

*Friday,
28th January, 1910*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVIII

April 1909 - March 1910

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

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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VOLUME XLVIII



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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 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, and 9 Edw. VII, c. 4).

The Council met at Government House on Friday, the 28th January 1910.

PRESENT:

His Excellency THE EARL OF MINTO, P.C., G.C.M.G., G.M.S.I., G.M.I.E.,
and Governor General of India, *presiding*,

and 55 Members, of whom 50 were Additional Members.

OATH OF OFFICE.

The following Additional Member, before taking his seat, made the prescribed oath of his allegiance to the Crown:—

The Hon'ble Mr. F. Rawson, C.M.G.

RULES FOR THE CONDUCT OF LEGISLATIVE BUSINESS.

The Hon'ble MR. S. P. SINHA moved that in rule 2 of the Rules for the conduct of the Legislative Business of the Council of the Governor General, in the definition of "President", for the words "the senior Ordinary Member of Council present and presiding" the words and figures "the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909", be substituted. He said:—

"My Lord, Hon'ble Members are aware that in the Government of India Act, 1833, and the Indian Councils Act of 1861, there are sections enacting that during the temporary absence of the Governor General from the Council, the senior Member should preside both in the Executive Council and in the Legislative Council; and there are provisions also for the temporary holding of the office of the Governor General. The Indian Councils Act of 1909 has, by section 4, modified those provisions inasmuch as it requires the Governor General to appoint a Member of his Council to be Vice-President thereof for the purpose of temporarily holding and executing the office of Governor General and of presiding at meetings of the Legislative Council. It is therefore necessary to include the Vice-President appointed under the provi-

sions of section 4 in the definition of the word 'President' in the rules as they stood ; that is the sole object of the amendment which I propose."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that rule 4 of the said Rules be omitted. He said :—" Hon'ble Members will observe that rule 4 of the existing rules is this :—' The quorum shall be seven, including the President.' Under the Indian Councils Act of 1909 the Governor General in Council is required to make regulations fixing the quorum for the new Council, and in pursuance of that, Regulation XIII of the Regulations which were published on the 15th of November has fixed the quorum at 15 excluding the President. Rule 4 therefore is superseded by the Regulation, and is no longer necessary."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that for rule 5 of the said Rules the following rule be substituted, namely :—

" 5. The Members shall sit in such order as the President may direct."

He said :—" As Hon'ble Members have seen in the Statement of Objects and Reasons of this amendment, it is stated that the present rule 5 is not suitable for the enlarged Council in which there will be no seniority among the Additional Members. Formerly the seniority depended on the date of nomination. It is therefore proposed that Members should in future sit according as the President may direct."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that for rule 7 of the said Rules the following rule be substituted, namely :—

" 7. The President shall preserve order, and all points of order shall be decided by him.

" No discussion on any point of order shall be allowed unless the President shall think fit to take the opinion of the Council thereon.

" Any Member may at any time submit a point of order to the decision of the President.

" The President shall have all powers necessary for the purpose of enforcing his decisions."

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[*Mr. S. P. Sinha.*]

He said:—"As stated in the Statement of Objects and Reasons, this amendment also arises by reason of the enlargement of the Council. As points of order will more frequently arise now than they did before, it is proposed to amplify the present rule 7 on the basis of the corresponding changes in the rules for the discussion of the Financial Statement and of resolutions on matters of public and general interest."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that in rule 8 of the said Rules, for the last nine words the words "shall speak from his place, shall rise when he speaks and shall address the President" be substituted. He said:—"The reason for the amendment is the same as for the other amendments, namely, that the rule which requires a member to sit while he speaks is unsuitable for the present Council with regard to its enlarged number."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that to the said rule 8 the following be added, namely:—

"At any time, if the President rises, any Member speaking shall immediately resume his seat."

He said:—"This is absolutely necessary for preserving the order of discussion in the Council."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that in rule 9 of the said Rules, for the first two sentences the following shall be substituted, namely:—

"After the Member who makes a motion has spoken, other Members may speak to it in such order as the President may direct,"

and in the third sentence the words "in turn" be omitted.

