

*Friday,  
3rd January, 1908*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XLVI**

**April 1907 - March 1908**

**ABSTRACT OF PROCEEDING**  
**OF**  
**THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**ASSEMBLED FOR THE PURPOSE OF MAKING**

**LAWS AND REGULATIONS,**

**April 1907 - March 1908**

**VOLUME XLVI**



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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 Government House, Calcutta, on Friday, the 3rd January, 1908.

PRESENT :

- His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.  
 His Honour Sir Andrew Fraser, K.C.S.I., Lieutenant-Governor of Bengal.  
 His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.  
 The Hon'ble Mr. H. Erle Richards, K.C.  
 The Hon'ble Mr. E. N. Baker, C.S.I.  
 The Hon'ble Major-General C. H. Scott, C.B., R.A.  
 The Hon'ble Sir Harvey Adamson, Kt., C.S.I.  
 The Hon'ble Mr. J. F. Finlay, C.S.I.  
 The Hon'ble Mr. J. O. Miller, C.S.I.  
 The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of Darbhanga.  
 The Hon'ble Munshi Madho Lal.  
 The Hon'ble Mr. Gangadhar Rao Madhav Chitnavis, C.I.E.  
 The Hon'ble Mr. H. W. W. Reynolds.  
 The Hon'ble Mr. F. A. Slacke, C.S.I.  
 The Hon'ble Mr. H. A. Sim, C.I.E.  
 The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.  
 The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.  
 The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.  
 The Hon'ble Mr. A. A. Apcar, C.S.I.  
 The Hon'ble Mr. S. Ismay, C.S.I.  
 The Hon'ble Maung Bah Too, K.S.M.  
 The Hon'ble Mr. W. W. Drew.  
 The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.  
 The Hon'ble Mr. W. R. H. Merk, C.S.I.

NEW MEMBERS.

The Hon'ble MR. APCAR, the Hon'ble MR. ISMAY, the Hon'ble MAUNG BAH TOO, the Hon'ble MR. DREW, the Hon'ble NAWAB SAIYID MUHAMMAD SAHIB BAHADUR and the Hon'ble MR. MERK took their seats as Additional Members of Council.

[*Sir Harvey Adamson; Mr. Erle Richards.*] [3RD JANUARY, 1908.]

### LEGAL PRACTITIONERS (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill further to amend the Legal Practitioners Act, 1879, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be passed.

The motion was put and agreed to.

### INDIAN LIMITATION BILL.

The Hon'ble MR. ERLE RICHARDS said:—"My Lord, the title of the Bill which I now ask leave to introduce appears to be somewhat ambitious. It is the 'Indian Limitation Act', and it might be assumed from that title that this Council was to be asked to embark on a general amendment of the Law of Limitation. I desire at the outset to make it clear that there is no such intention. The Bill is intended primarily to remedy a hardship caused by a recent decision of the Privy Council to which I will return in a moment; to make some amendments ancillary to the Code of Civil Procedure Bill which is now before his Council and which, it is hoped, will be shortly passed into law; and in addition to amalgamate in one enactment the various Acts through which the law is at present scattered. For the rest the amendments are, as is believed, of an unimportant character directed solely to clearing up points as to which there exists a conflict between the various High Courts. The Bill makes no other changes in the law.

"For some years past there has been a difference of opinion as to the period of time within which suits to enforce payment of money secured by mortgages other than English mortgages might be brought: some High Courts have held that the period was sixty years and that the case was governed by Article 147; other High Courts have held that Article 132 applied and that the time was twelve years. The result has been that the law has differed in different Provinces: in some Provinces the sixty years' rule prevailed: in others twelve years was the time allowed. The Privy Council have now decided that the latter view is correct and that the period of limitation for suits of this character all over India is twelve years and no more. This result has caused considerable hardship in the territories within which the sixty years' rule had prevailed. Suits for the enforcement of mortgages which before the decision of the Privy Council would have been within time, have been and must be dismissed by Courts

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on the ground that they are barred by limitation: and claims under a still larger number of mortgages have become unenforceable owing to the construction now put upon the Statute. Mortgagees relied and were entitled to rely on the view of the law taken by the High Courts of their respective Provinces, and it does not seem fair that they should lose their rights merely because that view has now turned out to be incorrect. The Government of India are of opinion that some provision should be made to meet these cases, and the Bill accordingly proposes that suits in the Provinces in which the sixty years' rule prevailed, may be brought within two years from the passing of the Bill: it also provides for the continuance of pending suits and for the restoration of suits which have been dismissed on the ground of limitation since the date of the Privy Council decision.

“Further amendments, my Lord, are required, as I have said, to make the law of limitation conform to the new proposals in regard to civil procedure. The two Statutes are to some extent interwoven and it is not possible to amend the one without making necessary some amendments in the other. Such of these amendments as are matters of substance have been recommended either by the Select Committee of 1903 or by the Special Committee of 1907 and have been already discussed in connection with the Code of Civil Procedure Bill. Some objection has been taken to the definition of ‘moveable property’, a definition recommended by the Select Committee of 1903, and that objection will be carefully considered. The other amendments of substance are not, as is thought, of a contentious character. Beyond these, the changes are mere matters of form.

