

*Friday,  
8th January, 1904*

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

**Vol. XLIII**

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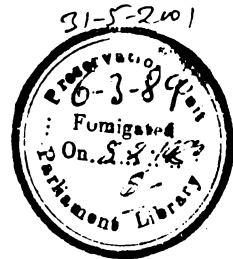
ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS

1904

VOLUME XLIII



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The Council met at Government House, Calcutta, on Friday, the 8th January, 1904.

PRESENT :

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.  
His Honour Sir A. H. L. Fraser, K.C.S.I., Lieutenant-Governor of Bengal.  
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., K.C.I.E.  
The Hon'ble Sir A. T. Arundel, K.C.S.I.  
The Hon'ble Sir Denzil Ibbetson, K.C.S.I.  
The Hon'ble Rai Sri Ram Bahadur.  
The Hon'ble Mr. A. W. Cruickshank, C.S.I.  
His Highness Raja Sir Surindar Bikram Prakash Bahadur, K.C.S.I., of Sirmur.  
His Highness Agha Sir Sultan Muhammad Shah, Agha Khan, G.C.I.E.  
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.  
The Hon'ble Mr. E. Cable.  
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.  
The Hon'ble Mr. F. S. P. Lely, C.S.I.  
The Hon'ble Mr. H. Adamson, C.S.I.  
The Hon'ble Mr. A. Pedler, C.I.E., F.R.S.  
The Hon'ble Mr. T. Morison.  
The Hon'ble Dr. Ramkrishna Gopal Bhandarkar.  
The Hon'ble Mr. J. B. Bilderbeck.  
The Hon'ble Mr. D. M. Hamilton.  
The Hon'ble Rai Bahadur B. K. Bose, C.I.E.  
The Hon'ble Dr. Asutosh Mukhopadhyaya, D.L., F.R.A.S., F.R.S.E.

NEW MEMBERS.

The Hon'ble RAI BAHADUR B. K. BOSE and the Hon'ble DR. ASUTOSH MUKHOPADHYAYA took their seats as Additional Members of Council.

POISONS BILL.

The Hon'ble SIR DENZIL IBBETSON presented the Report of the Select Committee on the Bill to provide for the regulation of the possession and

[*Sir Denzil Ibbetson; Dr. Asutosh Mukhopadhyaya.*] [8TH JANUARY, 1904.]

sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally. He said that he had no remarks to offer at the present stage of the Bill.

### TRANSFER OF PROPERTY (AMENDMENT) BILL.

The Hon'ble SIR DENZIL IBBETSON moved that the Bill further to amend the Transfer of Property Act, 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Raleigh, the Hon'ble Rai Sri Ram Bahadur, the Hon'ble Mr. Adamson, the Hon'ble Dr. Asutosh Mukhopadhyaya and the mover.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"My Lord, I trust I may be permitted to offer a few observations upon the Bill which is now before the Council, for there can be no reasonable doubt as to its importance or far-reaching consequences, though it has not attracted much public attention, possibly because it has not been regarded as legislation of a sensational character.

"The principle which lies at the foundation of the Bill involves a recognition of the doctrine that transfers of interests in land should be effected, as far as possible, by means of written and registered instruments. If we examine the history of legislation in this country we shall find that the doctrine in question had always been steadily recognised, even before the Transfer of Property Act was passed. I am entirely in favour of the principle which underlies the Bill, but I cannot conceal my regret that the Bill does not go far enough in two directions, at any rate so far as mortgages are concerned. Under the Transfer of Property Act, as it now stands, a mortgage can be effected only by a registered instrument if the principal secured is one hundred rupees or upwards; if the principal amount is less than one hundred rupees, registration is entirely optional, and if the mortgage is other than a simple mortgage the law goes further, and provides that no document of any kind is necessary, and the mortgage may be effected by delivery of the property. In the Bill which is now before us, it is proposed that, where the principal money is less than one hundred rupees, a mortgage may be effected by a registered instrument or, except in the case of a simple mortgage, by delivery of the property. To put the matter in another way, the only change which it is proposed to introduce into the law is that, whenever a mortgage is created by a written instrument, it must also be registered, but it is left open to people to create a mortgage, other than a simple mortgage, by mere delivery of the property and without any written instrument.

[8TH JANUARY, 1904.] [*Dr. Asutosh Mukhopadhyaya.*]

To my mind this does not appear to be either satisfactory or defensible in principle. I venture to think that if we determine whether a particular mortgage transaction can be effected only by a registered instrument, with reference solely to the amount of the principal money secured, we may be rightly charged with taking a narrow and restricted view of things. The position will be made absolutely clear by means of a concrete illustration: A borrows Rs. 50 from B, whom he places in possession of the property, and agrees to pay compound interest at 3 per cent. per month with quarterly rests; if he seeks to redeem the security, say, at the end of ten years, he has to pay to B Rs. 1,570 less the profits received by B during his occupation; such a mortgage as this may, if the Bill is passed as it stands, be effected without any document embodying the terms of the contract; if, however, A borrowed Rs. 340 from B and agreed to pay simple interest at 3 per cent. per month, the law says that the terms of the transaction must be embodied in a registered instrument, although the amount upon payment of which the security can be redeemed at the end of ten years is practically the same as in the case of the previous illustration. In other words, the amount of the principal money secured by a mortgage, which is taken as the sole determining factor, may, and often does, prove to be the least important element in calculating the extent of the liability created by the transaction.

