

*Friday,
4th March, 1892*

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 pro-
visions of the Act of Parliament 24 & 25 Vict., cap. 67.*

The Council met at Government House on Friday, the 4th March, 1892.

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.

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

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

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

The Hon'ble Sir A. E. Miller, Kt., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

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

The Hon'ble J. Nugent.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

INDIAN BANKRUPTCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Sir Philip Hutchins be added to the Select Committee on the Bill to amend and consolidate the law of Bankruptcy and Insolvency in British India. He explained that looking at the character of the Bill it was necessary that the Hon'ble Member in charge of the Home Department should be one of the Select Committee.

The Motion was put and agreed to.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the presentation of the final Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be postponed to the next meeting of the

24 *MADRAS SMALL CAUSE COURT; AMENDMENT OF RANGOON
PORT COMMISSIONERS ACT, 1879; AMENDMENT OF
COURT OF WARDS ACT, 1879 (B. C.).*

[*Sir Philip Hutchins; Mr. Bliss; Sir John Edgar.*] [4TH MARCH, 1892]

Council. He explained that the papers relating to the Bill had not yet arrived from Madras, but he hoped that they would arrive in time to enable the Committee to take them into consideration and frame its report before the next meeting of the Council.

The Motion was put and agreed to.

**RANGOON PORT COMMISSIONERS ACT, 1879, AMENDMENT
BILL.**

The Hon'ble MR. BLISS presented the Report of the Select Committee on the Bill to amend the Rangoon Port Commissioners Act, 1879.

COURT OF WARDS ACT, 1879 (B. C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR introduced the Bill to amend the Court of Wards Act, 1879 (B.C.), and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Evans, the Hon'ble Mr. Woodburn, the Hon'ble Dr. Rash Behari Ghose and the Mover, with instructions to report in a week. He said:—

“ The most important provisions of the Bill which I am now about to lay before this Council are meant to amend the Bengal Court of Wards Act of 1879 so as to enable the Court of Wards to take over the management of the property of persons not otherwise disqualified upon their own application and with the sanction of the Lieutenant-Governor in each case. Similar provisions were included in a Bill passed by the Council of the Lieutenant-Governor of Bengal in 1877, from which however the sanction of the Governor General was withheld owing to a technical defect. Since that time the desirability of taking some measures to preserve ancient families from ruin and to prevent estates of historical and political importance from being broken up has frequently been brought home to the Government, and in one instance a special Act was passed with the consent of the creditors of a great landholder with a view to rescuing his estate from imminent ruin. In March, 1891, a Bill similar to that part of the present Bill which affects proprietors disqualified on their own application was introduced into the Council of the Lieutenant-Governor of Bengal and reported upon by a Select Committee. But before the measure could become law it was brought to notice that one of its provisions appeared to conflict with the Civil Procedure Code, and that the measure was therefore beyond the competence

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[Sir John Edgar.]

of the Bengal Council. Consequently it was decided that legislation should be undertaken by the Council of the Governor General.

“ The sections of the present Bill, which relate to the new class of disqualified proprietors, are practically the same as those of the Bill which was discussed in the Bengal Council, and they do not materially differ from what is actually the law in other Provinces. They fall far short of the provisions of the law on the same subject which prevails in one part of this Province,—I mean the Chota Nagpore Encumbered Estates Act,—and I do not think it necessary therefore to take up the time of the Council by any discussion of the policy of this part of the measure.

“ Another section in the Bill extends the definition of ‘estate’ in section 3 of Bengal Act IX of 1879 so as to make it cover ‘a portion of an estate.’ The Bengal Board of Revenue have pointed out that under section 7 of the Act the Court of Wards can only take charge of the property of disqualified proprietors who are either sole proprietors or joint proprietors of an estate, and that this has been held to exclude from the jurisdiction of the Court of Wards proprietors of only shares of estates, however large their entire property may be, while the Court is enabled to, and as a matter of fact does, take charge of properties mainly composed of many shares of estates, provided only that the proprietor has one whole estate, no matter how small. The Board point out that this condition is not required in the cases of properties made over to the Court of Wards by Civil Courts under section 10 of Act IX of 1879 or to the Collector under Act VIII of 1890, and that the restriction does not obtain in certain other Provinces, amongst which the North-Western Provinces may be instanced. They adduce, as an instance of the defective state of the present law, the case of the great Bonalli Raj, with a rent-roll of about 12 lakhs of rupees, seven-sixteenths of which are held by a major proprietor and nine-sixteenths by two minor proprietors. The Court of Wards is unable to take over charge of the latter as the minors do not hold a single entire estate entered in the revenue-roll. Some of the Members of Council are aware that there has lately been a great lawsuit between the major and minor proprietors of this estate, which, after an expenditure of, it is said, between 8 and 9 lakhs of rupees, was settled by a compromise, part of the terms of which was that the whole estate should be managed by the Collector, who would take over the major’s share at his own request and that of the minors under the Court of Wards. This arrangement, however, has been found to be impracticable under the existing state of the law, and if the present state of things continues this great and historic estate will probably be irretrievably ruined.

