

*Thursday,
5th March, 1896*

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

LAWS AND REGULATIONS

Vol. XXXV

Jan.-Dec., 1896

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1896

VOLUME XXXV



Published by Authority of the Governor General.



CALCUTTA
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1896

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 Government House on Thursday, the 5th March, 1896.

PRESENT :

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

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

The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.

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

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

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

The Hon'ble Alan Cadell, C.S.I.

The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.

The Hon'ble Mohiny Mohun Roy.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble A. S. Lethbridge, C.S.I., M.D.

The Hon'ble M. R. Ry. P. Ananda Charlu, Rai Bahádur.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble J. D. Rees, C.I.E.

The Hon'ble G. P. Glendinning.

The Hon'ble Nawab Amir-ud-Din Ahmad Khan, C.I.E., Bahádur, Fakharud-doulah, Chief of Loharu.

The Hon'ble Rao Sahib Balwant Rao Bhuskute.

The Hon'ble P. Playfair, C.I.E.

QUESTIONS AND ANSWERS.

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE asked :—

“(a) Will the Government be pleased to state whether any final order has been received with reference to the term of the new settlement now in progress in the Central Provinces ?

“(b) If so, will they publish the final order of the Secretary of State on the subject ?

[*Rao Sahib Balwant Rao Bhuskute ; Mr. Woodburn ; Sir James* [5TH MARCH,
Westland.]

- “ (c) Will the Government be pleased to state whether, after the expiry of the current short-term settlements in the Raipur and the Bilaspur Districts of the Central Provinces, it is in contemplation to have another settlement of the land-revenue demands and others auxiliary thereto ?”

The Hon'ble MR. WOODBURN replied :—

“ 1. The final orders of the Secretary of State have recently been received upon certain general questions connected with the terms for which settlements should be made in India.

“ 2. Those orders, which are subject to exceptions under special circumstances, have been communicated to the Chief Commissioner, so far as they concern the Central Provinces, in the following words :—

‘ In the Central Provinces twenty years will be the normal term for future settlements ; but the roster which has been framed so as to suit this term and has been acted upon throughout the revision of settlements now current is to be adhered to, as regards both settlements that have already been announced and those which still remain to be completed.’

“ 3. Under existing rules, when the term of any settlement in the Central Provinces is about to expire, the Chief Commissioner reports to the Government of India upon the question whether the assessment should be revised or not, and the Government of India then pass orders on the point. It is impossible to state before the Government are in possession of the facts what their decision will be in any particular case ; but there is at present no reason to doubt that the assessments in question will be revised on the expiry of the current terms, in conformity with the above-mentioned roster.”

BONDED WAREHOUSES AND SALT-BONDING BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to provide for the establishment of bonded warehouses at places other than Customs-ports, and to afford facilities for the bonding of salt in such warehouses, be taken into consideration. He said that he had explained the purport of the Bill and the Select Committee's Report at some length at the last sitting, and it was unnecessary for him to make any further remarks on the subject.

The motion was put and agreed to.

1896.] [Sir James Westland ; Sir Alexander Miller.]

The Hon'ble SIR JAMES WESTLAND also moved that the Bill, as amended, be passed.

The motion was put and agreed to.

LEGAL PRACTITIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Legal Practitioners Act, 1879. He said :—
“ I do not intend on the present occasion to go at any length into the details of the measure as now presented to the Council, because I think that can be done better when I move that the Report be taken into consideration. But I wish to explain the result of what has been a very large revision of the measure originally presented to the Council. The original proposal, as I told the Council at the time when I asked for leave to introduce this measure, was one increasing the penalties upon persons who acted as touts, and persons who accepted business from touts. The Government did not see its way to increasing the application of the provisions of the criminal law to matters of this kind, but they endeavoured with such assistance as they could get from the High Courts, and particularly from the High Court of Calcutta, to prepare a Bill which, without increasing the stringency of the criminal law, might in some way mitigate an evil the existence of which was admitted by everybody. When, however, a Bill came to be drafted on these lines and subjected to careful criticism, not only various outside bodies whose opinions are entitled to respect, but the very High Court itself on whose opinion and advice the Bill had been undertaken, came to the conclusion that those were not the best lines on which legislation might be undertaken, and they advised that a totally different course, and one much more in consonance with the feelings of the Government itself had they felt themselves untrammelled by the opinion of the Court, should be taken instead. The result was that the Select Committee were unanimously of opinion that the new course proposed was the better of the two, and the Bill has been so completely recast as to withdraw the matter altogether from the purview of the criminal law, to increase considerably the power of domestic discipline over the legal practitioners, to remove the principal objections which were taken to entrusting the Courts with a supervision over persons who exercised the business of touts, and to enable, I hope, the Courts to exercise such supervision in a manner which will tend, without unduly interfering with the reasonable business of any man outside the Courts, to prevent the nuisance which there has been so much animadversion upon. I will explain at greater length on another