He said:—"Hon'ble Members will notice that in the rule as it exists now it is provided that each Member consecutively, beginning with the Member on the left of the President, may make such observations as he thinks proper. There being more Members than before, it will be a question of catching the President's eye, and I have no doubt the President will direct each Member to speak according as it may be consistent with the orderliness of debate."

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that in rule 12 of the said Rules, for the second and third sentences the following be substituted, namely :—

“ Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

“ The President shall determine the method of taking votes by division.”

He said :—“ As stated in the Objects and Reasons, Hon'ble Members will see that the present rule requires revision for the same reason—the enlargement of the number of the Members of Council, and it is proposed, following the rules for the discussion of the Budget and matters of general public interest, to leave it to the President to determine the method of taking votes on a division.”

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that in rule 16 of the said Rules, for the second sentence the following be substituted, namely :—

“ If such motion be carried, a copy of the Bill with a full Statement of Objects and Reasons shall be sent by the Member to the Secretary.”

He said :—“ The former practice was that the Secretary used to draft Bills—private Bills—which additional Members desired to introduce. Having regard to the fact that the number has increased to such an extent now, it would be obviously impossible for the Secretary to carry out any duty of that description, and it is therefore desired to leave the Members to draft their own Bills.”

The motion was put and agreed to.

The Hon'ble MR. S. P. SINHA moved that in rule 40 of the said Rules, for the second sentence the following be substituted, namely :—

“ Application for order of admission is to be made through a Member to the Secretary at least two days before the meeting, and the order, if made, shall be sent to such Member.”

He said :—“ It is more than probable that there will be more applications for admission to our Council Chamber than there have been in the past, and it is also desirable that Members should introduce only such persons as they think desirable, and we rely upon Members introducing persons whom they can vouch for.”

The motion was put and agreed to.

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[*Mr. Miller.*]

ELECTRICITY BILL.

The Hon'ble MR. MILLER said:—"My Lord, as the Council has been entirely re-constituted since the Electricity Bill was introduced, it may be convenient that in moving for its reference to a Select Committee, I should explain, very briefly, the steps by which the proposed legislation has reached its present stage and the objects we have in view.

"The existing law on the subject is contained in an Act of 1903. This was the first comprehensive enactment dealing with the subject in this country, and, as was to be expected, in its application and administration some difficulties came to the front, and the legal opinions which we received showed that in some respects amendment was necessary. Accordingly in 1907 a strong Committee was appointed to consider the revision of the Act and to suggest the lines upon which any amendments should proceed. They submitted a very complete and valuable report with a draft Bill. After a reference to Local Governments a Bill that was largely based on that proposed by the Committee, was introduced at Simla last year, the object being to have it circulated and to obtain opinions so that it could be referred at as early a date as possible to a Select Committee in the Calcutta session. We have now received a very complete expression of opinion from all those interested in electrical enterprise in different parts of the country. I should like to acknowledge here the value of the criticisms and suggestions made, which show that many amendments in the Bill will be necessary, and which will be fully considered in the Select Committee. What we all aim at in proposing this legislation is to give every reasonable and proper encouragement to the application of capital to electrical enterprise, with due regard to all the other interests concerned, for this Bill touches very many interests. There are the commercial interests,—the capitalist who considers that he does not get sufficiently liberal terms in the provisions of the existing law regarding the compulsory acquisition at some distant date of his property. There are the suppliers, who also think that they are inadequately protected by some of the provisions of the present Act and who wish for something more drastic. In addition to this, there are the consumers, the general public, the local authorities, all of whom have to be considered.