"There are some other amendments of the Bengal Wards Act contained in the Bill of a purely formal nature. They have been made necessary by the repeal of Act XL of 1858, and require no further explanation here.

"It is proposed to omit the proviso to section 48 of Act IX (B.C.) of 1879 making the consent of the Lieutenant-Governor and the Court of Wards necessary to the expenditure of more than ten per cent. of the previous year's surplus, as it has been found that this proviso only causes unnecessary delay, without providing any additional security for the proper expenditure of the funds.

"The objects of the remaining sections of the Bill are to provide that probate and letters of administration may be taken out by the Court of Wards in that capacity, and the conditions on which such probate and letters of administration may be granted; that the Court of Wards shall be the guardian of a minor when such minor is the sole executor or residuary legatee, &c., and belongs to the class to which the jurisdiction of the Court of Wards extends; that it should have power to take charge of properties of disqualified proprietors at the request of private executors and administrators; that it should be exempt under certain conditions from liability to giving security and rendering accounts to the Civil Court; and that estates administered by the Court of Wards under these sections should be exempt from sale on account of arrears of revenue.

"The discussions which have led to the introduction of these provisions are of old date, having arisen, in the year 1883-84, out of several cases which occurred about that time, the most important of which was one connected with the will of Raja Pramatha Nath Roy Bahadur of Dighaputtia, a very wealthy zamindar, who left four minor sons and by his will made the Court of Wards executor until the coming of age of his eldest son. It was found, however, that the Court of Wards could not take out probate and act as executor, and practically the existence of the will, which the testator meant to strengthen the position of the Court, was found to be an almost insurmountable obstacle to the exercise of the powers vested in the Court by statute. All the Local Governments and Administrations have been consulted on the subject and have reported generally in favour of the alteration in the law which it is now proposed to make, but it has been decided to legislate for the present only for Bengal.

"The Bonalli Raj case, to which I have already referred, shows clearly that it is most desirable that the changes proposed with regard to disqualified proprietors should be made with the least possible delay, and as the most import-

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ant alterations in the Bengal Act of 1879 have been before the public for a year and have been discussed in the Bengal Council, and as the Bill in its present form has been already published under Rule 22 in the Gazette of India and Calcutta and Vernacular Gazettes, I trust that the Council may be able to dispose of it before the close of the present session, and I shall therefore ask the Council to instruct the Select Committee to report in a week."

The Motion was put and agreed to.

BENGAL MILITARY POLICE BILL.

The Hon'ble SIR JOHN EDGAR also introduced the Bill for the Regulation of the Bengal Military Police and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Evans, the Hon'ble Dr. Rash Behari Ghose and the Mover, with instructions to report in a fortnight. He said :—

"The Bill which I am about to introduce does not require any lengthened explanations. It has been made necessary by the removal of the Frontier Police Force formerly employed in the Hill Tracts of Chittagong to the new district, the South Lushai Hills. The discipline of this force has hitherto been regulated by the Chittagong Hill Tracts Frontier Regulation of 1881, but as this applied only to frontier police-officers posted to the Hill Tracts of Chittagong it has apparently become inapplicable to them now that they are posted to the new district, the South Lushai Hills, and it has been thought safer to provide by fresh legislation for their discipline in future. Experience has also shown that a change is required in the terms of enlistment of the force. Hitherto all the men have been entitled to resign on giving their superior officer two months' notice in writing as provided in section 9 of Act V of 1861, but experience has shown that this might become a source of inconvenience and even of danger in the case of a force employed amongst tribes like those of the Lushai Hills. It has been therefore decided to enlist the men of this force for three years as is done in the case of the Burma Military Police, and also to provide that if they are on active service at the time when their engagement expires they shall not be entitled to claim their discharge until such active service is at an end.

"Besides the police force lately employed in the Chittagong Hill Tracts, and now employed in the South Lushai Hills, there are certain bodies of semi-

[*Sir John Edgar.*]

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military police in Bengal known as special reserves, and it has been found desirable to provide for the enlistment and discipline of these bodies and of any similar bodies which may hereafter be formed, upon the same lines as those laid down for the frontier force. The present Bill, which provides the above objects, follows very closely the Burma Military Police Act, XV of 1887, with the omission of one section. I do not think it is necessary for me therefore to take up the time of the Council with any detailed examination of its provisions. Under Your Lordship's orders it has already been published in the Gazette of India and in the Calcutta and Vernacular Gazettes in the manner provided by Rule 22 of the Rules for the Conduct of Business in this Council."

The Motion was put and agreed to.

The Council adjourned to Friday, the 11th March, 1892.

S. HARVEY JAMES,

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

CALCUTTA ;
The 4th March, 1892. }