

THE



# Bombay Government Gazette.

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*Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January 1885:—

We, the undersigned Members of the Select Committee to which the Bill to amend the Transfer

- of Property Act, 1882, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.
2. It is generally admitted that the provisions of section 1 (a) of the Bill will amend the Act satisfactorily, but there are differences of opinion as to clause (b) of that section. The Government of Bombay, Mr. Justice West and others are strongly in favour of making the exemption from the provisions of section 41 of the Act local and not personal. It has also been urged, especially by Mr. Justice Mahmūd, that power should not be given to exempt from the provisions of section 41. Mr. Mahmūd says, "As I understand the law, the provisions of section 41 of the Transfer of Property Act are nothing more or less than the repetition of the rule of natural equity which belongs to almost every department of law connected with the dealings of one human being with
- From Officiating Registrar, High Court, Calcutta, No. 2596, dated 15th September 1884 [Paper No. 1].  
 From Secretary to Chief Commissioner, Coorg, No. 813—114, dated 13th September 1884 [Paper No. 2].  
 Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1252, dated 24th September 1884, and enclosures [Papers No. 3].  
 From Officiating Secretary to Chief Commissioner, British Burma, No. 125—16L., dated 9th October 1884, and enclosures [Papers No. 4].  
 From Chief Commissioner, Ajmer-Merwara, No. 880, dated 17th October 1884 [Paper No. 5].  
 From Secretary for Berar to Resident, Hyderabad, No. 376G., dated 21st October 1884, and enclosures [Papers No. 6].  
 From Chief Secretary to Government, Madras, No. 2681, dated 18th October 1884, and enclosures [Papers No. 7].  
 From Under-Secretary to Government, Bombay, No. 7599, dated 31st October 1884, and enclosures [Papers No. 8].  
 From Officiating Secretary to Government, Panjáb, No. 987, dated 14th November 1884, and enclosures [Papers No. 9].  
 From Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 5321—245, dated 14th November 1884, and enclosure [Paper No. 10].  
 From Secretary to Government, North-Western Provinces and Oudh, No. 1147—VII-279-19, dated 5th November 1884, and enclosures [Papers No. 11].  
 From Bábú Charu Chandra Mookerjee, dated 2nd November 1884 [Paper No. 12].  
 Extract, paragraph III, from Proceedings of the Meerut Association, No. 13, dated 16th November 1884 [Paper No. 13].  
 From Under-Secretary to Government, North-Western Provinces and Oudh, No. 1326—VII-277-23, dated 13th December 1884, and enclosure [Papers No. 14].  
 From Officiating Secretary to Government, Bengal, No. 3001 J., dated 19th December 1884, and enclosures [Papers No. 15].  
 From Secretary to Government, North-Western Provinces and Oudh, No. 1375—VII-277-26, dated 23rd December 1884, and enclosures [Papers No. 16].  
 Memorandum by Bábú Gridhar Dás, Honorary Magistrate, and Vice-Chairman, Municipal Fund, and Member of the District Board, Zila Etawah, No. 1, dated 20th December 1884 [Paper No. 17].  
 From the Hon'ble Mr. Justice S. Mahmūd, Allahabad, dated 13th January 1885 [Paper No. 18].

sions of section 41. Mr. Mahmūd says, "As I understand the law, the provisions of section 41 of the Transfer of Property Act are nothing more or less than the repetition of the rule of natural equity which belongs to almost every department of law connected with the dealings of one human being with



another. The rule of equitable estoppel is so important that, irrespective of section 41 of the Transfer of Property Act, I, speaking for my own part, would, regardless of the nationality of parties, apply it to all transactions which came before me and which furnished circumstances for its application."

3. After considering the matter we are of opinion that, if section 41 of the Act contains, as we believe it does, a rule of equity which our Courts should follow, the section should be in force wherever the Act is in force. If that section were excluded from the Act, the Courts would probably, on general principles of equity, follow the rule which it contains. We think, therefore, that it is unnecessary to give any power to exempt from the provisions of section 41, and have struck out clause (b) section 1 of the Bill.

