

*Friday,
5th February, 1909*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVII

April 1908 - March 1909

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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 Government House, Calcutta, on Friday, the 5th February 1909.

P R E S E N T :

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 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 Sir Erle Richards, K.C.S.I., K.C.

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. O. Miller, C.S.I.

The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.

The Hon'ble Mr. A. A. Apcar, C.S.I.

The Hon'ble Maung Bah Too, C.I.E., 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.

The Hon'ble Mr. N. C. Macleod.

The Hon'ble Mr. J. Andrew.

The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.

The Hon'ble Mr. F. A. Slacke, C.S.I.

The Hon'ble Mr. J. M. Holms, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. DADABHOY asked:—

“ Is it a fact that the Irrigation Commission of 1901-03 recommended a total expenditure on construction of 44 crores of rupees in twenty years, beginning from April 1905? Will the Government be pleased to state the total amount of actual expenditure on construction of irrigation works, major and minor, since April 1905? Does it fall short of the expenditure recommended by the Commission? If so, will Government, in making allotments for the next year, be pleased to make up the shortage of past years, besides providing for the full average annual expenditure recommended? ”

[*Mr. Miller ; Mr. Dadabhoy.*] [5TH FEBRUARY 1909.]

The Hon'ble MR. MILLER replied :—

“ The Irrigation Commission's forecast of expenditure on construction of major works was, as the Hon'ble Member states, 44 crores of rupees in twenty years. This estimate did not refer to works in Burma.

“ The actual expenditure in construction corresponding to the forecast, that is, the expenditure on major works omitting Burma, has been :—

	Lakhs.
1905-1906	115
1906-1907	160
1907-1908	178
1908-1909 (revised estimate)	199

“ The average expenditure under the forecast would be 220 lakhs a year. The actual expenditure therefore falls short of the forecast, and it has always been foreseen that it necessarily would do in the early part of the twenty years' period. As a matter of fact, what has happened is that the scope for productive public works has been found to be much greater than the Commission expected, and the expenditure on such works has been in excess of the forecast, while the expenditure on protective works has been much less. It would take too long to explain in detail why this has been the case in reply to a question, but I hope to return to the subject in connection with the Budget. I may, however, say that it would be out of the question to make up for the shortage of past years in making allotments for next year ; the money could not be spent. All we can hope for is that the progressive approach which has since 1905 been made towards the Commission's forecast will be maintained in the coming year.

“ As regards minor works the Commission made no definite forecast and no comparison is therefore possible. The greater part of this expenditure is under the control of Local Governments, and the total amounts to from 130 to 140 lakhs a year, including maintenance as well as construction charges.”

The Hon'ble MR. DADABHOY asked :—

“ In view of the remarks made by the Hon'ble Finance Member in the Financial Statement for 1906-07 about the Mahanadi Canal in the Raipur District, the admitted frequency of famines in the Central Provinces, and the utility of the project as a protective measure, will the Government, in making allotments for irrigation works for the year 1909-10, be pleased to consider the desirability of starting the work, and to make a substantial allotment for the purpose ?

[5TH FEBRUARY 1909.] [*Mr. Dadabhoj ; Mr. Miller.*]

“ Is a scheme now ready for execution ? If so, what time will be necessary for the completion of the work ? How is the total estimated cost of 95 lakhs of rupees to be distributed over the period ? ”

The Hon'ble MR. MILLER replied :—

“ The Government of India fully recognise the necessity for protective irrigation works in the part of the Central Provinces to which the Hon'ble Member refers, and a project for a canal to utilise the waters of the Mahanadi was drawn up some years ago. The Secretary of State, however, to whom it was referred, thought it desirable to have the data re-examined and further information collected before authorizing the expenditure of public funds on a work of this magnitude. In revising the project our Engineers have widened its scope, and have prepared a great scheme the total cost of which will be over two crores of rupees for utilizing the waters both of the Mahanadi and the Tendula rivers. The Government of India have been unable to accept the estimates of the Mahanadi part of this project as altogether satisfactory, but the other portion—the Tendula project—can be dealt with by itself. It appears to the advisers of the Government of India to be a promising scheme, and though not of equal protective value to the Mahanadi part of the project to offer many advantages in other respects.

