Thursday,
19th October, 1893

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1893

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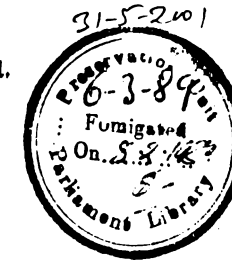

CALCUTTA
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1893

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 Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.

The Council met at Viceregal Lodge, Simla, on Thursday, the 19th October, 1893.

PRESENT:

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, K.C.B., G.C.I.E., V.C.
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 Sir C. B. Pitchard, K.C.I.E., C.S.I.
The Hon'ble W. Mackworth Young, M.A., C.S.I.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Stamp Act, 1879, with respect to Policies of Sea-insurance and Sale-certificates. He said:—

"It is only proposed to amend the Act in two respects—first, with reference to policies of sea-insurance, and, secondly, with reference to the rate of duty chargeable upon sale-certificates. Under the law as it at present stands, a policy of sea-insurance is chargeable with stamp-duty at the rate of four annas when the amount insured does not exceed Rs. 1,000, and with four annas additional for every further sum of Rs. 1,000 or fraction of Rs. 1,000.

"It has been represented that the rates of duty chargeable in India are in excess of the rates chargeable in the United Kingdom, and that in consequence a good deal of sea-insurance business, which used to be transacted in India, is now transferred to the United Kingdom and other countries. The Government of India are of opinion that the rates chargeable in India ought to be reduced, and the main object of the present Bill is to assimilate, as far

as may be, the stamp law of India respecting policies of sea-insurance to that prevailing in the United Kingdom.

"It is proposed that, in future, policies of sea-insurance should, for the purpose of the levy of duty, be divided into two classes. The first class includes policies made for or upon a voyage, and the duty in the case of such policies will be one anna where the premium or consideration does not exceed the rate of one-eighth per cent. on the amount insured. In any other case the rate will be two annas per Rs. 1,000 or fraction of Rs. 1,000 insured.

"The second class includes policies made for a time, and the rate will be three annas per Rs. 1,000 or fraction of Rs. 1,000 insured when the policy is made for a time not exceeding six months, and six annas when the policy is made for a time exceeding six months and not exceeding twelve months.

"Certain provisions of the English law are also made applicable to India, such as that a contract for sea-insurance must be expressed in a policy of sea-insurance, that no policy of sea-insurance shall be made for a term exceeding twelve months, and that a policy of sea-insurance must contain certain particulars.

"The second amendment of the law is merely intended to settle a conflict of opinion which has arisen with reference to the rate of stamp-duty chargeable on a sale-certificate under certain circumstances.

"It has been held by certain authorities that the rate of duty chargeable on a sale-certificate should be calculated with reference to the amount of purchase-money. Other authorities have held that it should be calculated with reference to the amount of purchase-money *plus* the amount of the incumbrance on the property sold. It will now be placed beyond doubt that the stamp-duty is to be calculated on the amount of the purchase-money and not on the amount of the purchase-money *plus* the amount of the incumbrance."

The Motion was put and agreed to.

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

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 Local Governments think fit.

The Motion was put and agreed to.

1893.] [*Sir Alexander Miller.*]

PRISONERS ACT, 1871, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Prisoners Act, 1871. He said:—

"There are three or four points in which the Prisoners Act has been found to require amendment. The first is that it has been found desirable to extend to reformatory schools the provisions of Parts III and V of the Act, which at present apply only to prisons, and, as it is of course held that a reformatory is not a prison, it is considered advisable that the advantages of these parts should be extended to reformatories as well as to prisons.

"The second section of the Bill proposes to repeal the clause of the Act with reference to certain orders made by a Judge of a High Court in the case of sentences by court-martial. As far as I understand it, this law was necessary as part of the procedure under the old Mutiny Acts, but has become completely obsolete since the enactment of the Army Act, and consequently may just as well be removed as a mere incumbrance on the Statute-book.

"The third section of the Bill proposes to amend, in two particulars, the 16th section of the Prisoners Act, which is the section which provides that the sentences by certain Courts acting under the authority of the Governor General in Council or of any Local Government may be carried out in any jail in India; and it is thought desirable to extend this in two ways. First of all as to acting under the authority of the Governor General in Council or of a Local Government, there seem to be some doubt as to whether that provision was not confined to Courts within British India, and therefore we proposed to substitute for the words 'acting under the authority' the words 'acting, whether within or without British India, under the general or special authority.' That will enable such Courts, wherever they may sit, to have their sentences carried out under this section.