“Another class of amendments is that necessitated by differences entertained by various High Courts as to the construction of the present Act. I have already made reference to one difference which the Privy Council have now finally determined, but there are other cases in which similar conflicts exist—conflicts which may result in the same sort of hardship. It seems most desirable to take an early opportunity of ending these conflicts by legislation. It is believed that the amendments required raise no general questions of importance.

“Other changes in the existing periods of limitation have been suggested to the Government of India but have been rejected on the ground that they raise questions of principle and for that reason, even if beneficial in themselves, are not within the scope of this Bill; such for instance are proposals for the reduction of the period of limitation now given by Articles 145, 146 and 147

of the existing Act. The tendency of modern legislation is beyond doubt to shorten the time of limitation and on general principles that is a result to be desired. But in India we must proceed slowly: changes of the law in these respects are apt to create hardship, and in many matters, especially in those relating to land, Western legislation is not a safe precedent for India. Moreover, we have in this as in other questions to take into account the great difference in practice in the various Provinces. It has been suggested for instance that the period of sixty years allowed under the existing law for suits for redemption should be curtailed and that, following English law, one uniform period should be enacted for all mortgage-suits: a suggestion which has the support of high authority. But it is clear that in India any such change would have far-reaching results and that however desirable in some Provinces it would be altogether opposed to the habits of the people in others. This is an illustration of the sort of difference to which I have referred. I mention these matters in passing, because they have been the subject of some discussion in connection with the present Bill, but they are not material to the motion before the Council; for the Bill is intended to be restricted and will, I think, be found to be restricted to minor amendments for the most part of a non-contentious character.

“ My Lord, if the amendments to which I have called attention were alone in print this Bill would be of small dimensions, but it has been thought desirable to take this opportunity of reprinting the present Limitation Act with the amendments which have been made in it from time to time by the Legislature since 1877 and those now proposed. There are no less than eleven amending Acts already on the Statute-book, and it is from every point of view desirable to substitute one enactment for the twelve, or, if this Bill were passed in the form of an amending Bill only, for the thirteen, in which the law would otherwise be contained. Our Statute-book, if I may use that expression for convenience though it is not accurate in fact, is full of amending Acts: there are some 350 Acts of general application and of these about 120 are amending Acts, many of them making but trifling changes, altering a few words or perhaps a clause or two. The result is that our collection of Statutes has become confused and complicated, and that it is increasingly difficult for those who have to refer to it to find the law with accuracy. The Government of India from time to time issue copies of Acts as amended up to date, but these copies have no authority and the amending volumes are themselves the sources of some confusion. It seems desirable therefore, when opportunity offers, to consolidate Acts, that is, to reprint them as amended, repealing the amending Acts in the manner proposed in the present case and so to simplify the Statute-book.

[3RD JANUARY, 1908.] [*Mr. Erle Richards; Mr. Baker.*]

'Consolidation' is a long word, but in this connection it means reprinting and nothing more.

"A draft Bill containing the amendments now before this Council and some others put forward for discussion but not adopted, was circulated to Local Governments and others some two months since: but owing to a misunderstanding which has only recently come to my notice an altogether insufficient interval was allowed for replies. I have to express my regrets to those consulted that this was so. These criticisms with which we are favoured on our legislative proposals are of the utmost value and it would be most unwise for this Council to pass any Act such as this until it had been sufficiently discussed. The Bill as now before this Council is not, as I have said, of a contentious character, but adequate opportunity for discussion must be given before it is passed into law."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS introduced the Bill.

The Hon'ble MR. ERLE RICHARDS 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.

#### INDIAN TARIFF (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved for leave to introduce a Bill further to amend the Indian Tariff Act, 1894. He said:—"The object of this Bill is to give effect to the recommendation of the Excise Commission that the import duty on imported beer and the excise duty on beer made in India should be raised from one anna to two annas a gallon. The present rates have never been altered since they were imposed in 1863 and 1890, respectively. They do not act as a check on consumption. In 1889 the imports were about 3 million gallons, while the breweries in the country turned out about 5 millions. Last year these amounts had risen to about 5 millions and nearly 6 millions, respectively. The Excise Committee found that beer drinking by the native population was on the increase in Madras and Bangalore, and probably also in Burma, and that a commencement of such consumption had recently been observed in parts of Northern India and in Sind. Moreover, beer which is valued at more than Re. 1-4 a gallon, when taxed at one anna a gallon, pays less

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[Mr. Baker.]

in proportion to its value than it would do under the ordinary tariff rate of 5 per cent. *ad valorem*. This preferential treatment of alcoholic liquors cannot be defended.

“The Bill raises the tariff rate on imported beer to two annas a gallon. The excise duty will be raised to a similar figure by Local Governments under their Excise laws.

“I may add that under the term ‘beer’ I include the other liquors which are classed with it in Schedule III of the Tariff Act, namely, ale and porter, cider and other fermented liquors.”

The motion was put and agreed to.

The Hon'ble MR. BAKER introduced the Bill.

The Hon'ble MR. BAKER moved His Excellency the President to suspend the Rules for the conduct of business to enable the Bill to be passed at the present sitting of the Council. He said :—“This is the usual practice in connection with Tariff measures and is obviously necessary. The intention is that the enhanced duty should come into force at once.”

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. BAKER moved that the Bill be passed.

The motion was put and agreed to.

The Council adjourned to Friday, the 17th January, 1908.

J. M. MACPHERSON,

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

CALCUTTA:

*The 3rd January, 1908.*