

*Friday,
2nd February, 1900*

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 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 2nd February, 1900.

PRESENT :

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

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 Mr. C. E. Dawkins.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Mr. Denzil Ibbetson, C.S.I.

The Hon'ble Mr. P. M. Mehta, C.I.E.

The Hon'ble Nawab Mumtaz-ud-daula Muhammad Faiyaz Ali Khan.

The Hon'ble Mr. J. K. Spence, C.S.I.

The Hon'ble Mr. G. Toynbee.

The Hon'ble Mr. D. M. Smeaton, C.S.I.

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

The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Kunwar Sir Harnam Singh Ahluwalia, K.C.I.E., of Kapurthala.

The Hon'ble Mr. J. T. Woodroffe.

The Hon'ble Mr. J. Buckingham, C.I.E.

The Hon'ble Mr. H. F. Evans, C.S.I.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Mr. Allan Arthur.

QUESTION AND ANSWER.

The Hon'ble MR. SMEATON asked:—"Has the attention of the Government of India been called to great delays in deferred telegraphic traffic between India and Burma? If so, what is the cause, and what, if any, steps are being taken to remove it, and to accelerate the telegraphic service between India and Burma?"

[Sir Arthur Trevor.] [2ND FEBRUARY, 1900.]

The Hon'ble SIR ARTHUR TREVOR replied:—"The attention of Government has been drawn to the delays referred to in the Hon'ble Member's question. The longest delays occurred between the 26th September and 10th October and again between the 25th December and 1st of January, and were primarily due to a great and sudden increase in this class of traffic all over India due to grain speculation. During the former period it unfortunately happened that the direct route, *i.e.*, *vid* Chittagong and Akyab, was the only one available, the alternative route *vid* Assam and Mandalay having been interrupted by the partial failure of the cables across the Ganges and Brahmaputra.

"There is no part of India with which it is so difficult to maintain telegraphic communication as with Burma, owing to the physical difficulties to be encountered in the shape of large and shifting rivers, hills and dense jungle, and although urgent and ordinary messages are exchanged between India and Burma in a reasonable time, it has not always been possible to cope satisfactorily with sudden and unexpected increases in the deferred traffic. Measures have, however, been taken to increase the efficiency of the present routes. An additional wire is now under erection between Akyab and Prome, which will be completed before the end of March, and Wheatstone's automatic quick working instruments, which have never hitherto been used in India, have been lately introduced on this route, and commenced working on 22nd January. A new copper wire has also been lately erected between Calcutta and Madras, and similar wires will shortly be completed between Calcutta and Bombay and Bombay-Madras, which will greatly improve the means of communication between India and Burma. Arrangements have also been made for completing another through route from Calcutta to Upper Burma *vid* Manipur, which will provide an alternative line by a third route for a considerable distance. It is believed that these and other measures which have either been carried out or sanctioned, including a considerable increase in the signalling establishment, will enable the Department to cope successfully in future with all demands due to the growth of the deferred telegraph traffic.

"There has been a great increase in deferred as compared with ordinary and urgent traffic since the introduction of a system of hand delivery, the proportion of deferred messages to the whole traffic being over 66 per cent. in 1898-99, while it averaged less than 55 per cent. in the five years ending 1897-98. The public must not, however, forget, when resorting more freely to deferred messages, that they are still, what the name implies, messages which can only be sent through after the wires have been cleared of the urgent and ordinary traffic, that is, usually during the night or after ordinary business hours. The Telegraph

*QUESTION AND ANSWER; WHIPPING; INDIAN COMPANIES 29
(BRANCH REGISTERS); TELEGRAPHIC PRESS MES-
SAGES; TRANSFER OF PROPERTY.*

[2ND FEBRUARY, 1900.] [*Sir Arthur Trevor; Mr. Ibbetson; Mr. Dawkins;
Mr. Raleigh.*]

Department aims at the delivery of all deferred messages before business hours begin on the day following that in which the messages are tendered, or say before 10 A.M. If deferred messages are frequently delayed beyond this hour there is an indication that additional measures are required for coping with this traffic, but if the sender of a message desires earlier delivery he would do well to send it at the ordinary rate."

WHIPPING BILL.

The Hon'ble MR. IBBETSON presented the Report of the Select Committee on the Bill further to amend the Whipping Act, 1864.

INDIAN COMPANIES (BRANCH REGISTERS) BILL.

The Hon'ble MR. DAWKINS presented the Report of the Select Committee on the Bill to authorize certain Companies registered under the Indian Companies Act, 1882, to keep branch registers of their members in the United Kingdom.

TELEGRAPHIC PRESS MESSAGES BILL.

The Hon'ble MR. IBBETSON presented the Report of the Select Committee on the Bill to provide for the protection of certain telegraphic press messages. He said:—"We do not recommend that the Bill be republished, but I propose to wait a month before I ask the Council to consider our report, in order that the Press, which is so closely concerned, may have ample time to examine the considerable alterations which have been made in the Bill."

