

*Friday,
7th August, 1908*

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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VOLUME XLVII



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Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under provisions of the Indian Council Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 and 56, Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 7th August 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 Louis William Dane, K.C.I.E., C.S.I., Lieutenant-Governor of the Punjab.

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 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 Mr. J. S. Meston, C.S.I.

The Hon'ble Munshi Madho Lal.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

INDIAN LIMITATION BILL.

The Hon'ble MR. ERLE RICHARDS moved that the Report of the Select Committee on the Bill to consolidate and amend the law for the Limitation of Suits and for other purposes be taken into consideration. He said:—"I have, on former occasions, explained to this Council the object of this Bill and the changes proposed by the Select Committee. I cannot usefully add anything today."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that in clause 13 of the Bill, as amended by the Select Committee, after the words "British India" the following words shall be inserted, namely:—

"and from the territories beyond British India under the administration of the Government."

He said:—"Clause 13 of the Bill, as it stands, applies only to territories in British India. There are some territories administered by the Government of

[*Mr. Erle Richards; Dr. Rashbehary Ghose.*] [7TH AUGUST 1908.]

India which are not technically part of British India, but which are for all purposes of this Bill on the same footing as British India. The object of this amendment is to include them within this clause."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that in clause 29 of the Bill, as amended by the Select Committee, for sub-clause (2) the following sub-clause shall be substituted, namely:—

"(2) Nothing in this Act shall apply to suits under the Indian Divorce Act."

He said:—"There is an error in clause 29, sub-section (2). The Madras Regulation which is referred to there, is not now in force and the amendment which I move is intended to alter the clause accordingly."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that the Bill, as now amended, be passed.

The Hon'ble DR. RASHBEHARY GHOSE said:—"My Lord, it has been pointed out to us by a learned gentleman for whose opinion I have great respect that clause 3 of the Bill is not quite consistent with the provisions contained in Order VIII, rule 2, of the Code of Civil Procedure, 1908, under which a defendant 'must raise by his pleading all matters which show the suit not to be maintainable, * * * * * and all such grounds of defence, as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, * * *. To my mind, however, there is no such inconsistency. For where the defence of limitation rests upon any disputed question of fact, if the defendant does not raise it in his pleading, the Court will not be bound to direct an issue; as pointed out by the Judicial Committee in *Vankata v. Rashyakarlu*, 25 Mad. 367, in which their Lordships held, section 4 of the Limitation Act notwithstanding, that where no question of limitation necessarily arose on the pleadings it was not obligatory on the Judge to direct an issue on the point. Where, however, the facts are not in any way in controversy, the Court will be bound to dismiss the suit, if it is barred by the law of limitation, though the defendant may not have raised the defence in his pleading. And in this connection I may refer to Order VII, rule 11, of the new Code of Civil Procedure."

The motion was put and agreed to.

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[*Mr. Erle Richards.*]

INDIAN PORTS BILL.

The Hon'ble MR. ERLE RICHARDS: "I move, my Lord, for leave to introduce a Bill to consolidate the law relating to Ports and Port-charges. This Bill is of the same character as two other Bills to which subsequent motions on the paper relate. They are, all three of them, Bills to consolidate the law. It will probably be convenient to the Council if I explain on this motion the reason why this consolidation is undertaken.

"It must be the aim, my Lord, of every Legislature to have the Statute law on each particular subject contained in one enactment and one enactment only. The law is then readily ascertainable both by executive and judicial officers who have to administer it, and by those of the public who have occasion to investigate it. But this is an ideal which it is not easy to maintain. An Act complete in itself may be enacted in the first instance, but as time goes on changes are required: amendments are made, one after the other; and sooner or later, it is sure to happen that the law, instead of being contained in that one enactment, becomes scattered about in a series of Acts.

"Legislation in this Council is not attended with the same difficulties as in some other Legislatures, and for that reason we are constantly tempted to pass amending Acts. During the past four years we have passed some 37 Acts of general importance, and of these no less than 23 have been amending Acts. The result is that the Statute law on some subjects has become obscure and our principal Acts, or at least the earlier of them, have become encumbered with cross-references which are a source of confusion and of mistake. The changes introduced are often of themselves of minor importance; alterations of a few words, or of a clause or two; but still each one of them has to be examined to find out what the law is. Cromwell described the Statute-book of England in his day as a 'most ungodly jumble': I will not use that expression of our Indian Statute law; but I do urge on this Council that no opportunity should be neglected of simplifying our Statute-book. The Legislative Department from time to time publishes editions of our Acts with the amendments printed in them up to date, but these editions are of no authority: they cannot be cited in Courts of Law; and are not, I understand, in wide use. The only effective remedy is to consolidate, that is, to re-enact in a single measure the provisions relating to the same subject which have become scattered about in different Acts.