"I am afraid that it is impossible that an Act dealing with such a very technical subject and affecting so many interests should be a simple one, and although the Bill which has now been drafted does not propose any very fundamental changes in the existing law, still I think that the Select Committee will have

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no easy task in dealing with all the questions on points of local and technical detail that will come before them. It has been thought advisable to appoint a large and strong Select Committee so as to facilitate the placing before it of the views of representatives of the different interests concerned. I have no doubt that with their assistance we shall be able to place before the Council a Bill which will give every reasonable encouragement to electrical enterprise, and which will generally be regarded with satisfaction. I beg to move, my Lord, that that the Bill to amend the law relating to the supply and use of electrical energy be referred to a Select Committee consisting of the Hon'ble Mr. S. P. Sinha, the Hon'ble Sir T. R. Wynne, the Hon'ble Mr. Jacob, the Hon'ble Mr. Kesteven, the Hon'ble Sir Vithaldas Thackersey, the Hon'ble Maung Bah Too, the Hon'ble Mr. Dadabhoy, the Hon'ble Mr. Graham, the Hon'ble Mr. Rawson and myself."

The motion was put and agreed to.

DOURINE BILL.

The Hon'ble MR. MILLER said:—"The Bill with which I have now to deal is in the same stage as the Electricity Bill. It was introduced in the former Council at Simla, and it is now proposed to refer it to a Select Committee. It is a short Bill to give the Government power to deal with dourine, a disease which affects equine stock. I am glad to say that the spread of this disease has given rise to serious concern only in Upper India as yet, and that such administrative measures as it has been found possible to take without any definite legal provisions have been very successful in checking its spread. It is so serious, however, that it has been thought necessary to draft a permissive measure to allow of Local Governments taking the steps necessary to check this disease. It is proposed therefore to give them certain powers for this purpose, and at the same time to provide for the grant of compensation where private loss is caused by the measures which are adopted. The Bill has been circulated and a number of criticisms and suggestions have been received that will be considered in Select Committee. I beg to move that the Bill to provide for the prevention of the spread of dourine be referred to a Select Committee consisting of the Hon'ble Mr. S. P. Sinha, the Hon'ble Mr. Carlyle, the Hon'ble Mr. Holms, the Hon'ble Mr. Graham, the Hon'ble Malik Umar Hyat Khan, and myself."

The motion was put and agreed to.

[28TH JANUARY 1910.] [Sir Guy Fleetwood Wilson; Sir Herbert Risley.]

INDIAN PAPER CURRENCY BILL.

The Hon'ble SIR GUY FLEETWOOD WILSON said :—“ The motion which I have to put before the Council is of a formal character. The Bill for amending the Paper Currency Act has been referred to Provincial Governments and to the financial, commercial and industrial communities for their opinions, and the great body of opinion throughout the country is wholly in favour of the principles which the Bill embodies.

“ I introduced the Bill at Simla, but we considered it right to take the Bill through its latter stages in Calcutta so as to meet the convenience of non-official Members of Council. Accordingly, I now beg to move that the Bill to consolidate and amend the law relating to the Government Paper Currency be referred to a Select Committee consisting of the Hon'ble Mr. S. P. Sinha, the Hon'ble Mr. Meeson, the Hon'ble Nawab Saiyid Mahammad Sahib Bahadur, the Hon'ble Mr. Gokhale, the Hon'ble Sir Vithaldas Thackersey, the Hon'ble Babu, Bhupendra Nath Basu, the Hon'ble Mr. Graham, the Hon'ble Mr. Armstrong, and myself.”

The motion was put and agreed to.

INDIAN PENAL CODE (AMENDMENT) BILL.

The Hon'ble SIR HERBERT RISLEY said :—“ My Lord, I have the honour to move for leave to introduce a Bill to amend the Indian Penal Code by enlarging the scope of section 75 which deals with certain classes of habitual offenders. The Bill consists of a single section and its purpose is concisely stated in the summary of Objects and Reasons which is in the hands of Hon'ble Members. I need not therefore enter upon a lengthy further explanation. It will be sufficient to say that the present state of the law has caused serious practical difficulties in the Central Provinces and Berar, and I shall refer only to those territories, and not to the other areas within Native States which are covered by Berar. Although Berar is for administrative purposes an integral part of the Central Provinces and is under the same police and judicial system, it is, according to the better opinion, not British India. I am aware that the Hon'ble Mr. Mudholkar holds a different opinion on this rather abstruse question of legal metaphysics, but he has consented not to raise it on the present occasion and he will have ample opportunities of bringing his views before the Government of India. From the present state of the law there follows the anomalous and inconvenient