4. With regard to some questions raised as to the effect of section 3 of the Bill, we may mention that the Transfer of Property Act in requiring that certain transfers shall be made by a registered instrument does not conflict with the Indian Registration Act. That Act requires that certain documents shall be registered in order to render them capable of affecting certain property and admissible in evidence of any transaction affecting such property. The Transfer of Property Act, on the other hand, provides that certain transfers can only be effected by a registered instrument.

5. With reference to section 4 of the Bill, it has been suggested that section 69 of the Act should be restored to the form proposed by the Indian Law Commission. The question whether a power of sale should be valid in all cases where the property secured by the mortgage was of a certain value was fully discussed at the time the Act was passed. It was then decided that the valuation test should not be adopted, and we consider that it is inexpedient to re-open the question now.

6. Objections have been raised relating to the chapter on leases of immoveable property. These are sufficiently met by section 117 of the Act, which exempts leases for agricultural purposes from the provisions of the chapter.

7. We have taken the opportunity of adding to section 6 of the Act a clause (i) containing a proviso like that of sub-section (j), section 103. If the chapter on leases does not apply to leases for agricultural purposes, then the proviso to sub-section (j) will not be in force. It might therefore happen that an untransferable right of occupancy, the farm of an estate in respect of which default had been made in paying revenue or the lease of an estate under the Court of Wards might be held to be transferable by virtue of the general power of transfer conferred by section 6.

8. The publication ordered by the Council has been made as follows :—

*In English.*

<i>Gazette.</i>		<i>Date.</i>
<i>Gazette of India</i> ...	...	23rd and 30th August, and 6th September 1884.
<i>Fort Saint George Gazette</i> ...	...	9th September 1884.
<i>Bombay Government Gazette</i> ...	...	28th August, and 4th and 11th September 1884.
<i>Calcutta Gazette</i> ...	...	3rd, 10th and 17th September 1884.
<i>North-Western Provinces and Oudh Government Gazette.</i>	...	30th August, and 6th and 13th September 1884.
<i>Punjab Government Gazette</i> ...	...	28th August, and 4th and 11th September 1884.
<i>Central Provinces Gazette</i> ...	...	30th August, and 6th and 13th September 1884.
<i>British Burma Gazette</i> ...	...	13th, 20th and 27th September 1884.
<i>Assam Gazette</i> ...	...	13th September 1884.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras ...	Hindustani ...	30th September 1884.
	Telugu ...	7th October 1884.
	Malayalam ...	7th October 1884.
	Tamil ...	28th October 1884.
	Canarose ...	28th October 1884.
Panjáb ...	Urdu ...	29th September, and 6th and 13th October 1884.
	Burmese ...	27th September, and 4th and 11th October 1884.

9. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

(Signed) C. P. ILBERT.  
 ( " ) J. GIBBS.  
 ( " ) PEARI MOHAN MUKERJI.  
 ( " ) H. ST. A. GOODRICH.  
 ( " ) G. H. P. EVANS.

*The 21st January 1885.*

R. J. CROSTHWAITE,  
 Offg. Secy. to the Govt. of India.



## LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January 1885:—

We, the undersigned Members of the Select Committee to which the Bill to amend the Negotiable

Instruments Act, 1881, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our report.

