

*Friday,
2nd September, 1898*

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

Vol. XXXVII

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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

1898

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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., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 2nd September, 1898.

P R E S E N T :

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

His Honour Sir William Mackworth Young, K.C.S.I., Lieutenant-Governor of the Punjab.

His Excellency General Sir C. E. Nairne, K.C.B., R.A., Provisional Commander-in-Chief in India.

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

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

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

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble J. B. Fuller, C.I.E.

N E W M E M B E R.

The Hon'ble MR. FULLER took his seat as an Additional Member of Council.

I N S O L V E N C Y R U L E S B I L L.

The Hon'ble MR. CHALMERS moved that the Bill to make provision for certain matters connected with Insolvency be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that in line 9 of clause 2 of the Bill, for the words "the reasonable costs and charges" the words "the reasonable costs, charges and allowances" be substituted. He explained that this was a drafting amendment which had been suggested both by the Madras and Bombay High Courts.

The motion was put and agreed to.

[*Mr. Chalmers.*]

[2ND SEPTEMBER,

The Hon'ble MR. CHALMERS moved that the following be added as clause 4 of the Bill, namely :—

"4. The Chief Justice of the said Court may, with the previous sanction of the Governor General in Council, pay to the present Official Assignee's allowance for pension. Official Assignee out of the interest on the Unclaimed Dividend Account such sum by way of pension on retirement, or bonus in lieu thereof, as may be reasonable and proper, having regard to the length, nature and conditions of his service."

He said :—"I ought perhaps to say a word about the addition of this new clause.

"When the present Official Assignee, Mr. Turner, was appointed to his office, he was appointed as a half-time officer and allowed to practise his profession as a barrister. This was found to be prejudicial to the work of his office, which was quite sufficient for a full-time officer, and negotiations were entered into with him on behalf of the High Court and also on behalf of the Government of Bombay, and he was requested to give up his practice and to take up the appointment as a full-time appointment; and it was represented to him that, if he gave up private practice and accepted the appointment as a full-time appointment, he should be put on pensionable terms. It is necessary now to confirm the arrangement then entered into, and this we propose to do by the clause in question. Mr. Turner has for several years given up his practice and has been a considerable loser thereby, and this clause now carries out the engagement entered into at the time when the arrangement was made with him."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the Bill, as amended, be passed.

The motion was put and agreed to.

ARBITRATION BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to amend the law relating to Arbitration. He said :—"This Bill is an adaptation to India of the English Arbitration Act, 1889 (52 & 53 Vict., c. 49), just as the existing provisions relating to arbitration in the Code of Civil Procedure are an adaptation of the arbitration provisions which were contained in the English Common Law Procedure Act, 1854. The English Act of 1889 has been found to work well, especially in the case of mercantile disputes. Some of the Indian Chambers of Commerce have asked that the provisions of the English Act might be applied to India, and after consultation with the various Local Governments we

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have decided to introduce a Bill to effect this object. It may perhaps be asked why a separate Bill has been introduced instead of a Bill amending the Code of Civil Procedure. To this question there are two answers. In the first place, this Bill relates only to arbitration in disputes where no suit is pending, or, as it is commonly called, arbitration out of Court. We do not propose by this Bill to deal with the law which relates to reference to arbitration in the course of a suit. In the second place, the Bill in the first instance is to apply only to the Presidency-towns, whereas the Code of Civil Procedure is an Act of universal application. It may very well be that an Act which is suitable to the mercantile communities of the big towns might not be suitable to less advanced communities. We have, however, taken power subsequently to extend the Act by notification to other selected areas. If it is found to work well in the Presidency-towns, it may be well to extend it to other mercantile centres. I do not think that at this stage I need refer in detail to the provisions of the Bill. It will be sufficient to mention the following salient points. In the first place, a submission to arbitration may cover future as well as existing disputes, and it will not be necessary for the parties to name their arbitrator in the agreement to refer. For example, it will be competent to the parties to an agreement to insert in it a clause that all disputes which may arise between them concerning the agreement shall be referred to the arbitration of a person to be appointed by (say) the President of the Calcutta Chamber of Commerce. Then again, following the English Act, we have inserted in the first schedule a set of conditions which are to be implied in every submission which does not contain provisions to the contrary. But the parties, of course, can expressly vary these conditions if they like. In the second schedule we have inserted some simple forms which can be varied as required, but which may be of use to non-professional arbitrators."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS 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.

BURMA LAWS BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to declare the Regulations of the Bengal Code and Acts of the Governor General in Council now in force in Upper Burma and to make certain provisions regarding the law in Burma and other matters. He said :—" This Bill is in the main a consolidation Bill, but it makes one important change in the law relating to Upper Burma. As

[*Mr. Chalmers*] [2ND SEPTEMBER, 1898.]

Hon'ble Members are aware, under Act XX of 1886, an Act of the Governor General in Council, which is expressed to apply to the whole of British India, nevertheless does not apply to Upper Burma, unless it is expressly extended to it. If you wish an Act to apply to Upper Burma, you have to say in the extent clause that the Act in question 'applies to the whole of British India *including Upper Burma.*' The Local Government have advised that this rule may now safely be reversed, and that an Act which applies to British India as a whole should apply to Upper Burma unless that territory be expressly excluded. Burma has now a legislature of its own which can legislate for Upper and Lower Burma alike, so that it is anomalous to exclude Upper Burma from the operation of Acts which purport to apply to the whole of British India. Under the present Bill the bar created by the Act of 1886 is removed.

"That Act, which regulates the law in force in Burma, has been eight times amended, and it is also supplemented by other Acts which do not in terms amend it, so that the law in Burma is in a pretty complicated state.

"The present Bill proposes to consolidate all these enactments and to reproduce them, so far as in force, in a single Act. It enables us to repeal nine entire Acts and a large number of scattered provisions. It also supersedes a large number of statutory notifications which applied Acts to Upper Burma and which being scattered about are apt to be overlooked. The second schedule to the Bill gives a complete list of the Acts which up to the present date have, or ought to have, been applied to Upper Burma, and will thus facilitate the preparation of a new edition of the Burma Code which is now urgently required. The ordinary Repealing and Amending Bill which precedes the new edition of a local Code was prepared some little time ago. We thought it would be convenient to include it in the present Bill, and its provisions will be found in the third and fifth schedules."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Government thinks fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 23rd September, 1898.

J. M. MACPHERSON,

SIMLA;
The 2nd September, 1898. }

Secretary to the Government of India,
Legislative Department.