[*Sir Alexander Miller.*]

[5TH MARCH,

occasion the various steps which have been taken for this purpose : but I wish to explain now that, if it had not been that there was a sufficient consensus of opinion to enable us to propose the repeal of the criminal clause of the existing Act, it would have been impossible to provide for the class of supervision now proposed, because, as pointed out by an Hon'ble Member of this Council on a former occasion, it would be impossible to entrust any person or any body of persons other than a duly constituted Criminal Court with the power of declaring that a man, particularly an untried and unheard man, was acting in a manner which according to a provision then actually on the Statute-book would subject him to fine and imprisonment. That obstacle being removed and the requisite powers of supervision being given, the disciplinary action of the Courts can be given free scope to, and I have reason to hope that that disciplinary action will be more effective than any criminal action that could be imposed in its place."

INDIAN RAILWAYS ACT, 1890, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Indian Railways Act, 1890, be taken into consideration. He said :— "The Bill is a very short one and, with one exception, will require very little explanation indeed.

" The first section of the Bill deals with section 7 of the Railways Act. Section 7 provides that the Government may, for the use of railway administrations, make or construct in, upon, across, under or over any lands, roads, or streets, etc., such embankments and other works of various kinds as the railway administration thinks proper ; and it has been suggested that after the word ' roads ' the words ' lines of railway ' should be added. I do not know whether any difficulty has been found in constructing proper works on behalf of one railway across another railway, but no doubt such a case might occur, and therefore it is as well to provide for it if possible before it does.

" Then there is a perfectly formal amendment in section 10, with which I do not think I need trouble the Council at any length, and the correction of an accidental misprint in section 59 ; and then comes section 73, as to which I mentioned something on a former occasion. Section 73 is a section which limits the responsibility of a railway administration for the loss or destruction of certain animals, and it says that the limit should be in the case of elephants or horses Rs. 500 a head, in the case of camels and horned cattle Rs. 50 a head, and in the

1896.]

[*Sir Alexander Miller.*]

case of sheep, goats, dogs or other animals Rs. 10 a head. The section does not mention either mules or donkeys, and a very nice question might have arisen which would probably have exercised all the Courts, from the Munsifs' Courts up to the High Courts, as to whether a Commissariat mule worth say Rs. 150 which had been killed on a railway was to be treated as a horse with a liability up to a limit of Rs. 500, or was to be considered as 'another animal' and the liability of the Company limited to Rs. 10. We propose now to insert the word 'mule' in the category with camels and horned cattle, making the limit of responsibility for a mule Rs. 50, and to make it clear that the responsibility for donkeys is to be limited, as far as the railway is concerned, to a value of Rs. 10.

" Then, in section 136, where the property of the railway is excluded from being distrained or taken in execution, except under certain circumstances, it was found that the section was so worded as not to prevent local authorities from having the power to attach such property, and it has been considered that, on the same principle on which the rolling stock of a Railway Company is not to be taken in execution under the decree of a Court without the sanction of the Governor General in Council, it ought not to be distrained or attached by municipal or other local authorities.

" The remaining portion of the Bill which I intentionally passed over for the moment relates to section 81 and is really a matter of some consequence.

" By the English Acts, where a Railway Company owns or chartered a steamer working in connection with the Company, that steamer is subjected to the same liabilities in respect of through rates, reasonable conditions, etc., as the Railway Company itself. The effect of those enactments is to increase the responsibility of the steamer, not to diminish it, the object being no doubt more or less to penalize the Railway Company for entering into a line of business which is outside its own proper business; and accordingly steamers, as the law stands in England, working in connection with Railway Companies are subject to certain restrictive provisions that they would not be subject to in working independently.

" Now, section 81 of the Act was, I think, intended to follow those lines, though I am not in a position to assert that as a fact.

" It says that —

' Where a railway administration under contract to carry animals or goods by any inland water procures the same to be carried in a vessel which is not a railway as defined in this Act,

[*Sir Alexander Miller ; Mr. Playfair.*] -

[5TH MARCH,

the responsibility of the railway administration for the loss, destruction or deterioration of the animals or goods during their carriage in the vessel shall be the same as if the vessel were such a railway.'