"Consolidation, my Lord, may take two forms: there may be consolidation with amendments of substance, or there may be consolidation pure and simple, that is, without any amendments of substance.

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“ The first form of consolidation has been adopted by this Council not infrequently. The Limitation Act, which we have passed this morning, is an instance of consolidation with some amendments to meet conflicts of judicial opinion. The Civil Procedure Code, passed this year, consolidates the law of civil procedure with some considerable changes; the Coinage Act and the Paper Currency Act, both passed in recent years, are measures which contain the whole Statute law on those subjects. But it is not always possible to undertake a Bill of this kind, nor can it be passed into law without considerable delay. Amendments of substance require, and must receive, the consideration of Local Governments and of other persons interested in the subjects with which they deal; and once any amendments of substance are introduced it is open to anyone to bring forward other amendments. Moreover, it is often impolitic to put a law into the melting pot in this way. These objections can, to some extent, be met by varying the procedure; by passing an amending Bill in the first instance to be followed by a consolidation Bill re-enacting the law as it stands after the passing of the amending Act; or, again, in some cases an amending Act can be turned into a consolidation Act in Select Committee. For both these courses there are precedents in English practice. But still consolidation with amendments must always be a matter of some difficulty.

“ The present Bills, my Lord, are examples of the second method of consolidation, which is not open to the objections to which I have just referred, and I invite the attention of Council to the matter because they are the first Bills of the kind which have been introduced into the Legislative Council of India. They are intended to collect and re-enact the law without any changes of substance. There must in any re-enactment be some small alterations of wording; there are differences of style in the existing Acts, and those Acts often speak in different language, because a different General Clauses Act or different rules of construction were in force at the time they were passed. But these Bills are intended to reproduce the existing enactments with such alterations only as are required for uniformity of expression and adaptation of existing practice; they are not intended to embody any substantial amendments of law. It is a temptation to every one to suggest amendments when a Bill is before this Council, but that temptation is one which I hope, in the present instances, we shall sternly resist; once the door is opened to any one amendment of substance it will be impossible to decline to discuss other amendments of a like kind and the Bills will then cease to be mere consolidating measures.

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[*Mr. Erle Richards.*]

“These three Bills, my Lord, collect and re-enact the Law relating to the three subjects of Ports and Port-charges, Registration of Documents and Emigration of Natives of India. The law is now scattered about in no less than 21 enactments. If these Bills be passed the law on each of these subjects respectively will be contained in one Act—and one Act only—and we shall have reduced the number of Statutes on our Statute-book by 15. It is a modest improvement, my Lord, but still it is an improvement worth making.

“In regard to the particular Bill which I move for leave to introduce, *viz.*, the Ports Bill, I have little further to say. It effects one small alteration in the law to which reference is made in the Statement of Objects and Reasons, but the matter is not one of substance and it is not necessary for me to call further attention to it.”

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 English in the Gazette of India, the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette, the Burma Gazette, and the Eastern Bengal and Assam Gazette.

The motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. ERLE RICHARDS moved for leave to introduce a Bill to consolidate the law relating to the Registration of Documents. He said:—“On this Bill there is one point of some little doubt. It arises on clause 50. It is explained in the Statement of Objects and Reasons and I will not refer to it further now. It is a point which will have to be settled in Select Committee.”

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 English in the Gazette of India and in the local official Gazette.

The motion was put and agreed to.

EMIGRATION.

[*Mr. Erle Richards.*] [7TH AUGUST 1908.]

INDIAN EMIGRATION BILL.

The Hon'ble MR. ERLE RICHARDS moved for leave to introduce a Bill to consolidate the law relating to the Emigration of Natives of India.

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 English in the Gazette of India and in the local official Gazette.

The motion was put and agreed to.

The Council adjourned to Friday, the 11th September 1908.

SIMLA:
The 7th August 1908. }

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