"I therefore venture to point out that the distinction drawn is not well founded in principle, nor do I think is it satisfactory in its working. I take it, the object of all legislation is to minimise the possibility of speculative and mischievous litigation; there can hardly be room for any reasonable doubt that, if registration is made compulsory in the case of all mortgages, whatever be the amount secured, and whether accompanied by delivery of possession or not, a great deal of unnecessary litigation would be rendered impossible; as soon as the document is proved and the payment of the consideration established, the terms of the contract would be ascertained beyond the possibility of a doubt, and there would be left little scope for the manufacture and application of perjured evidence. Moreover, an exact description of the terms of agreement between the parties, when they are embodied in a registered instrument, is not only beneficial to the mortgagor and mortgagee, but is of the utmost importance to strangers who may have occasion to deal with the property or may acquire any interest therein. The only objection which may, with any plausibility, be urged against the compulsory registration of all mortgages, is that such a provision may, in practice, cause hardship to poor and ignorant borrowers; but I venture to observe that these are precisely the people who

[*Dr. Asutosh Mukhopadhyaya*; *Sir Denzil Ibbetson*.] [8TH JANUARY, 1904.]

stand most in need of protection. They may find it cheap in the beginning to be relieved from the payment of the stamp duty and the registration fee, but in the end they may discover, when too late, that the advantage they have gained is of an unsubstantial character, and that the uncertainties of oral evidence and the costs of speculative litigation have proved ruinous to them.

"I would therefore submit that registration may, with advantage, be made compulsory in the case of all mortgages."

"The second point to which I desire to invite attention relates to what I may describe as legislation by notification. The Bill authorises the Local Government, by previous notification in the official Gazette, to direct that all or any mortgages, made within the territories under its administration or any part thereof, shall be effected only by registered instruments. This principle of legislation by notification is already, to some extent, recognised in the Transfer of Property Act, but I am unable to advocate its further extension. I am fortified in my views by the opinion of Mr. Justice Benson, of the High Court of Madras, who has pointed out that the provisions of this branch of the law should be simple, widely known, easily ascertainable and little liable to alteration—conditions which can hardly be realised if we have recourse to legislation by notification. Indeed, if I may say so without impropriety, recourse to this process is an admission of ignorance on our part; it is in reality an attempt to throw upon the Local Government the responsibility which rightly attaches to us. If, at the present moment, we are not in possession of the necessary information, by all means let the materials requisite for our guidance be collected. If, at any future time, upon further enquiry and fuller materials, the law has to be changed as to the local extent of its application, let it be done after the fullest public discussion of the proposed changes in this Council."

"I am therefore unable to accept a further extension of the doctrine of legislation by notification."

The Hon'ble SIR DENZIL IBBETSON said:—"My Lord, I believe, although it is really a matter for lawyers rather than for Executive officers, that there is a good deal that is capable of improvement and amendment in the law of registration in India as contained in the Registration Act and in the Transfer of Property Act. But the Bill that is before us now is a Bill in which we are dealing with one specific point. That point alone has been referred to Local Governments and to the Secretary of State, and it was our desire to effect

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*TRANSFER OF PROPERTY; INDIAN UNIVERSITIES; CEN-  
TRAL PROVINCES CIVIL COURTS.*

[8TH ]ANUARY, 1904.] [*Sir Denzil Ibbetson; Mr. Raleigh; Sir Arundel Arundel.*]

the particular change that we had in view with 'as little alteration in the existing law as possible. That is to say, we wished to remove the possibility of a registered document taking precedence of a previous unregistered document, but not to alter any other provisions of the substantive law. Of course, as the Hon'ble Member has just pointed out, a money criterion such as the present law provides is open to objections, but any hard and fast line that is drawn must be open to objections, and the only way to avoid them is to abolish all distinctions.

"But I am not quite sure that the Hon'ble Member is really quite in order in discussing this point at this present stage. He entirely approves of the principle on which the Bill is founded. He wishes even to carry it further, but the point on which he wishes to carry it further is a question of detail. He himself is on the Select Committee, and will therefore have the fullest opportunity of expressing his views, which I am quite sure will have the most careful consideration from the Committee."

The motion was put and agreed to.

**INDIAN UNIVERSITIES BILL.**

The Hon'ble MR. RALEIGH moved that the Hon'ble Dr. Asutosh Mukhopadhyaya be added to the Select Committee on the Bill to amend the law relating to the Universities of British India.

The motion was put and agreed to.

**CENTRAL PROVINCES CIVIL COURTS BILL.**

The Hon'ble SIR ARUNDEL ARUNDEL presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Civil Courts in the Central Provinces. He said :—"My Lord, in presenting the Report of the Select Committee on the Bill to consolidate the law relating to Civil Courts in the Central Provinces, I may say that we have had the advantage of consulting the Chief Commissioner on the principal modifications made in the Bill, and of obtaining his approval thereto. As explained in paragraph 2 of the Report, the Bill now makes it clear that the Additional Judicial Commissioner will possess jurisdiction in criminal cases, and the Court of the Judicial Commissioner will be the highest Court of criminal appeal and revision as well as

## CENTRAL PROVINCES CIVIL COURTS.

[Sir Arundel Arundel.]

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the highest Civil Court of appeal. The other alterations are of a minor character but add to the efficiency of the legal provisions.

"I trust that the Council may be able to consent to pass the Bill at an early date."

The Council adjourned to Friday, the 22nd January, 1904.

J. M. MACPHERSON,

CALCUTTA;

The 11th January, 1904. }

Secretary to the Government of India,  
Legislative Department.