"The effect of that clause is of course the exact contrary of the effect of the clauses which I have been just describing. It has the effect of diminishing the liability of the vessels and placing them in the same position as regards limitation of liability as the railway itself is. Now, a railway in India is not liable as a common carrier, but only liable to the extent of a bailee for hire, which is a very greatly more limited responsibility. A railway in England is liable as a common carrier subject to certain restrictions contained in, I think, three public Acts—the well known Carriers Act of William IV, the Railway and Canal Traffic Act of 1854, and, I think, certain provisions of the Act of 1873. Consequently the position in India is that a steamer carrying animals or goods, unless it happens to be a mere ferry, in which case it is part of the railway, is now exempted by law from all the liabilities which the law of India imposes upon ordinary inland carriers, and that has been felt, and I think rightly, to be a very great hardship not only on the other competing inland carriers but on the public, who may have to send their goods and who may find it convenient to send them through the operation of the railway, and yet whose right of recovery in case the goods are lost at sea ought not to be in that manner diminished. That such a provision, once it was seen what its effect was, should have existed for five years shows, I think, the extreme slowness and caution with which legislation is conducted in this country. Of course I can quite understand that, a thing once passed, the Legislature is very careful not hastily to retrace its steps; but I think it is rather a matter for wonder that, even with the amount of care and caution with which one would ordinarily expect the Legislature to deal with large Acts of this kind, such a provision should have been permitted to remain on the Statute-book for such a long period as five years. At any rate the attention of the Government of India was called to the matter. They proceeded not only to examine the matter themselves but to call the attention of the Secretary of State to it, and the Secretary of State was of opinion also that such a clause ought not to be allowed to stand; and I now have to ask this Council to co-operate with both Governments, Home and Indian, in removing the section from the Statute-book."

The Hon'ble MR. PLAYFAIR :—"The Bill before Your Excellency's Council will place all carriers by inland waters on a common level. This is a result greatly to be desired. The Bill will remove a fair ground of complaint which the inland

1896.]

[*Mr. Playfair ; Sir Griffith Evans.*]

Steamer Companies now have, but I do not expect it will satisfy them, as they have striven to be relieved altogether from the operation of the existing carriers law. Personally I do not support their claim to the extent it has been preferred. With, however, such an extension of the railway system as would give the public an alternative route for the transport of their goods and with the hulls of the vessels built to a specification acceptable to those who might be asked to insure the cargoes carried in those vessels for the public, it may, I, hope, become possible, without injury to the Native and casual shipper, to relax somewhat the provisions of the existing law."

The Hon'ble SIR GRIFFITH EVANS said :—" This Bill has a very long history It arises in this way. By the Inland Carriers Act of 1865 the common carriers on inland waters and by road are subject to the full insurer's liability placed upon them by the common-law of England, *i.e.*, liability for all loss except that caused by the cat of God or the Queen's enemies, and further, whereas the common law of England allows them to relieve themselves of liability of any kind by contracting themselves out of it, the Carriers Act, following in that respect very nearly the Railways and Canals Act of 1854, provides that they should not be at liberty to relieve themselves of this full insurer's liability except by a special contract. Now, this special contract by the English Act may be signed by the consignor or the person delivering the goods, but by the Indian Act it must be signed by the owner of the goods or a person duly authorised by him. The consequence is that in the upward journey, where the goods start from Calcutta, the carriers are able to get what is called a forwarding note ; that is to say, a note of the terms on which the goods are to be carried, signed by the owners or responsible agents, and that forwarding note is given, and it acts to relieve them from responsibility other than responsibility caused by their own negligence or the criminal acts of their servants. This responsibility by virtue of the Carriers Act they cannot relieve themselves of at all ; and further the Carriers Act provides that it shall not be necessary for the shipper who is claiming damages for the loss of his goods to prove negligence, but only for him to prove that the goods have not been delivered ; and thereupon the onus is upon the carrier to show that the loss was not caused by his negligence or the criminal acts of his servants. But on the downward voyage they are often unable to protect themselves against losses arising from unavoidable accident, such as snags and the various dangers of navigation which cannot be prevented by any ordinary skill or precaution, seeing that tea and other products are generally brought down by manjis, illiterate boatmen and other persons of that sort who cannot be held to be agents of the owners duly empowered

[*Sir Griffith Evans.*]

