

*Thursday,
12th July, 1894*

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

LAWS AND REGULATIONS

Vol. XXXIII

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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Viceregal Lodge, Simla, on Thursday, the 12th July, 1894.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

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

The Hon'ble Sir A. E. Miller, K.T., Q.C.

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

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

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

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

The Hon'ble Baba Khem Singh Bedi, C.I.E.

N E W M E M B E R.

The Hon'ble BABA KHEM SINGH BEDI took his seat as an Additional Member of Council.

P R E S I D E N C Y S M A L L C A U S E C O U R T S A C T, 1882, A M E N D M E N T B I L L.

The Hon'ble SIR ALEXANDER MILLER said :—" Before I make the first Motion, I have to ask, under circumstances which I will describe, that Your Excellency would suspend the 24th Rule of Business, in which it is provided that the Select Committee to which any Bill is referred shall state whether it has been so altered as to require republication, &c. By some accident—I will not attempt to determine who is to blame for it—I daresay I am, more or less, myself—the Select Committee to which this Bill was referred, having a great deal of matter before them which required consideration, omitted at the last moment to provide for this purely formal regulation, and the result is that, under the 24th Rule of Business, the Report is an incomplete one, and, if it were

[*Sir Alexander Miller; The President.*]

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convenient, I should suggest that the Committee should be called again together *pro forma*, for the purpose of completing its Report; but under the circumstances—this Committee having sat in Calcutta, one member being now in Calcutta and another in Bombay—this is practically impossible, and, as the matter is purely formal, I would ask Your Excellency to suspend this Rule of Business in order that the Council may now proceed to the consideration of the Report. It is entirely a matter for Your Excellency to decide."

His Excellency THE PRESIDENT said:—"I think that, under the circumstances as stated by the Hon'ble Member, the Rule may be suspended in this case."

The Rule was accordingly suspended.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Presidency Small Cause Courts Act, 1882, be taken into consideration. He said:—"I may state that I have received two telegrams from public bodies in Calcutta—one of them the Bengal Chamber of Commerce—pointing out, what is perfectly true, that, according to the ordinary practice, no Bill of a commercial or a controversial character ought to be passed except at Calcutta; and, if this Bill had not been practically settled in Calcutta and the entire discussion of it had not taken place there, I should not have thought of asking the Council to pass it in Simla. But the facts as regards the Bill are somewhat peculiar; it was discussed in Calcutta during two cold seasons; the Bill, in its original form, was discussed in Calcutta as long ago as 1892-93, and then the objections to the Bill were not only considered at considerable length, but they were sent home for the consideration of the Secretary of State in Council, and he expressed a wish to see the form in which the Bill was eventually passed through the Select Committee before any other step was taken. During the last Calcutta session the Bill was before a Select Committee, and my hon'ble friend Sir Antony MacDonnell, who was on the Committee, will bear me out in saying that it was considered with great care by that Committee, that all the points which were controversial were then and there discussed, and that a settlement was come to with the consent of the whole Committee, (I do not think there was any actual division on any occasion,) and the Bill as settled by the Committee would have been, in due course, passed during the last Calcutta session had it not been for the fact that the Secretary of State desired to see it before it was finally disposed

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of. Under these circumstances I stated in Calcutta at the time that my only reason for not asking the Council then and there to take the Bill into consideration was that we were under an obligation to send it home to the Secretary of State in Council. That was accordingly done, and we have received a despatch from the Secretary of State in Council stating that he has no further objections to the Bill; and, under these circumstances, I think that the rule that Bills of this character should be discussed and settled in Calcutta has been substantially complied with, and that there is not sufficient reason for postponing until the next cold weather the mere formal passing of the Bill as it has come from the Select Committee. It is a matter which I desire to leave in the hands of the Council. If it is considered that there is any reason for postponing the Bill for the next few months I should not press it, but I think myself that the rule has been substantially complied with, and, if so, there is another reason why the Bill should now pass into law—and if that view commends itself to the Council there is good reason for not delaying it—namely, that the best time for introducing any change such as the Bill proposes is at the end of the vacation. I propose, if this Bill be taken into consideration now, to bring it into force on the 1st October, so that it will come into force with the new sittings of the Courts, whereas if it be postponed to be passed in Calcutta it will come in in the middle of the sittings, and consequently at a very awkward time, or be postponed for another twelve months. With these observations I beg to move the Motion in my name."