From Officiating Secretary to Chief Commissioner, Assam, No. 393, dated 3rd April 1884, and enclosure [Papers No. 1].  
 From Secretary for Berar to Resident, Hyderabad, No. 115G., dated 7th April 1884, and enclosures [Papers No. 2].  
 From Secretary to Chief Commissioner, Central Provinces, No. 2635—120, dated 3rd June 1884 [Paper No. 3].  
 From Secretary to Chief Commissioner, Coorg, No. 288—I. 41, dated 2nd June 1884 [Paper No. 4].  
 Office memorandum by Home Department, No. 829, dated 18th June 1884, and enclosures [Papers No. 5].  
 From Chief Commissioner, Ajmer-Merwara, No. 486, dated 23rd June 1884, and enclosures [Papers No. 6].  
 From Under-Secretary to Government, Bombay, No. 4659, dated 30th June 1884, and enclosures [Papers No. 7].  
 From Secretary to Government, North-Western Provinces and Oudh, No. 527—VII-27-10, dated 2nd July 1884, and enclosure [Papers No. 8].  
 From Chief Secretary to Government, Madras, No. 1579, dated 26th June 1884, and enclosure [Papers No. 9].  
 From Officiating Secretary to Chief Commissioner, British Burma, No. 106—7L., dated 4th July 1884, and enclosure [Papers No. 10].  
 From Officiating Secretary to Government, Punjab, No. 661, dated 23rd July 1884, and enclosures [Papers No. 11].  
 From Officiating Registrar, High Court, Calcutta, No. 1872, dated 30th July 1884 [Paper No. 12].  
 From Officiating Secretary to Government, Bengal, No. 1339T.—R., dated 31st July 1884 [Paper No. 13].

section 61 of the Code of Civil Procedure.

2. With regard to lost bills it has been pointed out that the Act provides, no machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker. We think that this omission should be supplied, and have accordingly inserted in the Bill a section (2) taken from section 69 of the English Statute. Actions on lost bills are sufficiently provided for by

3. With reference to the remarks forwarded by the Government of Madras, we think that clause (c) section 101 of the Act does seem to imply that to render a protest valid the demand must be made by the notary public in person. If the law be so understood, it will cause inconvenience, and to remove all doubts we consider that the section should be amended so that it may be clear that a demand may be made by a notary public's clerk in person. The Act might also, we think, be still further amended so as to afford greater facilities for presenting bills and demanding acceptance or payment. The English Act [section 41 (1) (e) and section 45 (8)] provides that a bill is duly presented for acceptance or payment when presented through the post office in cases where such presentment is authorised by agreement or usage. We think that it is desirable to extend to this country similar facilities for presenting bills, but we consider that when presentment through the post office is allowed it should be made by means of a registered letter. We have accordingly, in section 3 of the Bill, made additions to the Act which will validate a presentment through the post office by means of a registered letter when such a presentment is authorised by agreement or usage. We have also, in section 4 of the Bill, added to section 101 a clause to the effect that the demand mentioned in clause (c) may be made by the notary public in person or by his clerk in person or, where authorised by agreement or usage, by a registered letter.

4. It has been pointed out that while section 108 implies that acceptance for honour may take place when a bill has been noted or protested, the definition of "acceptor for honour" (section 7) shows that an acceptance for honour is made after a bill is protested. It might be held therefore that there could be no acceptance for honour until a bill had been protested as well as noted. To meet this difficulty we have inserted in the Bill a section (6) taken from section 93 of the English Statute, and have slightly amended the definition in section 7 of the Act so as to make it agree with section 108.

5. The Chambers of Commerce of Bombay and Rangoon have suggested an amendment of Section 113 of the Act which would have the effect of rendering a declaration before a notary public unnecessary in the case of a payment for honour. We have considered this suggestion and we think that some formality is desirable. We are of opinion that it would not be safe to relax these formalities regarding payments for honour further than they are relaxed by English law.

6. It has also been suggested that power should be taken to make rules for the control of those notaries public who have not been appointed under the Act. We think that it is not desirable to make rules for the control of notaries not appointed by the Government of India.

7. We have been asked to make a provision for cases in which the services of a notary public are not available, by adopting section 94 of the English Act which provides that in such cases a protest may be made by means of a certificate signed by a householder or substantial resident. Having regard to the power given to Government of appointing notaries public, the number of appointments that have been made and the possible abuses that might arise if a householder or substantial resident were substituted for a notary, we think that it would be unwise to adopt this provision of the Statute.

8. It is said that the proposed amendment of section 113 will raise doubts whether the words "acceptor," "acceptor for honour," "payee" and "drawee" are intended to include an agent of an acceptor, payee or drawee. We think that section 27 of the Act, which provides that a person may bind himself by a duly authorised agent, will answer all questions of this nature that may arise.