[5TH MARCH,

in that behalf to sign a contract. The consequence is that the carriers cannot very often get these contracts or forwarding notes signed for the downward journey and they are liable for unavoidable accidents. That is one of the grievances which they formulated a great many years ago. They have other grievances, one of them being the grievance that the period of limitation in which they are allowed to sue is too long ; ordinarily speaking, you give a plaintiff a fair period of limitation to bring his suit, and the longer he delays bringing it the worse is his chance of being successful with it, for he has to prove his case, and the loss of evidence caused by time is his loss ; but with regard to these plaintiffs, the shippers, the longer they can keep the thing quiet the better it is for them, because they have to prove nothing except the undisputed fact that the goods were not delivered to them. Thus the longer they delay proceedings the better it is for them and the worse for the carriers, on whom is the onus to prove that the loss was not occasioned by their negligence or any criminal act on the part of their servants ; and the result is that the carriers suffer, their servants may have died or left the place in the interval, and at the end of the period—three years is the usual term—they very often find it impossible to prove anything at all ; not only that, but, if their servants still happen to be there, it frequently occurs that their recollection is so hazy and so confused that a little cross-examination will very often induce the Judge before whom the case is heard to disbelieve everything they say. This then is one of the other grievances which the carriers have. Besides asking for the rectification of this grievance they ask for many other things, amongst them they request to be relieved of the onus of proving that there was no negligence and that every reasonable precaution was taken. It is very doubtful if that could be allowed to them. Then they ask to be placed in the position of the railway or of the ocean steamers. As regards placing them in the position of ocean steamers there is great difficulty, as our ocean steamers are in a better position as regards contracting themselves out of negligence than many people think they ought to be, and it is doubtful whether it would be wise to place these carriers in that position. As regards placing them in the position of the railways they have a very strong case, and it is this. They say that in England the railways and canals are all governed by the same rules, and that there is no reason here, because the State is very much interested in railways, why the railway should be placed in a better position as regards competing for carriage than other common carriers. Railways do compete we know with the river traffic, and in the case of the River Companies they compete now very largely in many cases as regards wheat, jute, seeds, etc. They are not able to compete as regards tea, but when the new Assam-Bengal Railway is finished,—and I understand that part of it will be open this year,—there

1896.]

[*Sir Griffith Evans.*]

will be a strong competition as regards tea and other products coming from those parts, and the Railway Companies have only the liability which is placed upon the ordinary private carrier. We know that the common country boat is generally under that liability only, as it is generally speaking not the property of a common carrier, and therefore it stands that the River Companies are really the only people who have this excessive liability upon them. They can therefore make a strong case for being treated in the same way as railways ; but what particular relief should be given to them is not a question now before the Council. The reason why I make these remarks is this, that I believe it has been the opinion of every Legal Member of this Council for the last fifteen years or so that something ought to be done. I believe it was the opinion of Sir Courtenay Ilbert when he was Legal Member of Council, but the matter stood over in order to obtain the opinion of the Chamber of Commerce. The Chamber of Commerce has given various opinions at various times, and there is a want of unanimity in the opinions of that body as you might expect from the composition of it. Then came Sir Andrew Scoble, and he was strongly of opinion that these carriers ought to be placed on the same footing as the railways, and, as far as I understand the matter, the placing of these steamers in the position in which they were placed by the section now repealed was done with the intention of following it up by placing the river steamers in the same position also by subsequent legislation. The River Steamer Companies on this Act being passed in 1890 renewed their representations to the Government of India, and they used this section and the observations of Sir Andrew Scoble at the time as a strong argument for being placed on the same footing as the railways ; but the matter went up and was very fully discussed in a Despatch sent by the Government of India to the Secretary of State, and the Secretary of State decided on those materials that it was not right to give them any relief whatever, but that the best course was to reverse the legislation of 1890, to repeal the section and keep up the distinction between railways and other common carriers. But I expect this will be only a temporary measure, because the Steamer Companies have again brought the matter before the attention of the Government of India. The Government of India has again sent down for reports to the Governments of Bengal, Assam and Burma. The Bengal Government has already reported that some relief should be given, though not anything like the full relief which the Steamer Companies ask for. Of course, Steamer Companies like other people are very apt to follow the old Native proverb, 'if you want eight annas you ought to ask for sixteen' ; and probably they have asked for a great deal more than they are likely to get. The Government of Burma has also recommended that something should be done under the circumstances. The reason why I make