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. RALEIGH moved that the Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RALEIGH said:—"In introducing this Bill I called attention to the difficulties which the Courts had found in interpreting the provisions of Chapter VIII of the Transfer of Property Act. It was hoped that by a re-drafting of the chapter as it stood those difficulties might be met, but in consequence of the able note of the Chief Justice of Bombay

[*Mr. Raleigh ; Mr. Woodroffe ; The President.*] [2ND FEBRUARY, 1900.]

we found ourselves compelled to go more thoroughly into the question and to re-draft not only the chapter in the Act, but to consider generally the law relating to actionable claims. The Bill on which the Select Committee reported is explained in the report, and before I move that it be passed, I have to propose only two amendments which, I hope the Council will take it from the learned Advocate-General and myself, are of a formal character. I beg to move in the first place that, in section 132, the latter part of the section be amended, and that the words which now run—"the liabilities and equities entitled to priority over the right of the transferor" should run 'the liabilities and equities to which the transferor was subject'."

The Hon'ble MR. WOODROFFE said :—"I beg to second this amendment. The words 'entitled to priority' were doubtless apt and fit in this section as the Bill stood when originally introduced into Council, but by the adoption in Committee of the more general expression 'liabilities and equities', the words which the Hon'ble Legal Member has moved to omit, have, as I think, been rendered unnecessary, and ought not to be retained. The section will, by their omission, be, in my opinion, freed from some ambiguity."

His Excellency THE PRESIDENT said :—"The question is that in section 132 of the Transfer of Property Act as amended by the Bill the words 'entitled to priority over the right of the transferor' be omitted, and that for the word 'he' the words 'the transferor' be substituted."

The motion was put and agreed to.

The Hon'ble MR. RALEIGH said :—"The other amendment I have to propose refers to sections 136 and 137 of the Transfer of Property Act. Section 136 runs: 'No judge, pleader, mukhtár, clerk, bailiff or other officer connected with Courts of Justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.' And then section 137 proceeds to deal with the important subject of the traffic in actionable claims by Judges, legal practitioners and officers of the Court, etc. I propose that these two sections should be transposed, so that the provisions of section 136 will apply to section 137."

The Hon'ble MR. WOODROFFE said :—"I beg to second the amendment which has just been moved by the Hon'ble Legal Member. The question has arisen in this way: it has been suggested that regard being had to the language of the present section 137, no legal practitioner could take a cheque in pay-

[2ND FEBRUARY, 1900.] [*Mr. Woodroffe; The President; Mr. Raleigh.*]

ment of his fees, a result which would, of course, be a serious matter for any member of the profession to which I have the honour to belong, and that by placing section 136 after 137 which exempts from the application of this Act negotiable instruments, such as a cheque, the difficulty would be overcome."

His Excellency THE PRESIDENT said:—"The question is that sections 136 and 137 of the Transfer of Property Act as amended by the Bill be transposed, and be renumbered accordingly."

The motion was put and agreed to.

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

The Hon'ble MR. WOODROFFE said:—"As one of the members of the Select Committee to which the Bill was referred, it may, perhaps, not be out of place were I to offer a few observations to the Council upon the principles which guided our consideration in Committee and the more salient amendments which were there introduced.

"The Transfer of Property Act is divided into chapters each purporting to deal exhaustively with its own subject-matter, and having thus dealt with transfers of property by act of parties in one chapter, sales of immovable property in another, mortgages and charges of such property in a third, and leases of immovable property, as also exchanges and gifts of property generally, in subsequent chapters, Chapter VIII deals with the transfer of actionable claims. So considering the Act it appeared to us unreasonable to suppose that the Legislature intended to deal in Chapter VIII with any of the matters for which that Act had already made specific provision, or to suppose that actionable claims were intended to cover every claim for which an action would lie in our Courts so as to include claims arising out of sales, gifts, mortgages, or leases of immovable property or exchanges or gifts of moveable or immovable property within its provisions. Unhappily the term 'actionable claim,' which found no place in the original Bill as laid before the Law Commissioners in 1879, had not been defined, and section 130 having from the generality of its terms occasioned considerable difficulty in determining what was the true nature of the property dealt with in that chapter, we thought that the term should be so defined as to make it clear that actionable claims were property of the description known to English lawyers as 'choses in action,' and as such dealt with in England by the Supreme Court of Judicature Act of 1873. The definition arrived at by the Committee may, I

[Mr. Woodroffe.] [2ND FEBRUARY, 1900.]

venture to think, be taken to be a fairly correct description of that kind of property, and seeing that the term 'actionable claim' occurred elsewhere in that Act, the Committee placed the definition in the interpretation clause.