“ This scheme, the estimated cost of which is 95·73 lakhs, is, as far as the engineering details go, ready for execution. It has, however, to be approved of and sanctioned by the Secretary of State. The time allowed for completion of the project in the estimates is six years. I am unable to say how the cost will actually be distributed, but the scheme contemplates the expenditure of—

12·11	lakhs	in	the	first	year.
18·82	”	”	”	second	”
18·82	”	”	”	third	”
18·73	”	”	”	fourth	”
18·67	”	”	”	fifth	”
8·53	”	”	”	sixth	”

“ As the scheme has not yet been sanctioned, it is impossible to hold out any hope of a substantial allotment for it in the budget of 1909-10.”

The Hon'ble Mr. DADABHOJ asked :—

“ Has the attention of Government been drawn to a Resolution of the Indian Industrial Conference held at Madras in December last, praying for the abolition of the countervailing duty upon cotton manufactured in India ?

[*Mr. Dadabhoy ; Mr. Miller ; Sir Harvey Adamson ;* [5TH FEBRUARY 1909.]
the Commander-in-Chief.]

“Is the Government aware that there is at present a general depression in the Indian cotton industry ?

“In view of these facts will Government be pleased to at least suspend the impost for a period, especially when it is not wanted for revenue purposes ?”

The Hon'ble MR. MILLER replied :—

“Government have received copies of the Resolutions passed at the last Indian Industrial Conference referred to by the Hon'ble Member. They are also aware that there is at present some depression in the Indian power-loom industry ; but they have no reason to believe that this depression is in any way due to the excise-duty of $3\frac{1}{2}$ per cent. levied on cotton goods manufactured in Indian mills. Government cannot hold out any hope of action in the direction suggested by the Hon'ble Member.”

The Hon'ble MR. DADABHOY asked :—

“Has Government finally decided upon a scheme for the separation of judicial and executive functions in this country, on the lines laid down by the Hon'ble Home Member last March ?

“When will the reform be tentatively introduced into the two Bengals ?”

The Hon'ble SIR HARVEY ADAMSON replied :—

“The reply to the first question is in the negative. The Government of India have referred to the Lieutenant-Governors of Bengal and Eastern Bengal and Assam and the High Court of Calcutta proposals for introducing into selected districts of Bengal and Eastern Bengal and Assam, by way of experiment, a scheme for the separation of judicial and executive duties. When all the replies have been received, the scheme will be further examined by the Government of India and a reference will be made to the Secretary of State. It is impossible to say at present when final orders on the proposal will be passed.”

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“Will Government be pleased to state whether Kashmiris are eligible for military service as soldiers ? If so, how many are on the active list as soldiers in the Indian Army ?”

His Excellency THE COMMANDER-IN-CHIEF replied :—

“There is nothing to debar the enlistment of Kashmiris in the Indian Army, but as the class composition of units does not specifically include them, none are enlisted.”

[5TH FEBRUARY 1909.] [*Mr. Dadabhoy; Mr. Miller; Sir Harvey Adamson.*]

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“ Will Government be pleased to state whether Kashmiris residing and living in Amritsar and the borders of Kashmir are included in the definition of ‘cultivators’ in the Punjab Alienation Bill? If not, will Government be pleased to state why not? ”

The Hon'ble MR. MILLER replied :—

“ The Hon'ble Member's question indicates some misapprehension as to the effect of the law relating to the alienation of land in the Punjab. The Punjab Land Alienation Act has never contained any definition of the term ‘cultivator’. Under section 4 of the Act as amended in 1907, the Local Government is empowered to determine by notification what bodies of persons in any district or group of districts are to be deemed to be agricultural tribes or groups of agricultural tribes for the purposes of the Act. It is presumed that the object of the Hon'ble Member's question is to ascertain whether Kashmiris residing and living in Amritsar and the borders of Kashmir have been notified as an agricultural tribe. The notifications issued by the Local Government under section 4 of the Act have been examined. They do not include any tribes or groups of tribes described in the manner specified in the question. Applications from persons desirous of being notified as an agricultural tribe for the purposes of the Act should be submitted to the Local Government, which is empowered by the law to decide such questions without reference to the Government of India and to which a copy of the question and of this reply will be forwarded.”

