

*Friday,
2nd January, 1891*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXX

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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,

1891

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1892

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 Government House on Friday, the 2nd January, 1891.

PRESENT:

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 Bengal, K.C.S.I.

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 P. P. Hutchins, C.S.I.

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

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble Khan Bahadur Muhammad Ali Khan.

The Hon'ble Sir Alexander Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble G. H. P. Evans.

NEW MEMBER.

The Hon'ble MR. BLISS took his seat as an Additional Member of Council.

SUNDRY BILLS.

The Hon'ble SIR ANDREW SCOBLE moved that the Hon'ble Mr. Nugent be added to the Select Committees on the following Bills:—

Bill to amend the Indian Factories Act, 1881 ;

Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882 ;

Bill to amend the Indian Christian Marriage Act, 1872 ;

Bill to amend the Code of Criminal Procedure, 1882 ; and

Bill to repeal certain obsolete enactments and to amend certain other enactments.

The Motion was put and agreed to.

2 AMENDMENT OF CATTLE-TRESPASS ACT, 1871; AMENDMENT
OF ACTS I OF 1859, VII OF 1880 AND V OF 1883; AMEND-
MENT OF MERCHANT SHIPPING ACT, 1880; AMENDMENT
OF ACT X OF 1841; EASEMENTS.

[Mr. Hutchins; Sir David Barbour; Sir Andrew Scoble.] [2ND JAN., 1891.]

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Mr. Nugent be added to the Select Committee on the Bill to amend the Cattle-Trespass Act, 1871.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Nugent be added to the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*).

The Motion was put and agreed to.

MERCHANT SHIPPING ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill to amend the Indian Merchant Shipping Act, 1880, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Alexander Wilson, the Hon'ble Mr. Halliday, the Hon'ble Mr. Nugent and the Mover.

The Motion was put and agreed to.

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill to amend Act X of 1841 (*Registration of Ships*) be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Alexander Wilson, the Hon'ble Mr. Halliday, the Hon'ble Mr. Nugent and the Mover.

The Motion was put and agreed to.

EASEMENTS, BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force. He said:—

The Easements Act, passed in 1882, was intended to form part of the Indian Civil Code; and though it was applied in the first instance only to the territories

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[*Sir Andrew Scoble.*]

administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg, a provision was introduced into the Bill as originally drafted, empowering the Local Government to extend it to any other part of India, by the simple process of a notification in the official Gazette. Exception was, however, taken to the extension of measures of such importance by an executive order instead of by an Act of the Legislative Council; and this provision was dropped, with the result that a regular legislative enactment is necessary in order to apply the Act to any province not originally included within its scope.

The object of the present Bill is to extend the operation of the Act to the presidency of Bombay, and to the North-West Provinces and Oudh. In the former case the extension is asked by the Local Government, with the consent of the High Court; in the latter, the proposal has originated with the High Court, and is supported by the Local Government.

When the Easements Act was under consideration in Council, two objections were raised to it—first, that its language was over-technical and obscure; and secondly, that it was likely to provoke litigation. No doubt an enactment of this kind must employ technical language, but there is no reason to believe that the Judges and professional lawyers, for whose guidance it was primarily intended, have found greater difficulty in understanding it than they would have found in getting at the meaning of any of the well-known treatises on the subject. And as to the second objection, the learned author of the Act, Mr. Whitley Stokes, is, I think, fully entitled to say—"It has worked well, during the last eight years, among the forty millions to whom it applies, and has falsified the prediction that it would give rise to litigation." (*The Anglo-Indian Codes*, I, 888.)

In this opinion, Mr. Stokes is supported by eminent authority. The Judicial Commissioner of the Central Provinces, where the Act has been in operation from its commencement, "is decidedly of opinion that it has not given rise to litigation." On the contrary, he has "found that the Act was of much advantage in the decision of cases" of the class to which it relates; and that "it is most important that the Courts should have such an enactment to guide them." The Chief Justice of the High Court at Allahabad considers that the extension of the Act to the provinces under his jurisdiction "would be more likely to decrease than to increase litigation." "From the uncertainty as to the law to be applied in such cases," he writes, "litigation is much protracted by appeals, and the rights of the contending parties are not unfrequently finally ascertained only at an expense exceeding the actual money-value of

the easement claimed and contested." Mr. Justice Straight, of the same High Court, observes: "It will be of great advantage to the Subordinate Courts to have a book to which they can go for information, and there find the law of easements crystallized in its most important particulars. I have long felt that there should be some Statute for the guidance of the Courts in dealing with litigation of this kind . . . and I confess I see nothing so fantastic or elaborate in the provisions of the Easements Act as to render it incomprehensible or incapable of construction by the ordinary Judicial Officers."

The Bombay Government, in communicating its consent to the proposed extension of the Act to that presidency, while expressing the opinion that certain of its provisions are not well adapted to Indian circumstances, nevertheless "considers it preferable that the law should be stated in a clear and compendious form, as in Act V of 1882, rather than that it should be gathered with more or less uncertainty from cases decided in England and India."

I have therefore to ask leave to introduce the Bill mentioned in the notice of Motion. The authorities which I have quoted show that it is well calculated to afford much valuable assistance to both Courts and suitors in regard to a difficult, but very important, branch of the law.

The Motion was put and agreed to.

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 Bombay Government Gazette and the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 9th January, 1891.

S. HARVEY JAMES,

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

FORT WILLIAM;
The 2nd January, 1891.