

*Tuesday,
4th August, 1903*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLII

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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 Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Tuesday, the 4th August, 1903.

P R E S E N T :

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

His Honour Sir C. M. Rivaz, K.C.S.I., Lieutenant-Governor of the Punjab.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. T. Raleigh, C.S.I.

The Hon'ble Sir E. FG. Law, K.C.M.G., C.S.I.

The Hon'ble Major-General Sir E. R. Elles, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Sir C. L. Tupper, K.C.I.E., C.S.I.

N E W M E M B E R.

The Hon'ble SIR LEWIS TUPPER took his seat as an Additional Member of Council.

E X T E N S I O N O F T H E V I C E R O Y ' S T E R M O F O F F I C E.

Before proceeding with the business of the Legislative Council His Excellency THE PRESIDENT addressed Hon'ble Members as follows:—

“It is my duty to make an announcement at the opening of these proceedings. Some months ago His Majesty's Government offered me an extension of my term of office in India; and since then I have long and anxiously considered what it would be right for me to do. The rule or custom of a five-years' duration of the Viceroyalty of India seems to me to be on the whole a wise rule, and I should not like by any action of mine to be thought to weaken its general application. Further, no one recognises more clearly than myself that no man is necessary, and that others could be found perfectly qualified to carry on the work. Nor can I be unaware of the tax

[*The President.*]

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upon health and strength, and I would add upon spirits also, that is entailed by the long exile and the undeviating strain; or of the warning supplied by the experience of the only two Governors General in the last half century who have stayed beyond the five-years' term. These points, and many others that I could name, have been arguments in favour of not accepting the offer. But, on the other hand, I have felt that there was still work, hard and heavy but necessary work, to be done, which it was almost an obligation upon the person who had initiated it to see through. Five years may be long enough for the individual, but it is all too short for a Government that has embarked upon wide and comprehensive schemes of reform, and that aspires—I hope not vainly or foolishly—to redress many evils, and to communicate a fresh impetus to the strenuous organism of our Indian administration. Education, Police, Railways, Irrigation, Agricultural, Industrial and Commercial advancement, efficiency in every branch and department of our Administration—all of these have been, or still are, under our close examination; and as the result we hope to frame the lines upon which this country can pursue the great development that awaits it for another generation. Some of our work is already done; much is still incomplete. A little while longer is needed to start the whole on its way. These are the considerations that led me to think that I ought not to turn my face homewards just yet, and that it would be a neglect of duty to abandon my share in the undertaking while it still remains unfulfilled. I have felt, too, that by staying on to complete this task, it might be in my power to do something more for the people of this country, which, in one way or another, I have endeavoured to serve for so many years of my life, and which can never lose its hold upon my affections. I have, therefore, accepted the offer of His Majesty's Government for an extension of my term of office, with permission for an interim vacation in England, should I desire to take it next year.

“ I have only come to this decision with much misgiving, but in the hope that I may find justification in the motive that underlies it, in the approval of the Indian people whom it is my privilege to serve, and in the support of the colleagues to whom I owe so much, and upon whose continued co-operation I feel confident that I may rely. I am aware that the administrative programme of which I have spoken, and which we have in hand, cannot be achieved—it has not been pursued thus far—without placing an immense strain upon the labour and energies of the official world throughout India, who are the direct instruments in formulating and carrying it through. The loyalty with which they have responded to every appeal, the zeal and devotion with which they have

[4TH AUGUST, 1903.] [*The President ; the Lieutenant-Governor ; Mr. Raleigh.*]

played their part, I can never sufficiently acknowledge or praise. But at least I may take this opportunity of publicly expressing my gratitude for it, and my pride at being permitted for some time longer to preside over a service thus constituted and inspired, and to assist in a task which I shall never cease to regard as the greatest and noblest that anywhere devolves upon the British race."

His Honour THE LIEUTENANT-GOVERNOR said :—"As I had the honour of serving as a Member of Your Excellency's Executive Council during the first three years of Your Excellency's administration and am head of the Province in which the meetings of Your Excellency's Legislative Council are at present being held, I trust that it will not be considered out of place on my part if I take on myself to assure Your Excellency that the announcement which Your Excellency has just made will be received with the liveliest satisfaction by all classes in India. Your Excellency, by consenting to prolong the tenure of your high and onerous appointment, will be able to bring to maturity such of the many important and beneficial projects which Your Excellency has initiated as it has not been found possible to complete within the ordinary limit of a Viceroy's term of office ; and I am confident that I am expressing the general sentiment not only of those present in this Council Chamber to-day, but of the entire community of this country, in saying that the Indian Empire is to be heartily congratulated on its good fortune in securing the benefit of Your Excellency's services for a further period, and in wishing Your Excellency health and strength to bring the great work which you have undertaken to a successful conclusion."