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consequence that a man who has been convicted over and over again in Berar for theft and other grave offences against property cannot, if he is subsequently convicted in the Central Provinces, be punished according to his deserts. His previous convictions cannot be proved against him; on one side of an administrative line he is a habitual criminal, on the other side the law as it now stands enables him to pose successfully as a first offender. The same applies to a Central Provinces habitual who transfers his mischievous activities to Berar; he gets so to speak a fresh start; his *Karma*, to use a familiar metaphor, does not pursue him. That is a typical case, and owing to the constant communication between Berar and the adjacent districts of British India, such cases are frequent enough to call for an amendment of the law. Berar is a rich country and large numbers of labourers from the rice and rabi districts of the Central Provinces visit Berar every year to seek temporary employment in the cotton harvest and in the numerous ginning and pressing mills, and in this moving population there is a certain sprinkling of habitual criminals. In a matter of this kind it is not easy to procure complete statistics, but I may mention that a partial examination of the records of the last few years discloses that 260 persons convicted in 146 cases had been previously convicted in the adjoining province. The problem of dealing with habitual criminals is a formidable one and the development of railways has added to its difficulties, but one of the conditions of success is that they should not be encouraged, by defects in the law, to think that they can ply their trade with impunity by simply changing their venue.

“ I trust, my Lord, that I have said enough to justify to this Council the measure which I ask for leave to introduce.”

The motion was put and agreed to.

The Hon'ble SIR HERBERT RISLEY introduced the Bill.

The Hon'ble SIR HERBERT RISLEY 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 CENSUS BILL.

The Hon'ble SIR HERBERT RISLEY said :—“ My Lord, I have the honour to move for leave to introduce a Bill to provide for the taking of a Census

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of India early in March 1911. The Bill is in the hands of Hon'ble Members; it is identical in terms with the Act of 1900; and I might reasonably follow the example of Sir Charles Rivaz who was in charge of that measure and treat the Bill as a matter of administrative routine requiring no special explanation. But I am unwilling to adopt that course on the present occasion. It is due to the Council that they should be fully acquainted with the purpose and point of view of the Bill, and I may perhaps be permitted to add that I myself, having been Census Commissioner for India ten years ago, take a keen personal interest in the subject and am anxious not to miss this opportunity of drawing the attention of my Hon'ble Colleagues to its importance both for the purposes of administration and—a point which has not been noticed before—in its international aspects.

“ Now as regards administrations our object is essentially practical. The costly and laborious operations of an Indian census are amply justified by their direct bearing on the everyday government of the country. The census presents a series of pictures of the national history of the past ten years; it sums up the effects of the vicissitudes of the seasons, of religious and social movements, of educational effort, of commercial and industrial progress. It enables the Government of India, the Local Governments and the Ruling Chiefs to take stock of their position and to see how things have fared with the peoples entrusted to their charge. For the current decade it fixes the statistical data on which all administrative action must be based. It tells the rulers what manner of men they have to deal with; how many will suffer from a failure of the rains or will benefit by a well-conceived scheme of irrigation; what are the prospects of a new line of railway; what proportion of the population will be reached by a reduction of taxation; how many children ought to be at school; what is the real measure of the ravages of various forms of disease. For these and numberless other purposes an accurate census is an indispensable preliminary to administrative action.