"Then we propose to extend the provisions of the section to certain special cases where Courts which are not acting under the authority of the Government but under the authority of a Native Prince or State in alliance with Her Majesty have passed a sentence which the Governor General in Council thinks ought to be carried into effect in British India: and, therefore, we have provided that, with the previous sanction of the Governor General in Council, to be specially given in each case, such sentences may be carried out in British India.

"Then a question arose some twenty years ago with reference to certain Courts which are held in Native States under the authority of the State, but whose sentences cannot be carried out unless confirmed by a British officer, whether such Courts were or not Courts acting under the authority of the Government of India for the purposes of this section; and two very high authorities, neither of whom I should venture to differ from unnecessarily, came to diametrically opposite conclusions on the point. Mr. Stokes thought that such Courts were not for any purpose Courts sitting under the authority of the Government of India. Lord Hobhouse thought that, in respect of the particular sentences which could not be executed without confirmation by a British officer, they were Courts acting under the authority of the Government. I have no intention of asking the Legislature to determine the question as between these two authorities, but I think it will be sufficient for our purpose to provide expressly that, where such a sentence which cannot be executed without the concurrence of the British Government has been considered and confirmed on the merits by a British officer authorised to do so, that shall be considered to be the sentence of a Court acting under the authority of the Governor General in Council, so as to bring it within this section. I do not think it necessary to go further. If a case should arise which would not be covered by this provision, there is nothing in the clause which I am now proposing which in any way impugns the authority of the opinion which Lord Hobhouse has given; but I do not think it is the least necessary specially to recognise so much by legislation.

"The fourth and last clause of the Bill proposes to alter the 19th section of the Act in three particulars. As the Act stands at present, only the Local Government can authorise the reception, detention and imprisonment in any place in British India of prisoners who have been sentenced by certain Foreign Courts. Now, it is very convenient for many purposes that the Governor General in Council should have the same authority over all India that each Local Government has in regard to places under itself, with reference to authorising the detention of prisoners; and therefore we propose, in the first place, to extend the power of authorising the detention of prisoners to the Governor General in Council.

"Secondly, in the Act as it stands, it is provided, after giving a long list of offences to which the section applies, that it shall also apply to any offence which the Governor General in Council has, by notification in the Gazette, included in the section; and by a notification, dated 12th August, 1872, this

section was extended to a number of offences which may be described generally as extraditable offences. It is thought desirable that, instead of that remaining on the authority of the notification, it should appear on the face of the Act. This does not alter the law as it stands, but merely puts into the Act specifically that which has got into it by means of this notification, and which has been the law for the last twenty years.

"Lastly, the proviso to this section is to the effect that the sentences to which it applies must have been pronounced after trial before a tribunal of which one of the Judges was an officer of the British Government authorised to act as such Judge by the Native Prince or State or by the Governor General in Council. On this wording of the Act it seems to have been decided—at any rate it was the opinion of both Lord Hobhouse and Sir Andrew Scoble—that it did not apply to any sentence pronounced by a single British officer sitting as a single Judge, and that in order that the section should apply there should be a mixed Court, of which at least one Judge was a British officer, but with whom there must have been associated at least one Judge of the Native State. That has been found inconvenient in practice, and, as I conceive that the object of the section is merely to secure that these sentences shall have been pronounced with the concurrence of a British Judge, I think it is desirable to get rid of this inconvenience by enacting that the sentence shall have been pronounced after trial before a tribunal of which the presiding Judge, or, if the Court consists of more than one Judge, at least one of such Judges, was an officer of the British Government. That will cover all the cases that come within the Act as it stands at present, and will also provide for the case which has arisen, and which may arise again, where either the sole Judge or all the Judges are British officers, cases which are at present not considered to come within the Act.

"I will only add that it has been proposed to extend this proviso also to cases where, although the Court which tried the prisoner did not contain any British officer, the sentence was afterwards confirmed executively by a Council or Board of which a British officer was one of the members. I do not myself consider that desirable, but the question is certainly arguable; and if, when the Bill goes before the Select Committee, the Select Committee should think it desirable to extend the proviso in that way, I should not offer any violent opposition."

The Motion was put and agreed to.

[*Sir Alexander Miller.*] [19TH OCTOBER, 1893.]

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 Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned *sine die*.

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

SIMLA;
The 20th October, 1893.

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