

*Thursday,  
1st July, 1897*

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

**Vol. XXXVI**

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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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*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 Act, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).*

The Council met at the Viceregal Lodge, Simla, on Thursday, the 1st July, 1897.

PRESENT:

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

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

His Excellency Sir G. S. White, G.C.I.E., G.C.B., V.C., Commander-in-Chief in India.

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

The Hon'ble Sir H. T. Prinsep, K.T.

UNITED KINGDOM PROBATES BILL.

The Hon'ble MR. CHALMERS asked for leave to withdraw the Bill to provide for the recognition in British India of Probates and Letters of Administration granted by Courts in the United Kingdom. He said:—"The Bill was referred to a Select Committee last year in Calcutta. The Select Committee unanimously came to the conclusion that the Bill was not required in India, and that it would have the effect of introducing confusion into the existing practice which has been working satisfactorily. I beg therefore to withdraw it."

Leave was granted.

BURMA MUNICIPAL BILL.

The Hon'ble SIR JOHN WOODBURN asked for leave to withdraw the Bill to amend the law relating to Municipalities in Burma. He said:—"Last year I asked permission to introduce a Bill, at the instance of the Chief Commissioner of Burma, to amend the law relating to Municipalities in that province."

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The Chief Commissioner has now been made a Lieutenant-Governor and has a Legislative Council of his own; and I ask permission to withdraw the Bill in order that it may be brought forward in his Council."

Leave was granted.

### SHORT TITLES BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to facilitate the citation of certain Acts. He said :—"In India the practice of giving a short title to every Act does not at present exist. The English practice is to give a short title to every Act, and a Bill was passed into law last year to give a short title to every Act which had not been provided with one. This Bill is drawn on the lines of the English Act. When an Act is cited it is very inconvenient to cite it by its long title, and it is a convenience to everybody that a short title should be given to it. The Bill is merely a formal one."

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 English in the Gazette of India and in the local official Gazettes.

The motion was put and agreed to.

### COURT-FEES ACT, 1870, AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved for leave to introduce a Bill to amend the Court-fees Act, 1870. He said :—"The necessity for each of the two amendments in the Court-fees Act which are embodied in the Bill before the Council has been separately brought to the notice of the Government of India; and, though the two are closely connected, it is necessary to explain briefly the legal history of each separately.

"The object of the two amendments is—

*Firstly*, to provide a check on the undervaluation of estates by persons applying for probate of a will or for letters of administration, and

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*Secondly*, to place on a more satisfactory footing the existing law relating to the realization of the duty payable on probates and letters of administration.

"The law which at present governs the administration of the estates of deceased persons in India is as follows. Under section 62 of the Probate and Administration Act (V of 1881), the petitioner must, in his application for the grant of probate or letters of administration, furnish an estimate of the assets likely to come into his hands, and court-fees are levied accordingly under article 11 of Schedule I to the Court-fees Act. Then, under section 98, the petitioner is required, within six months of the grant, to exhibit in Court an inventory containing a full and true estimate of all the property in possession and of all credits and debts; and within one year to exhibit an account of the assets realized and the manner of their disposal; the exhibition of an intentionally false inventory or account being punishable as an offence under the Indian Penal Code. Finally, provision is made in Chapter IIIA of the Court-fees Act for the refund of duty in the case of a person who has paid too high a court-fee, and for recovering the deficiency from a person who has paid too little. The provisions of the Indian Succession Act correspond precisely with those of the Probate and Administration Act just described.

"There is, however, no machinery provided by which the Revenue-officers of Government can check the sufficiency of the valuation, and it has been reported that evasions of duty by undervaluation have caused considerable loss of revenue to the exchequer in the past. It was first proposed to supply the want by amending the Indian Succession and the Probate and Administration Acts, but since Chapter IIIA of the Court-fees Act specially relates to matters connected with probate and administration it is more convenient to effect the necessary change in the law by an amendment of the latter Act. Section 19H has therefore been drafted so as to empower the Collector to intervene by examining the applicant for probate or letters of administration, or by adducing other evidence of the undervaluation of the estate concerned, in order to secure the payment of the proper amount of court-fees; and the section provides that, for this purpose, he shall have access to the records. To explain the second amendment it is again necessary to point out how the existing law on the subject of recovery of the duty payable on probates and letters of administration stands.

"Under section 243 of the Indian Succession Act (X of 1865), an application for probate or letters of administrations, if duly made and verified, is conclusive for

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the purpose of authorising the grant of probate or administration, and sections 187 and 190 provide that no right under a will, or to the property of an intestate, can be established in any Court unless probate or administration, as the case may be, has been granted. But the Indian Succession Act does not apply to the case

• Section 352.

of Hindus, Muhammadans or Buddhists, or to persons specially\* exempted by the Governor General in

Council, and the case of such persons is governed by the Hindu Wills Act (XXI of 1870) and the Probate and Administration Act (V of 1881). The latter Act, while

Section 61 of Act V of 1881.

reproducing the provisions of section 243 of the Indian Succession Act, omits the provisions con-

tained in sections 187 and 190, with the result that persons to whom the Act of 1881, and not the Indian Succession Act, applies, find that if they apply for probate or for letters of administration, and if their applications are admitted as duly made and verified, a certificate of the fact may have the same effect as if they incurred the expense involved in actually taking out formal probate or administration. They may thus derive all the benefit of the security given them by the law without the liability to pay the fees which are involved in taking out formal probate or administration, whereas persons to whom the Act of 1865 applies are compelled, as already explained, by sections 187 and 190 of that Act to obtain formal probate or administration before any rights under any will or to the property of an intestate can be established. This is clearly inequitable, and the question of the best means of remedying the defect in the law has resulted in the decision to amend the Court-fees Act by the addition of a section on the lines of section 14 of the Succession Certificate Act. That section reads as follows :—

‘ 14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870, in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.’

“ The second amendment which, by the Bill now before the Council, it is proposed to effect in the Court-fees Act is therefore, in substance, simply the extension to applications for probate and letters of administration of the provisions

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of the law which already apply to applications for succession certificates under the Succession Certificate Act of 1889."

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN introduced the Bill.

The Hon'ble SIR JOHN WOODBURN 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 may think fit.

The motion was put and agreed to.

The Council adjourned to Thursday, the 8th July, 1897.

J. M. MACPHERSON,

SIMLA;  
The 2nd July, 1897. }

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