The Hon'ble SIR ANTONY MACDONNELL said:—"I should like with reference to this matter to say that from Lord Ripon's time I believe that most measures affecting the commercial interests of the country, or of a controversial character, have been passed by this Council in Calcutta. As my hon'ble friend Sir Alexander Miller has said, I was a member of the Select Committee on this Bill; the President of the Chamber of Commerce, Mr. Playfair, was also a member; and so was Sir Griffith Evans. The Bill was most carefully discussed, and my remembrance is that the conclusions come to were (if I am not violating the secrecy of the Select Committee) referred to the Chamber of Commerce with the view of procuring their assent to the arrangements come to, and we were informed in Select Committee that the arrangements or proposals made were acceptable to the Chamber of Commerce, and generally to the mercantile community of Calcutta; so that when my hon'ble friend Sir Alexander Miller the other day proposed to bring forward this Bill I made no objection, because I thought that it would be passed through as a matter of course. Now, however, as objection has been raised to its being proceeded with in Simla by such an

[*Sir Antony MacDonnell* ; *Mr. Westland* ; *Lieutenant-General Brackenbury* ; *Sir Alexander Miller* ; *The President*.] [12TH JULY,

influential body as the Bengal Chamber of Commerce, it will, I think, be better if the Bill is submitted to the complete Council and if Your Excellency had the advantage of hearing a debate on the substantive provisions of the measure."

The Hon'ble MR. WESTLAND said:—"I am afraid I must say that I agree with the Hon'ble Sir Antony MacDonnell in his objection to the Bill being taken up and passed now. The objection seems to me all the stronger for the reason that, as Sir Alexander Miller has explained, the Bill when it came back from the Select Committee was submitted to the Secretary of State at a time when it was still before this Council. I remember the occurrence and my hon'ble friend Sir Alexander Miller's explanation that it was necessary to send the measure to the Secretary of State because the Secretary of State had desired that it should be seen by him. But I confess that I think such bodies as the Bengal Chamber of Commerce and the European and Anglo-Indian Defence Association would have grounds for taking strong exception to the procedure in this Council if a Bill of this kind were withdrawn from the consideration of the Legislative Council by reason of its having been submitted to the Secretary of State, which is practically what would be the result if it were passed at the present sitting."

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY said:—"I have the same feeling. The words of the telegram from the Bengal Chamber of Commerce are 'a strong protest' against the Bill being passed here; and I think it so important that in these commercial matters we should legislate in accord with bodies like the Bengal Chamber of Commerce, rather than in apparent opposition to them, that I would suggest that the Motion should be withdrawn."

The Hon'ble SIR ALEXANDER MILLER said:—"I am quite prepared to abide by whatever decision the Council comes to. My only desire was to ascertain the feeling of Hon'ble Members on the subject."

His Excellency THE PRESIDENT said:—"I understand that it is the wish of the Council that the consideration of the Bill should be postponed. I did not think it right to stop it on the technical point raised by the Hon'ble Member in his opening remarks. I do, however, now consider that there is sufficient reason for not proceeding further with the Bill at present."

The Motion that the Report of the Select Committee be taken into consideration was, therefore, withdrawn.