“ The international aspect of the subject, although not of primary importance, cannot be left entirely out of view. Decennial censuses, taken so far as may be at the same time, are now a recognised necessity in all civilised countries. By taking part in this concerted scheme of operations India enters into the comity of nations, and I think I may say that she has won for herself there a distinguished place. To use a sporting phrase, India holds the world's record both for the magnitude of her operations and for the speed with which the results are published. In 1891 my predecessor as Census Commissioner, Sir Athelstane Baines, produced the first totals of the census then taken about

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five weeks after the actual enumeration. Ten years later, in 1901, we went a little better. Nearly three hundred millions of people were counted between 7 P.M. and midnight on the 1st of March; the preliminary results were published on the 15th March, exactly a fortnight later; and these figures differed from those arrived at in the final compilation by only 94,355 or '03 per cent. So far as I am aware, no other country, not even the United States, which has always taken the lead in census organization, has produced any figures at all in less than six months. To whom is the credit due for the success attained ten years ago which may not improbably be surpassed next year? I say without hesitation—and I welcome the opportunity for saying it here—to the people themselves, to all sorts and conditions of men from one end of the Empire to another, who gave their unpaid services for a great public object. An Indian census is pre-eminently the work of the Indian people. If they held aloof or even demanded the most trifling remuneration for their trouble, the whole undertaking would be financially impracticable. As it is, the greater part of the enumeration is done for nothing by an army of private individuals, numbering on the last occasion more than a million and a quarter, who bring to their troublesome task a spirit of painstaking accuracy which I believe to be unequalled anywhere in the world. Their exertions have at times a humorous side. I remember for example how the zeal of a volunteer enumerator in the United Provinces impelled him to turn into verse the census instructions and to suggest that the weaker brethren should be required to learn his production by heart. They have also their serious side. Perhaps the most remarkable instance of voluntary exertion in the public interest occurred in the City of Bombay, where the teaching staff and the senior students of the Elphinstone High School came forward spontaneously to conduct the entire operations of the census for the quarter in which the school was situated. There was plague in Bombay at the time; the census enumerators, going from house to house and from room to room, were specially exposed to infection; and several of them fell victims to the disease. I point to that as a fine illustration, in a humble sphere, of that 'fellow service' which His Excellency the Viceroy held up the other day as the ideal to be aimed at in the future. I have no doubt that equally ungrudging assistance will be rendered in the next census, and that India will maintain the pre-eminent place that she now occupies on the international record of census successes.

“ Now the main object of a Census Act is to give legal authority and sanction to the host of non-official agents who are appointed to carry out the enumeration. It confers upon them the status of public servants, empowers

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them to ask certain authorised questions, and requires the public to answer such questions to the best of their knowledge and belief. It places co-operation in the census on the footing of a public obligation, and imposes a penalty of Rs. 50 on certain acts and omissions which would impede the enumeration or would vitiate its results. But such is the spirit in which the operations are regarded by the people that prosecutions are exceedingly rare, and I doubt whether any province could show as many as a dozen cases. Here and there an instance of perversity occurs such as that of the *faqir* who expressed disapproval of the census and retired to the middle of a tank until the enumeration was over. But even he was not prosecuted; he was duly entered in the appropriate schedule; and the tank, being at the time inhabited, was put down as a house. This illustrates the temper in which things are done and the reluctance to have recourse to the penalties provided by the law.

“ In conclusion there is one clause, clause 14, which calls for a word of explanation. This clause empowers the Local Government to direct that expense incurred under the Act may be charged to a municipal, local or village fund. It was inserted at my instance in the Act of 1900, and was explained in rather general terms by Sir Charles Rivaz. The real point of it is this, that in every census certain petty charges are incurred for painting numbers on houses, for pens and ink to write up the schedules, and for country paper used in practising enumeration and making rough drafts. If these things are provided locally, they cost next to nothing—one anna per 50 houses is an average figure for numbering; but if they are supplied from headquarters or elaborate bills are sent in to the District Magistrate, the expenditure is likely to mount up. In any case the power is discretionary and it will rest with the Local Government to exercise it or not.

“ My Lord, I now ask for leave to introduce the Bill.”

The motion was put and agreed to.

The Hon'ble SIR HERBERT RISLEY introduced the Bill.

The Hon'ble SIR HERBERT RISLEY moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette

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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.

The Council adjourned to Friday, the 4th February 1910.

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

CALCUTTA :
The 28th January 1910. }