His Excellency THE PRESIDENT :—"Sir Charles Rivaz, I hope you will allow me to say that I am very grateful to you for the kind words which you have spoken."

INDIAN EXTRADITION BILL.

The Hon'ble MR. RALEIGH moved that the Bill to consolidate and amend the Law relating to the Extradition and Rendition of Criminals be referred to a Select Committee consisting of the Hon'ble Mr. Arundel, the Hon'ble Sir Denzil Ibbetson, the Hon'ble Sir Lewis Tupper and the mover.

The motion was put and agreed to.

[*Sir Denzil Ibbetson.*]

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CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill to make better provision for the organization and administration of municipalities in the Central Provinces be referred to a Select Committee consisting of the Hon'ble Mr. Raleigh, the Hon'ble Sir Lewis Tupper and the mover.

The motion was put and agreed to.

POISONS BILL.

The Hon'ble SIR DENZIL IBBETSON moved for leave to introduce a Bill to provide for the regulation of the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally. He said :—" My Lord, the question of regulating the possession and sale of poisons in India has frequently been under the consideration of Government. It was felt, however, that it was not advisable to create new offences, and to place new powers in the hands of subordinate officials, unless really effective control could be secured ; and it was doubted whether this was possible, in view of the absence of qualified druggists outside the large towns, and of the fact that vegetable poisons abound everywhere, while certain mineral poisons are largely used in indigenous industries. Proposals for general legislation were, therefore, rejected.

" In 1895 the matter was again brought to the notice of Government by a paper read before the Calcutta Medical Congress and by a presentment made by the special jury in a murder case tried before the Calcutta High Court. Especially the necessity for some control over the sale of white arsenic was insisted upon ; and it was thought that, even if any measures of universal application were inadvisable, it would at any rate be possible to regulate the sale of poisons within municipalities and cantonments. Local Governments were therefore asked for their opinions ; and the Bill which I ask leave to introduce is the outcome of the discussion which ensued. It is approved of by all the Local Governments, and by the various Chambers of Commerce and Trades Associations which have been consulted.

" I need not, I think, say much in justification of our proposals. India is probably the only civilised country in the world of which the Government exercises no general control over the sale of poisons. The Bill has been carefully framed so as to confine the control which it is now proposed to exercise within the narrowest limits which are compatible with the end in view ; and its

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[*Sir Denzil Ibbetson.*]

provisions are wholly permissive, so that the action taken under it can be adapted to local circumstances. Power is taken to regulate the sale of all poisons within municipalities and cantonments ; but arsenic is the only poison the sale of which it is proposed to control in rural as well as in urban areas. The reason why arsenic is thus singled out for special treatment is, that it is the poison most commonly employed for homicidal purposes in India ; that, being used in the leather industry, it is procurable in every good-sized village ; and that it is not produced in India, so that it is possible to follow it from the importer to the consumer. The Bill accordingly provides for the prohibition of its importation into British India except under license.

“ The possession of poisons otherwise than for sale is not generally interfered with ; but power is taken to control such possession of arsenic in areas in which its use for poisoning either men or cattle is especially frequent. Power is also reserved to the Governor General in Council to extend to any other poison those provisions of the Bill which relate to arsenic, so as to provide for the possibility of the new restrictions inducing the Indian poisoner to adopt some other poison as his favourite agent.

“ The Government are anxious to avoid unnecessary interference with any legitimate industry in which poisons are employed ; and clause 10 exempts from the provisions of the Act everything done in good faith and in the exercise of his business or profession by any member of certain specified classes of persons. It is not impossible that this specification may require modification or enlargement, and we shall welcome any suggestions made with a view to its improvement.”

The motion was put and agreed to.

The Hon'ble SIR DENZIL IBBETSON introduced the Bill.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, together with the Statement of Objects and Reasons relating thereto, 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.

TRANSFER OF PROPERTY (AMENDMENT) BILL.

The Hon'ble SIR DENZIL IBBETSON moved for leave to introduce a Bill further to amend the *Transfer of Property Act, 1882*. He said :—“ My

[*Sir Denzil Ibbetson.*] [4TH AUGUST, 1903.]

Lord, the Bill which I now propose, with the permission of Council, to introduce, though very short, is one of considerable importance, since it will, if it becomes law, affect the manner in which transfers of real property are effected throughout the greater part of India.

"Under the law of registration, if two transfers of the same piece of land have been made by the owner, the later one by a registered and the earlier one by an unregistered document, the later transfer will hold good against the earlier by virtue of its registration. Until the year 1843, this rule was qualified by the proviso that the second transferee must not have had notice of the first transfer; and that, if he had such notice, the later transfer in his favour would no longer prevail over the earlier one. But in 1843 this 'doctrine of notice,' as it is called, was deliberately struck out of the Registration Act, on account, as expressly stated in the preamble of the revised Act, of the 'forgeries, perjuries, fraudulent concealments and other practices' to which it had given rise.