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*AMENDMENT OF INDIAN PENAL CODE AND ACT
VI OF 1864; AMENDMENT OF CIVIL PROCEDURE CODE
AND PUNJAB LAWS ACT, 1872.*

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[*Sir Alexander Miller.*]

INDIAN PENAL CODE AND ACT VI OF 1864 AMENDMENT
BILL.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill to amend the Indian Penal Code and Act VI of 1864 be referred to a Select Committee consisting of the Hon'ble Mr. Westland, the Hon'ble Sir Antony MacDonnell and the Mover. He said :— 'This is a Bill which was introduced at Calcutta. It contains amongst other things a provision for carrying out the international postal arrangement, and the Financial Department are very anxious to get it through as soon as possible. I do not think that it contains anything which is at all of a controversial nature, and it is unquestionably—at any rate so far as the part of it which refers to this international postal arrangement is concerned—of a very urgent character. I do not think therefore that any harm can be done by referring the Bill to a Select Committee; if hereafter it is thought necessary to postpone it, that can be done.'

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AND PUNJAB LAWS ACT, 1872,
AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to amend certain sections of the Code of Civil Procedure and to repeal certain sections of the Punjab Laws Act, 1872. He said :—"The repeal of certain sections of the Punjab Laws Act is merely consequential and does not really require any explanation. The Bill proposes to alter the Code of Civil Procedure in one or two matters of practice which are said to be inconvenient. The first is that by section 39 of the Code every person appearing as a pleader or vakil in any Court of the country is obliged to produce a written retainer unless he happens to be an advocate of one of the Chartered High Courts, in which case he is entitled to appear, as every barrister in the United Kingdom can do, without producing any written authority for the purpose. It has been found very inconvenient that advocates practising in the Chief Court of the Punjab should be exposed to this difficulty unless they happen to be advocates of one of the other High Courts also, in which case they are not required to produce a written authority; and, looking to the character of the Chief Court of the Punjab—a Court which I confess I regret has not been put in the position of a Chartered High Court—it seemed not only to me but

[*Sir Alexander Miller.*]

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to the other members of the Government to whom the matter was referred some twelve months ago very reasonable that the advocates of the Chief Court of the Punjab should be put in this respect on the same footing as the advocates of the Chartered High Courts; and that is all which the first section of the Bill proposes to do.

"The second section of the Bill is intended to make clear a question on which there has been apparently a difference of opinion in different Courts. The Code as it stands, after providing that the party on whom the proof of the issue lies in any case is to open his case and produce his evidence, goes on to say that the other party shall then state his case and produce his evidence, after which the party on whom the issue lies shall have the right to reply. Some of the Courts construed this to mean that the second party must necessarily state his case first and then produce his evidence, the result being that the counsel for the 'other party'—in most cases the defendant—would ordinarily have no opportunity of commenting upon his own evidence and would be unable to produce before the Court a connected argument putting all the evidence together, would be obliged to rely on his criticisms of the plaintiff's evidence and to leave his own evidence to the criticisms of the plaintiff's counsel unexplained and uncommented on by himself, which of course would be a great hardship. I do not think that the Code was intended to produce such hardship, but as it has been so ruled in some Courts it has been thought desirable to alter the wording of the section so as to make the matter quite clear; and, therefore, instead of saying 'the other party shall then state his case and produce his evidence, if any,' we propose to add 'and may then address the Court generally on the whole case.' The result will be to leave it in the power of the defendant's counsel to address the Court and sum up his evidence—a practice which prevails, I believe, everywhere except in some very few Courts, where it has been held that the Code of Civil Procedure negatives that practice—a practice which is universal at home, and which seems to me to be necessary in the interests of justice.

"The third section of the Bill provides for an alteration which I believe was originally agreed to as long ago as 1890, but it was not considered pressing, and the alteration was directed to stand over until some other amendment of the Code was in hand. In a case which no doubt most Hon'ble Members will recollect as having created a very great stir at the time—the case of Rukmabhai—it was decided by the High Court at Bombay that where a decree for the restitution of conjugal rights had been made and the defendant refused to comply with the decree the Court had no option but to sentence

