

*Friday,
28th July, 1899*

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

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
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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 28th July, 1899.

P R E S E N T :

His Excellency Baron Curzon of Kedleston, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

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

His Excellency General Sir W. S. A. Lockhart, G.C.B., K.C.S.I., Commander-in-Chief in India.

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

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

The Hon'ble Mr. C. E. Dawkins.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Lieutenant-Colonel R. Gardiner, R.E.

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

CURRENCY CONVERSION (ARMY ANNUAL) BILL.

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN moved that the Bill to provide for the conversion into British Indian currency of sums expressed in British currency in the Army Act be taken into consideration.

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN moved that the Bill be passed.

The motion was put and agreed to.

TELEGRAPHIC PRESS MESSAGES BILL.

The Hon'ble MR. RIVAZ moved that the Bill to provide for the protection of certain telegraphic press messages be referred to a Select Committee consisting of the Hon'ble Mr. Raleigh, the Hon'ble Mr. Dawkins and the mover, with instructions to report after one month.

The motion was put and agreed to.

[*Mr. Raleigh ; Mr. Rivaz.*]

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PRISONERS BILL.

The Hon'ble MR. RALEIGH moved, for leave to introduce a Bill to consolidate the law relating to Prisoners confined by order of a Court. He said :—
 “ This Bill was described by my predecessor as a novelty in Indian legislation. It is a Bill of pure consolidation and makes no change in the substance of the law. In the Imperial Parliament, as Your Lordship is aware, Consolidation Bills are referred to a Joint Committee consisting, for the most part, of legal experts, and, if the Committee reports favourably, the Bill is passed by a sort of self-denying ordinance, the Government making no change in the substance of the law, and private members offering no amendments of substance. In India, I hope that no special rules may be necessary in order to pass a Bill of this character. Apart, altogether, from any changes we may desire to make in the substance of the law, there can be no doubt at all that consolidation will be useful as bringing together the enactments scattered through a number of statutes and thereby saving time and trouble to those who have to administer the law. The draft Bill as it came to me contained one or two trifling alterations, but those alterations, though they were improvements, have been struck out in order that I might introduce this Bill as a Consolidation Bill ; and if it is the first I hope it may not be the last that I shall be in charge of.”

The motion was put and agreed to.

The Hon'ble MR. RALEIGH introduced the Bill.

The Hon'ble MR. RALEIGH 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.

CENTRAL PROVINCES COURT OF WARDS BILL.

The Hon'ble MR. RIVAZ moved for leave to introduce a Bill to consolidate and amend the law relating to the Court of Wards in the Central Provinces. He said :—“ The Act which at present regulates the superintendence of the person and property of Government Wards in the Central Provinces was framed in 1885. Since then, the whole question of Court of Wards' management has been thoroughly considered by the Government of India in consultation with Local Governments, and the law on the subject is at present being amended and

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improved in most Provinces by the local legislatures. In the Central Provinces also, the present law needs improvement and consolidation, in order to make it more clear, precise and effective. The principal amendments embodied in the Bill which I am asking leave to introduce are that the Commissioner of the Division will in future be the Court of Wards in place of the Deputy Commissioner of the District; the Local Government will have power to declare persons to be incapable of managing their property on account of mental as well as physical defects or infirmities; it will also be able, on the application of a proprietor, to place his property under the superintendence of the Court of Wards, when it is thought expedient in the public interest to do so; provision is made for the early ascertainment of the liabilities of wards' properties and the prompt adjudication of claims against them; also for preventing a ward from creating any fresh encumbrances on his estate while it is under the management of the Court of Wards; and, lastly, the Court of Wards will have the power to retain charge of an estate, with the sanction of the Local Government, until all debts and liabilities are discharged, when a ward dies or ceases to be disqualified, if his property is still encumbered at such time. The reasons for these various amendments in the present law are given in the Statement of Objects and Reasons which is appended to the Bill, and I need not take up the time of the Council by repeating them."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ introduced the Bill.

The Hon'ble MR. RIVAZ moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Central Provinces Gazette in English and in such other languages as the Local Administration thinks fit.

The motion was put and agreed to.

PUNJAB COURTS BILL.

The Hon'ble MR. RIVAZ moved for leave to introduce a Bill further to amend the Punjab Courts Act, 1884. He said:—"The law of the Punjab in regard to appeals from appellate decrees in civil suits differs from the provisions of the Civil Procedure Code on this subject in the following respects. Under the Code no second appeal lies in any suit of the nature cognizable in a Court of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 500 rupees; but in all other suits, a second appeal lies to the High Court on the ground that the decision

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appealed against is contrary to some specified law or usage having the force of law, or that it has failed to determine some material issue of law or usage having the force of law, or that there has been some substantial error or defect in the prescribed procedure, which may possibly have produced error or defect in the decision of the case upon the merits. In the Punjab, the law since 1888 has been as follows. All civil suits are classified under three heads, namely, (1) small causes, (2) land suits and (3) unclassified suits,—this last head including all suits which are neither small causes nor land suits. A second, or, as it is termed in the Punjab Courts Act, a further, appeal is allowed to the Chief Court on any ground which would be a good ground of appeal if the decree had been passed in an original suit, in the following cases, namely, (1) if the value of the suit is 1,000 rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value; or (2) in a land suit where the decree of the appellate Court varies or reverses, otherwise than as to costs, the decree of the Court below; or (3) if on the application of any party, except in small causes of less value than 1,000 rupees or in unclassified suits of the value of 100 rupees or under, the Judge of the appellate Court certifies that there is a question of law or custom involved, and that the case is, in his opinion, of sufficient importance to justify a further appeal.