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“ Will Government be pleased to have prepared and placed on the Council Table, by as early a date as convenient, a statement showing the Commissions of enquiry instituted by Government, from that of the Police Commission up to that of the Decentralisation Commission, and the cost incurred in and on account of each such Commission? ”

The Hon'ble SIR HARVEY ADAMSON replied :—

“ A statement as desired by the Hon'ble Member is being prepared and will be placed on the table as soon as possible.”

[*Mr. Dadabhoj ; Sir Harvey Adamson ; Mr. Miller.*] [5TH FEBRUARY 1909.]

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“ Will Government be pleased to state at what stage the question is of the necessity of legislation in the matter of the Registration of Partnerships, advocated by the Bengal Chamber of Commerce some four years ago ? ”

The Hon'ble SIR HARVEY ADAMSON replied :—

“ The following papers, copies of which have been placed on the table, explain how matters stand :—

1. Letter to the Bengal and Bombay Chambers of Commerce, Nos. 886-7, dated the 6th July 1908.
2. Letter from the Bombay Chamber of Commerce, No. 1016, dated the 14th September 1908.
3. Letter from the Bengal Chamber of Commerce, No. 1727, dated the 6th November 1908.
4. Letter to the Bengal and Bombay Chambers of Commerce, Nos. 33-4, dated the 6th January 1909.”

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“ Will Government be pleased to state whether the attention of the Department of Commerce and Industry has been drawn to the comments in the issues of the *Truth* newspaper of the 21st October and 4th November last, regarding the Anglo-Indo-European Trading Society, Limited, whose aim and object have been declared by the Secretary to be of ‘ a patriotic and political move against Anglo-Indian despotism and oppression ’. If so, is the Company registered in India ? ”

The Hon'ble MR. MILLER replied :—

“ Government have seen the comments in the issues of the *Truth* newspaper of the 21st October and the 4th November last, regarding the Indo-European Trading Society, Limited, to which the Hon'ble Member refers. It appears from those comments that the Society is registered in England under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict., c. 39). So far as Government is aware, the Society has not been registered as a Company in India.”

[5TH FEBRUARY 1909.] [*Mr. Dadabhoy; Mr. Miller.*]

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“Has the notice of Government been drawn to the comments of the Press in India as to the necessity of legislation to check and control the formation of commercial and industrial undertakings with little or no capital, the chief aim and object of which really is the formation of bogus companies for the benefit and advantage of company promoters ?”

The Hon'ble MR. MILLER replied :—

“Government have observed certain comments of the Press in India regarding the alleged formation of bogus companies for the benefit and advantage of company promoters.”

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“Will Government be pleased to take early steps for the consideration of such legislative measures as may help to the encouragement and formation of healthy and stable commercial and industrial undertakings in India ?”

The Hon'ble MR. MILLER replied :—

“The consolidation of the various English Companies Acts is now engaging the attention of His Majesty's Government. When the result of their action is known the Government of India propose to consider what improvements are necessary in the Indian Companies Act.”

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

“Will Government be pleased to state whether any of the Trade Associations or Chambers of Commerce of the country have memorialised against the introduction and establishment of the value payable parcel post with England, and, if so, which of them, and what action has been taken by Government on such memorial or memorials ?”

The Hon'ble MR. MILLER replied :—

“All the Trades Associations and Chambers of Commerce were asked for their views on the scheme proposed by the British Post Office for the introduction of a 'cash-on-delivery' parcel service between India and the United Kingdom. The replies which have been received show that the Trades Associations are unanimously opposed to the scheme. The Bombay and Bengal National Chambers of Commerce have expressed opinions adverse to the

[Mr. Miller ; Sir Erle Richards.] [5TH FEBRUARY 1909.]

proposal, and it is understood that the Upper India Chamber of Commerce, whose reply has not been forwarded by the Government of the United Provinces, is also opposed to it.

