, to use Lord Hobhouse's expression, 'there is dead matter in the statute-book which may advantageously be removed.' It also happens that obvious errors are discovered which it is desirable not to perpetuate."

"The Bill which I now ask leave to introduce has for its object to correct these errors and to get rid of these superfluities. It has been prepared by Mr. Wigley, whose work has been carefully checked by Mr. Harvey James, and, so far as I am able to judge, will not remove from the Indian statute-book anything of living importance, while I hope it will facilitate the production of a more accurate edition of the Acts and Regulations than is now possible."

The Motion was put and agreed to.

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The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW 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.

The Council adjourned *sine die*.

SIMLA;
The 17th October, 1890.

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