“ Experience has shown that this present law of further appeal in the Punjab is undesirably wide, especially as regards the facilities it affords for protracted litigation in petty land suits; that a great deal of the time of the Chief Court is taken up in dealing with comparatively trifling and unimportant cases; and that, consequently, under the present circumstances, the Punjab requires a Chief Court of six Judges, which is the same strength as that of the High Court of the North-Western Provinces, whose jurisdiction extends over a population half as large again as that of the Punjab. Both in the interests of the people and on the ground of reasonable economy, the Government of India think it very necessary to curtail the present facilities of appeal in the Punjab, to reduce the present number of the Chief Court Judges to a strength appropriate to the circumstances of a poor and comparatively small province like the Punjab, and to enable the Court, by relieving it of its present burden of petty appellate business, to devote a proper amount of time to the important duty of supervision of the work of the lower Courts. The measures for attaining these objects, which are embodied in the Bill which I am introducing, have been framed after careful deliberation and consultation with the Punjab Government and the Chief Court, and they are, for the most part, based on a scheme submitted by the Lieutenant-Governor and approved by the Judges. It is proposed to maintain the present system of second appeal in its main principles, that is, when such an appeal is allowed at all, to allow it on

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[*Mr. Rivaz ; The Lieutenant-Governor.*]

the whole case and not only on questions of law or custom, but the money limit, subject to which further appeals are allowed, is being raised for each class of suit, and a broad distinction is made between cases in which there are two concurrent decisions and those in which the decree of the first Court is varied or reversed by the appellate Court. It is proposed to allow a further appeal in small causes only when the value is of 1,000 rupees or upwards in the case of two conflicting decisions and in no case when there are two concurrent decisions; in land suits, only when the value is of 250 rupees or upwards in the case of two conflicting, and of 1,000 rupees or upwards in the case of two concurrent, decisions; and in unclassified suits, only when the value is of 1,000 rupees or upwards in the case of two conflicting decisions, and of 2,500 rupees or upwards when they are concurrent.

“At the same time, it is proposed to abolish the present system of certificate appeal on questions of law or custom, as being unsuitable to the circumstances of the Punjab, and in its stead to enlarge the revision powers of the Chief Court. These powers are at present more restricted than those conferred by section 622 of the Civil Procedure Code upon High Courts. A High Court can interfere on the revision side when a lower Court acts, in the exercise of its jurisdiction, illegally or with material irregularity; but in the application of section 622 to the Punjab, the words “illegally or” have been omitted. It is proposed to extend the present revisional power of the Chief Court to non-appealable cases in which a question of law or custom and of general interest is involved, on application being made within 30 days from the date of the order in respect of which the application is made.”

His Honour THE LIEUTENANT-GOVERNOR said :—“Not having had yet an opportunity of studying the provisions of the Bill, I am unable, at the present time, to enter into details, but I think it is proper that I should state at this stage that I am in entire concurrence with the views of my Hon'ble friend in the matter of this Bill. A great deal of correspondence has taken place in connection with it, and as the Hon'ble Mr. Rivaz says, and so far as I can judge from the account which he has given of the Bill, it is framed mainly upon the recommendations of the Local Government which, however, were undoubtedly called for by the remarks of the Government of India in connection with the administration of the Courts of Criminal and Civil Justice in the Province. The measure may be said to be one very largely in the interests of economy, and it may be a question whether the state of litigation in the Punjab is such as to require such a large Bench as the present Chief Court of the Punjab. I think that probably in regard to this matter there will be something to be said in the course of the discussions that

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will ensue on this Bill. The conditions of litigation in the Punjab are very different from those prevailing in other Provinces with which the Punjab is very often compared, and I think that in all probability it would be possible to justify the past action of the Local Government when, from time to time, it has asked for extra Judges to sit on the Bench of the Chief Court. However, I think that all are agreed that the time has come when, without sacrificing unduly the interests of justice, it is possible to make some economies, and the present Bill is largely aimed at doing this. The provisions of the Bill as explained by the Hon'ble Member have, as I have said, my concurrence."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ introduced the Bill.

The Hon'ble MR. RIVAZ moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Punjab Government 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 25th August, 1899.

J. M. MACPHERSON,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 1st August, 1899.