

*Friday,  
18th March, 1892*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXXI**

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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,

1892

VOLUME XXXI



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1893

*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.*

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The Council met at Government House on Friday, the 18th 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.

BENGAL MILITARY POLICE BILL.

The Hon'ble SIR JOHN EDGAR presented the Report of the Select Committee on the Bill for the Regulation of the Bengal Military Police.

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Indian Limitation Act, 1877, and the Code of Civil Procedure. He said :—

“ Before I explain the reason why it has been thought necessary to introduce this Bill, I wish to say one or two words to make it quite clear as to what the position, as I take it, of the Legislature in this matter is. In the construction of an Act of Parliament, or an Act of this Legislature, it is clear that the

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Courts of Law are the only authority that can decide as to what is the true construction, and that where two High Courts have, as in this case has happened in three instances, come to different conclusions upon the true construction of an Act, there is no authority in India which has any right to say which of the two High Courts is right and which is wrong. It may be that both are right or both wrong ; but what the Legislature has a right to do is this : if it considers either that one of the two conflicting views ought to prevail for the future, or that some view different from either would be the best rule to introduce for the future, it can alter the law so as to put an end to the conflict of authority without expressing any opinion as to which conclusion was right or which was wrong in the past.

" This is the course which I am about to ask the Council to take in regard to three cases in which a difference of opinion has arisen between different High Courts in this country.

" The first is a comparatively small matter. In the construction of the Limitation Act the Court at Calcutta has taken one view as to the manner in which ~~decrees~~ time for obtaining copies of decrees ought to be counted for purposes of appeal. The Court at Madras has, I understand, taken a different view ; and as long as each Court consistently follows its own view, as a mere matter of law procedure, no harm is done ; but it so happened that the Court in the North-Western Provinces, after following for some time the practice of the Calcutta Court, suddenly discovered in a case reported in the 12th volume of the Allahabad series of the Indian Law Reports that that view was wrong and that it ought to have adopted the practice of the Madras Court. The consequence is that a number of cases which would have been in time if the Court had continued to follow its old practice were thrown out of time by the change of practice. That no doubt was felt to be a hardship, and the first section of the Bill is designed to prevent the occurrence of a similar hardship in the future. I may say that the form in which the first section has been put was suggested by the Chief Justice of the Allahabad Court himself with a view to prevent the operation in the future of such a decision as that to which I have referred : so that it is introduced here with, if I may say so, the full co-operation, with the full concurrence and approbation, of the Judge against whom it might otherwise be supposed that the section was directed.

" The second and fourth clauses of the Bill refer to a somewhat different case. It had been decided again and again by the High Court in Calcutta that

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the twenty-second chapter of the Code of Civil Procedure, which refers to what I may, for convenience, call cases of nonsuit, has no application to proceedings after decree. By an interpretation of the 647th section of the Code, which differed from that put upon it by the Court of Calcutta, the Court of the North-Western Provinces has come to the conclusion that Chapter XXII does refer to proceedings after decree. Without saying which is right and which is wrong, I personally, and I think I may say the Executive Department most concerned, are strongly of opinion that that chapter ought not to refer to such proceedings; and that, whether it does do so or not, we ought to declare that it shall not do so for the future; and accordingly the second section of the Bill proposes to add to Chapter XXII of the Code of Civil Procedure a clause providing that nothing in that Chapter shall have any application to any proceedings subsequent to a decree; and the fourth section of the Bill proposes to add to section 647 an explanation which will prevent the same interpretation being put upon it in future as that which has been put upon it by the Allahabad Court.

“ Finally, the third section of the Bill, which I have passed over for a moment, applies to a case in which I am not sure that there is a difference of opinion between two High Courts, but in which an interpretation has been put upon the limitation in respect of memoranda of appeal and applications for review of judgment, which has had this effect, that where a memorandum of appeal has been presented in proper time, and has been duly received, bearing a stamp which at the time when it was presented was supposed both by the appellant and by the Registrar of the Court to be sufficient, but where, after the time for appealing had expired, it was discovered that the stamp was insufficient, the Court has held that there was no proper memorandum of appeal, for want of a proper stamp, that it was too late to amend the error, and that therefore the appeal failed.

“ I think that it will be obvious to every one that where there is a *bona fide* mistake of that kind which is not discovered until it is too late, and where the applicant is ready and willing to amend it as soon as he has discovered it, the appellant ought not to have his suit fail upon the merits merely because he and the officer of the Court had been under a mistake as to what stamp ought to have been affixed.

“ We accordingly propose to add a section to the Code of Civil Procedure to the effect that if an appeal is presented which is otherwise correct, but is insufficiently stamped by reason of a mistake as to the amount of the proper

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stamp, it shall be as valid as if it had been properly stamped, provided that, if the proper stamp is not put on within a reasonable time after the mistake is discovered, the appeal is to be rejected. That, I think, will meet the justice of the case without imposing any risk of loss to the revenue, which of course it is part of our duty to preserve."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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 Friday, the 25th March, 1892.

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

CALCUTTA;  
*The 22nd March, 1892.* }