"The intention of the Legislature evidently was that the doctrine of notice should no longer hold good in India, and that a registered deed of transfer should override an earlier deed which was not registered, even though the later transferee might have been fully aware of the first transfer: and certain of the superior Courts adopted this view, holding that by deliberately removing from the Statute the words which imported into it the doctrine of notice, the Legislature had implicitly enacted that it should no longer apply. Others, however, ruled that the doctrine still held good, on the ground, apparently, that fraud of necessity vitiates a transaction. It was this difference of opinion which led to the matter being brought to the notice of the Government of India. The difference has since disappeared, and all the superior Courts are now agreed in the view that the doctrine of notice still holds good.

"But this is the very doctrine which, sixty years ago, the Indian Legislature tried to get rid of—as it now appears, ineffectually—because of the iniquities to which it was found to give rise. And the Government of India are confirmed in their adherence to the view then held, by the fact that in England also the expediency of the doctrine has been questioned, and that it has been rejected in certain recent legislation on the subject. On the other hand, it is difficult to ask the Legislature to expressly declare that, if two men conspire together to defraud a transferee of land who has been so careless as not to register his deed of transfer, they may use as the instrument of their knavery that very registration machinery which was devised as a protection against fraud.

[4TH AUGUST, 1903.]

[*Sir Denzil Ibbetson.*]

"The position was thus a difficult one. It was susceptible, however, of a simple solution, which was to insist that in future *all* deeds transferring real property should be registered, thus rendering the conflict between a registered and an unregistered deed impossible. And this is, broadly speaking, what the present Bill, which modifies the provisions of the Transfer of Property Act, is intended to effect ; although in Bombay and Bengal it is not proposed that the change should extend to leases. The change has also this incidental advantage, that the registration registers will in future furnish more complete information as to the title in real property—a point not without importance in provinces where no record-of-rights is maintained.

"When the Local Governments were consulted upon the proposal, the Governments of the Punjab and Burma, in which provinces the Transfer of Property Act is not in force, were at the same time consulted as to the advisability of extending to them either the whole Act, or at least those portions of it which regulate the mode of transfer, thus making the law on the subject uniform throughout virtually the whole of India, excepting, however, Upper Burma, in which province registration of documents has not yet been fully introduced.

"The Government of Burma was willing to extend the particular provisions to which I have just referred to the greater part of Lower Burma ; and clause 2 of the Bill provides the necessary power. The Government of the Punjab objected to extending any portion of the Act to that province, mainly on the ground that the landowners are mostly small men and ignorant of the law ; that they possess a record-of-rights, maintained with great efficiency, and which has their complete confidence ; and that a duly attested mutation of names in that record is a method of transfer well suited to the people and their circumstances, and which it is desirable to encourage rather than to forbid. These arguments have been accepted by the Government of India, and the proposal against which they are directed has not been further pressed."

The motion was put and agreed to.

The Hon'ble SIR DENZIL IBBETSON introduced the Bill.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill, together with the Statement of Objects and Reasons relating thereto, 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.

[*Sir Edward Law.*]

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INDIAN TARIFF (AMENDMENT) BILL.

The Hon'ble SIR EDWARD LAW moved for leave to introduce a Bill further to amend the Indian Tariff Act, 1894. He said :—" In view of the fact that the Act which at present regulates the question of countervailing duties upon sugar expires on the 31st August next, it has been held advisable to take fresh action in this matter in the way of legislation. Section 8A of the Indian Tariff Act, 1894, provides for the levy of an additional duty on articles on which a bounty is given directly or indirectly by a foreign State, and section 8B provides for the levy of additional duties in certain cases in which high protective duties render possible the creation of bounties by private trade combinations or cartels. The majority of the chief sugar-producing countries of Europe have agreed to arrangements designed to secure the abolition of all bounties and high protective duties on sugar on the 1st of September, 1903. Large stocks of sugar exist in those countries on which bounties have been paid and which have been produced under the cartel system. The object of this Bill is to continue the present additional duties on sugar until the 31st of March, 1904, when it is expected that the greater part of the stocks which have received bounties will have been consumed.

" The opportunity has been taken at the same time to make it clear that section 8A of the Act of 1894, as amended in 1899, extends to bounties or grants paid or bestowed upon production as well as upon exportation."

The motion was put and agreed to.

The Hon'ble SIR EDWARD LAW introduced the Bill.

The Hon'ble SIR EDWARD LAW moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India and in the local official Gazettes in English.

The motion was put and agreed to.

The Council adjourned to Friday, the 28th August, 1903.

J. M. MACPHERSON,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 6th August, 1903. }