“After full consideration, the Government of India have informed the Secretary of State that they do not wish to participate in the scheme.”

PRESIDENCY-TOWNS INSOLVENCY BILL.

The Hon'ble SIR ERLE RICHARDS : “My Lord, in the Report of the Select Committee on the Presidency-towns Insolvency Bill, which I now have the honour to present, there will be found a detailed statement of the amendments which are recommended to this Council. But I think it will be convenient if I call attention on this occasion to the principal points which arise on the Report.

“On the whole the Bill has been well received. The representatives of the commercial communities who are specially affected by it, or at least the greater part of them, are in favour of its being passed into law forthwith. The Bengal Chamber of Commerce and the Calcutta Trades Association, the Chambers of Commerce of Bombay and of Rangoon, all approve. The Madras Chamber of Commerce take objection to a point of jurisdiction which is, we think, sufficiently met by the amendments we propose. The National Chamber of Commerce of Bengal have expressed the opinion that the working of the Bill would be expensive and we have inserted provisions to meet this point also.

“On the legal aspect of the Bill we have received valuable criticisms from the Courts who will have to administer it. The High Court of Madras and the Chief Court of Lower Burma are in favour of it. The High Court of Calcutta have made a number of suggestions which we have accepted almost in their entirety. The amendments proposed by the High Court of Bombay have also been generally adopted. The only objection taken to the Bill as a whole is one put forward by the latter High Court on the ground of the inability of the Indian Legislature to deal sufficiently with the matter of insolvency : a point to which I referred on a former occasion and on which I will say a word or two presently.

“The general effect of the amendments we have introduced is to bring the Bill more into line with existing practice. For instance the Bill as introduced provided that adjudication should be made only after service of the petition on the debtor ; we recommend that the present practice should be preserved and that orders of adjudication should be made *ex parte* unless the Court otherwise

[5TH FEBRUARY 1909.]

[*Sir Erle Richards.*]

directs. Under the Bill an adjudication order operated of itself to release a debtor from jail; we recommend that the present practice should be preserved and that debtors should not be released on adjudication but should be required to apply to the Court, as now, for a protection order. In the Bill the first meeting of creditors was compulsory; this was a new provision and was in our opinion too great a departure from the existing procedure. We recommend that such meetings should be held only in those cases in which the Court, on the application of a creditor or of an official assignee, should so direct. Under the Bill it was contemplated that the Court should have the power to commit all offenders for trial before a Magistrate. We think it desirable that the present insolvency practice should be preserved, and that while the Court should itself try insolvents charged with offences under the Act, insolvents and other persons charged with offences under the Penal Code should be dealt with under the ordinary criminal procedure. We think that the procedure to be followed before the Court in trials for offences under the Act should be set out in the Bill.

“The other amendments are set out in the Report and it is not necessary to call attention to them now. There remains the point to which reference has been made as to the power of this Council to legislate in such a way as to give sufficient powers to official assignees to collect the assets of debtors which are outside British India, and to give sufficient effect outside British India to discharges granted by the Courts here. This subject is fully discussed in a note by our Hon'ble Colleague Mr. Macleod, the official assignee of Bombay, which is appended to the Report. There can be no doubt that under an Imperial Act, such as the one now in force, greater powers can be given to an official assignee and greater effect can be given to a discharge than is possible under an Indian Act; for an Imperial Statute operates throughout the British dominions, while an Indian Act can only operate in British India. But if the effect of an adjudication order under the present Act is compared with the effect of an adjudication order under this Bill, if it becomes law, it will in my opinion be found that the advantages of an Imperial Statute are of small practical value. I will not weary this Council with a disquisition which must be somewhat technical, but I will content myself with pointing out that under section 118 of the English Statute of 1883, which in this respect has effect throughout the British Empire, every British Court acting in insolvency is bound to give effect to the orders of every other British Court in insolvency matters. It follows that vesting orders of Indian Courts made under an Indian Act would be given effect to by British Courts in all parts of the Empire even though they had not