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her to imprisonment for three months under section 260 of the Code. This was considered a very great hardship at the time, and there was a great deal of discussion upon it, the notes referring to it amounting to—I am speaking from memory—something like one hundred pages in print, but the eventual outcome of the discussion was that it was then considered desirable to extend the discretion of the Court so as to make it unnecessary, unless the Court thought fit, to impose a sentence of imprisonment on the defendant who refused to comply with the decree. Personally I should like to go further and say that no woman should be compelled to live with a man whom she did not care for, and that it would be quite sufficient to determine that she should be civilly responsible for any pecuniary damage which the man sustained and also for damage to his feelings in the ordinary way; but the Government of India considered that that would be going too far and making too great an alteration in the existing law, and they proposed instead not simply to bar the right of imprisonment but to leave it discretionary with the Court whether to send her to jail or not. Of course, no civil remedy which the husband may have is in the least interfered with, and all the civil liabilities to which she is subject at present by law will still remain unaffected if this alteration is made.

“ The fourth and fifth sections of the Bill provide that the respondent to an appeal shall get a copy of the memorandum of appeal, so that he may have the fullest possible information as to the grounds on which the decree is appealed from. I do not know how it has come about, for the memorandum of appeal necessarily contains the grounds of appeal, but at present all that the respondent is served with is a notice from the Court that an appeal has been entered, and he has to find out as best he can on what grounds the decree which he has obtained has been appealed from. It has been thought desirable to assimilate the practice in the case of appeals to the practice in the case of the original institution of the suit. In that case a copy of the plaint is given to each of the defendants at the same time as the summons, and if this clause passes it will practically provide that for the future, when there is an appeal, a copy of the memorandum of appeal will be served on each of the respondents at the same time as the notice of appeal. This seems to me to be a very convenient practice, and one which practically, though not exactly in the same form, prevails in the Appellate Courts in England, and which will really put the practice as to appeals upon the same footing as the Code of Civil Procedure puts the practice as to the original hearing of suits.

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“ The remaining section of the Bill is merely a repeal of two sections of the Punjab Laws Act which are unnecessary, and the repeal of which is thought desirable by the Punjab Government.”

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.

CANTONMENTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to amend the Cantonments Act, 1889. He said:—“ I have very little indeed to say upon this Bill. It is a Bill which has been introduced by direction of Her Majesty's Government in order to comply, if this Legislative Council should think fit to do so, with the requirements of the majority of the Commission which sat on the question of the practice of the examination of prostitutes in cantonments. That Commission reported by a majority of three to two that legislation was necessary in order to carry out the Resolution of the House of Commons on that subject, and the result of that decision is that Her Majesty's Government have expressed a wish that this particular Bill, which has been practically, though not formally, drawn in England, should be introduced for the consideration of the Legislative Council.”

His Honour THE LIEUTENANT-GOVERNOR said:—“ We have not had any statement of what the provisions of the Bill are ; so I think it is better that we should reserve any remarks which we have to make on it.”

The Hon'ble SIR ALEXANDER MILLER said :—“ If His Honour the Lieutenant-Governor wishes, I will state what the provisions of the Bill are ; but I purposely did not do so because I have explained the circumstances under which it is proposed to introduce the Bill, and I have no desire to express any opinion either way as to the advisability of its provisions.”

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The Hon'ble SIR ANTONY MACDONNELL :—"Are we to understand that this Bill is to be taken up in Simla?"

His Excellency THE PRESIDENT :—"I understood not."

The Hon'ble SIR ANTONY MACDONNELL :—"I ask the question with reference to what His Honour has said. If the Bill is not taken up in Simla, he will not have an opportunity of expressing his views on it. For my own part I think it would be very undesirable that it should be taken up in Simla."

The Hon'ble SIR ALEXANDER MILLER :—"I think it necessary that a Bill of this kind, if introduced, should be circulated to Local Governments and Administrations. When that is done, His Honour will have an opportunity in another capacity of expressing his opinion on it."

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 Thursday, the 2nd August, 1894.

J. M. MACPHERSON,

SIMLA;	}	<i>Deputy Secretary to the Government of India,</i> <i>Legislative Department.</i>
<i>The 19th July, 1894.</i>		