"One other and more salient matter has been the removal from the Transfer of Property Act, of section 135. The origin of that section will be found in the Roman Law, and was there known as *Lex Anastasiana*. It was intended to provide for cases of unfair sale. In an appeal from British Guiana, the only other part of Her Majesty's dominions in which that law found a place, the Privy Council declared that it could not, consistently with the ordinary principles which regulate the administration of justice in England, apply that law to cases where there was no taint of unfairness. The clause, moreover, was of this character, that while it pressed, or might press, harshly against the honest transferee of a book-debt for which he had paid less than the amount of that debt, regard being had either to the risk or delay of recovery, he might find himself, when he sued to recover it, obliged to take such debt less the cost which he had really paid for that risk. On the other hand, it afforded no protection against dishonest dealing, and did not apply to cases of gift at all. It was, therefore, open to any person who desired to deal dishonestly either to put forward the case of a transfer of an actionable claim as a gift or as a sale for a sum of money which he had not really paid. Moreover, the Courts of this country were at hopeless variance with one another upon this matter. The Courts of Allahabad and Madras took one view: Bombay agreed in part with Madras and in part with Calcutta. For these reasons it appeared desirable to omit this section altogether.

"The only other remaining section on which any observation appears to me needful is that which is now numbered 136, and to which there has been a considerable extension by the amendments introduced. As the section stood before such amendment, it was limited to such persons as were therein mentioned buying or trafficking in such claims in the Courts in which they were for the time being employed, but having regard to the fact that there are constant changes of Judges as well as officers, and that legal practitioners from all parts of the country may, from time to time, plead and appear in any Court, it seemed to be desirable to make the prohibition absolute as regards them all."

The motion was put and agreed to.

[2ND FEBRUARY, 1900.] [*Mr. Raleigh; Mr. Woodroffe.*]

PRISONERS BILL.

The Hon'ble MR. RALEIGH moved that the Report of the Select Committee on the Bill to consolidate the law relating to Prisoners confined by order of a Court be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the Bill as amended be passed. He said :—"Your Lordship will remember that this Bill was introduced as a consolidation Bill, making no change in the substance of the law. The Committee conceived that though the Bill was accepted as a consolidation Bill, they were not precluded from considering amendments to remove obvious defects and inconsistencies discovered in the process of re-arranging the subject-matter of the law. After the Committee had reported, the Hon'ble the learned Advocate-Général favoured me with a number of suggestions for the improvement of the law. Some of those suggestions were such as might have been considered by the Committee in accordance with the principle which I have just endeavoured to state, but others were amendments which perhaps made changes in the substance of the law and which ought to be circulated for opinion before they were adopted. I, therefore, asked the Hon'ble the learned Advocate-General to allow the Bill to pass in its present form on the understanding that an amending Bill will be taken in hand as soon as the state of our legislative business will admit, and on that understanding I now ask that the Bill as amended be passed."

The Hon'ble MR. WOODROFFE said :—"Strictly speaking and as indicated in the remarks of the Hon'ble Legal Member, the title of the Bill is a misnomer, and the preamble is incorrect. The Bill is not, as it left the Committee, a Bill merely to consolidate the existing law. It is a Bill that both consolidates and amends. There have been important amendments introduced, particularly in sections 19 and 20 of the Act as introduced into Council. There have also been other important changes made. Most of these, as far as I can judge, are not only material but salutary. There were, however, other matters which, as I ventured to think when my attention was invited to this Bill by the Hon'ble Legal Member, ought to have been taken into consideration. It is admitted that some of my suggested amendments are worthy of consideration. Some of these I would indicate now if it may be of any assistance hereafter in the Bill which I understand will be introduced for the purpose of amending this Bill. There are provisions in this Bill which seem to me to be in conflict with those of the law relative to the examination of witnesses

either by the Civil or Criminal Courts. The Civil Procedure Code and the Criminal Procedure Code alike contain clauses for the examination of witnesses. There is no distinction drawn in these Codes as to witnesses who are in prison and witnesses who are not in prison, and there seems to be—apart from those considerations which would guide the executive as provided for by section 42 of the present Bill—no reason why all persons should not be liable to be examined, either directly or under commission, in the manner provided for by the Codes. I venture to think also that in section 40 of the present Bill the position of a High Court is not exactly that which it ought to be. Under that section the High Court is to apply to the Local Government, but it seems to me more desirable that the High Court should certify and on such certificate the parties should apply. I merely indicate these points, and resting upon the assurance which has been given that there will be a Bill brought in to amend this Act, I abstain from moving any amendments; though it is, I think, to be regretted that the Legislature should be in the position of bringing in a Bill in one session for the consolidation of the existing law, and then in a session or two later of bringing in another Bill to amend the Act which has been passed."

The motion was put and agreed to.

The Council adjourned to Friday, the 16th February, 1900.

CALCUTTA;
The 7th February, 1900. }

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.