[5TH FEBRUARY 1909.] [*Sir Erle Richards; Sir Guy Fleetwood Wilson.*]

force of themselves without the endorsement of those Courts. The section has been proved effective by experience in regard to colonial bankruptcies. No difficulty has arisen in those cases in collecting the assets of a bankrupt beyond the jurisdiction of the Court by which he is adjudicated, at least no complaint that I know of has been made on that ground, and I venture to think that the section will be found sufficient to enable an Indian official assignee to collect the assets of an Indian insolvent in the same way. The effect of it has, perhaps, been insufficiently considered in these discussions, and the Committee deem it advisable to call the attention of Courts to it by an express reference in the Bill. Clause 126, as amended by us, enacts that Indian Courts shall do what is necessary to give effect to section 118 of the English Act, and though, in strictness, such a provision may be superfluous, it will at least be a convenient reminder of the effect of the Imperial Act. I am not without hopes that a further consideration of this aspect of the question may lead those who have felt pressed by this objection to modify the views which they previously entertained. The Committee recommend that Parliament should be asked to pass a validating Act, that is to say, an Act to put vesting orders and discharges of the Indian Courts in the same position under the Bill, if it is passed into law, as under the existing Act. It is at least a fair proposal that the present position should be maintained in England. But they are unanimously of opinion that the Bill should be enacted, irrespective of that legislation, because they are convinced that the advantages to be gained under it will altogether outweigh any advantages which is to be obtained only by Imperial legislation, and, apart from that, no one can contemplate with equanimity the postponement of all reform in this branch of the law until such time as Parliament should choose to legislate for us.

“I desire, my Lord, in conclusion, to express the thanks of the Committee to the Hon'ble Mr. Justice Fletcher of the High Court of Calcutta, who has been good enough to give us much valuable advice during our deliberations.”

INDIAN PAPER CURRENCY (AMENDMENT) BILL.

The Hon'ble SIR GUY FLEETWOOD WILSON moved that the Bill to amend the Indian Paper Currency Act, 1905, be taken into consideration. He said:—“Hon'ble Members will recollect that this measure is intended to make our five-rupee currency note legal tender and encashable in Burma as well as in the rest of India. The Bill has been published, I may mention, in all the local Gazettes including Burma, and no criticisms or objections have been received. It is a measure about which there can, I think, be no controversy,

[5TH FEBRUARY 1909.] [*Sir Guy Fleetwood Wilson; Maung Bah Too; Sir Harvey Adamson.*]

and there seems therefore no necessity to ask the Council to refer it to a Select Committee."

The Hon'ble MAUNG BAH TOO said:—"My Lord, I have much pleasure in supporting the Hon'ble Sir Guy Fleetwood Wilson's Bill. The adoption of the said Bill would confer a great boon on the travelling public and others. Great difficulty is experienced in changing notes of one circle in another, and now since the issue of gold sovereigns has been curtailed the travelling public and others find that they have to carry rupees to avoid the above-mentioned difficulty. But this has always been found to be bulky and inconvenient. In conclusion, may I be allowed to add that Burma herself will feel highly gratified to find that she will in future be enjoying the same privileges in this matter of five-rupee notes as her sister Provinces in India."

The motion was put and agreed to.

The Hon'ble SIR GUY FLEETWOOD WILSON moved that the Bill be passed.

The motion was put and agreed to.

WHIPPING (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898 be referred to a Select Committee consisting of the Hon'ble Sir Erle Richards, the Hon'ble Mr. Drew, the Hon'ble the Maharaja of Darbhanga, the Hon'ble Sir Muhammad Ali Khan of Mahmudabad, and the mover.

The motion was put and agreed to.

The Council adjourned to Friday, the 26th February 1909.

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

CALCUTTA ;
The 5th February 1909: }