[*Sir Griffith Evans ; Sir Alexander Miller.*] [5TH MARCH,

these observations is that I desire to place it on record that I regard this as a temporary measure. It is a position of affairs which cannot be allowed to remain as it is, and I apprehend that in all probability something will have to be done with regard to the position of the carriers, and when you remember that the words restricting their right of special contract, as I have already stated, restricting them to a special contract signed by the owner or person duly authorised by the owner, is far in excess of the restriction under the English Act, and when you remember also that the railways here have a right of restricting the very limited liability placed upon them in the first instance by a special contract in a form approved by the Governor General in Council, and that the special contract may be signed by the consignor or deliverer of the goods as in England, then I think it is evident that the situation cannot remain as it is, for what possible defence is there for saying that in the case of a railway a special contract may be signed by the person delivering the goods, but where it is a steamer you must have the signature of the owner or of his duly authorised agent? But behind all this matter of detail there is the broad question whether it is wise as a matter of policy to handicap the steamer traffic on the great rivers of India which were then the natural highways of the country. I think the public will be sufficiently protected if the Steamer Companies are made liable for negligence and criminal acts of their servants and if the onus of proof is left on them as at present. It does not seem right or necessary to compel them by statute to insure the consignor against all perils of a dangerous navigation in these days when insurance is so easy for the shipper."

The Hon'ble SIR ALEXANDER MILLER said :—" I do not wish to enter at the present stage on any discussion of the position as regards the general law of these carriers by inland water, although I am not thereby to be understood as in any way dissenting or otherwise from what has fallen from the Hon'ble Member ; but it is perfectly clear that whatever the rights of these carriers may be, and whatever propriety there may be in making some alternation in the law, it would be quite irrelevant to the Bill now before the Council, which is a Bill the object of which is to take away a privilege which has been, inadvertently I think, given to the railways, and not with a view of altering the legal position of carriers who are not railways."

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill be passed.

AMENDMENT OF INDIAN RAILWAYS ACT, 1890 ; AMENDMENT 185
OF INDIAN CONTRACT ACT, 1872.

1896.]

[*Sir Alexander Miller.*]

The motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Indian Contract Act, 1872, be referred to a Select Committee consisting of the Hon'ble Mr. Woodburn, the Hon'ble Mr. Cadell, the Hon'ble Babu Mohiny Mohun Roy, the Hon'ble Rai P. Ananda Charlu Bahádur, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Glendinning and the Mover, with instructions to report in a week. He said :—" This is a Bill which really deals with a very short and small point. By the Indian Contract Act, where a man under compulsion of law pays a debt for which he is only partially liable, or for which he is only liable in the second degree, he has a right of action against the person liable to contribution, or the person who is primarily liable, as the case may be ; but, although the result of his paying it may be to save valuable immoveable property from being alienated from both parties, he is not thereby given any right of lien or charge upon the property thus saved. Under the law as administered in England he would not at common law have had any right either, except the ordinary right of action against the person on whose behalf the money was paid ; but the Courts of Equity have always recognised in proper cases that a charge was thereby obtained on the property preserved. The Courts in this country have not been by any means unanimous in the view taken of this case. Two of the four Chartered High Courts have come to the conclusion that, inasmuch as the written law gives no such charge, no such charge exists under the law of India. The other two Chartered High Courts are of opinion that they being Courts of Equity are entitled to administer the equitable rule, and that in proper cases they can grant such a charge as I have mentioned. The object of this Bill is, under certain very careful limitations, and with a view to preventing unexpected charges being made, and to taking care that no person who is not really benefitted by the payment shall in any way be affected by it, to give legislatively the power to the Courts to create such a charge and to entitle the person who has paid the money under the circumstances I have described to come to the Court to get a declaration that he is entitled to such a charge.

" The Bill has been very carefully considered ; it has been subjected to three Departmental examinations ; it has been circulated for opinion to Local Governments and Administrations ; it has been twice considered by the Government of India as a body, and it has also been considered by Her Majesty's Government at home ; and I hope that, if notwithstanding all these examinations any loophole is

[*Sir Alexander Miller.*]

[5TH MARCH, 1896.]

still left in the Bill,—and it is impossible ever to say that in any human work there may not be a loophole that may not escape the observation of every one,—that the Committee which I have the honour to name will be able to hit the blot and mend it. I ask to have instructions to have the report in a week, and it may be for the convenience of Hon'ble Members that I should mention that, if this motion is now carried, I intend to propose that the Committee should meet on Saturday ; nearly all the same persons who are members of this Committee are members of a Committee which has to meet on Saturday at any rate, and I do not think the work of the Committee will occupy more than a very short time."

The motion was put and agreed to.

The Council adjourned to Thursday, the 12th March, 1896.

S. HARVEY JAMES,

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

CALCUTTA ; }
The 6th March, 1896. }