9. The Chief Commissioner, British Burma, suggests that the Local Government should be authorized to appoint notaries public. This question has already been considered, and we would not re-open it.

10. With regard to the question whether section 45 of the Contract Act unduly limits the negotiation of bills, we are not disposed to think that it does. We are not aware that that section has given rise to any difficulties in this respect, and the saving in the Contract Act of all usages or customs of trade will probably meet such difficulties if they do arise. If any amendment in this respect is necessary, it should take the form of an amendment of section 45 in the Contract Act, as such an amendment would perhaps be required for other cases besides those under the Negotiable Instruments Act.

11. The publication ordered by the Council has been made as follows :—

*In English.*

<i>Gazette.</i>		<i>Date.</i>
<i>Gazette of India</i> ...	...	8th, 15th and 22nd March 1884.
<i>Fort St. George Gazette</i> ...	...	18th March 1884.
<i>Bombay Government Gazette</i> ...	...	13th, 20th and 27th March 1884.
<i>Calcutta Gazette</i> ...	...	12th, 19th and 26th March 1884.
<i>North-Western Provinces and Oudh Government Gazette.</i>		15th, 22nd and 29th March 1884.
<i>Panjáb Government Gazette</i> ...	...	20th and 27th March, and 3rd April 1884.
<i>Central Provinces Gazette</i> ...	...	15th, 22nd and 29th March 1884.
<i>British Burma Gazette</i> ...	...	29th, March, and 5th and 12th April 1884.
<i>Assam Gazette</i> ...	...	29th March, and 5th and 12th April 1884.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bombay ...	Maráthi	... 17th April 1884.
	Gujaráthi	... 3rd May 1884.
Bengal ...	Bengali	... 1st April 1884.
	Hindi	... 18th March 1884.
North-Western Provinces and Oudh	Urdu	... 31st May and 7th and 14th June 1884.
Central Provinces ...	Maráthi	... 26th April and 3rd and 10th May 1884.
British Burma ...	Burmese	... 5th, 12th and 19th April 1884.

12. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Signed) C. P. ILBERT.  
 ( " ) J. GIBBS.  
 ( " ) ROBERT MILLER.  
 ( " ) G. H. P. EVANS.

*The 22nd January 1885.*

R. J. CROSTHWAITE,  
 Offg. Secy. to the Govt. of India.



## LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend Act XXII of 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January 1885 :—

We, the undersigned Members of the Select Committee to which the Bill to amend Act XXII of

1881 was referred, have considered the Bill and papers noted in the margin, and have now the honour to submit this our Report.

From Chief Commissioner, Coorg, No. 53, dated 17th November 1884 [Paper No. 1].  
 From Chief Commissioner, Ajmer-Merwara, No. 969, dated 4th December 1884 [Paper No. 2].  
 Extract, paragraph VI, from Proceedings of the Meerut Association, No. 15, dated 29th November 1884 [Paper No. 3].  
 From Officiating Junior Secretary to Government, Punjab, No. 3148, dated 12th December 1884, and enclosures [Papers No. 4].  
 From Officiating Secretary to Chief Commissioner, British Burma, No. 279-41 E., dated 12th December 1884, and enclosures [Papers No. 5].  
 From Secretary to Government, North-Western Provinces and Oudh, No. 74—VII. 305-13, dated 17th January 1885, and enclosures [Papers No. 6].  
 From Assistant Secretary to Chief Commissioner, Central Provinces, No. 143-284, dated 16th January 1885, and enclosures [Papers No. 7].

exercise the powers of arrest, seizure and search conferred by sections 28 and 29 of the Act. The Thugyi, who is a collector of revenue and also assists generally in the administration, does not receive a monthly salary. He cannot, therefore, on a strict construction of those sections, be held to be an officer in receipt of a monthly salary of not less than ten rupees.

2. At the suggestion of the Chief Commissioner of British Burmah, we have added to the Bill sections (1 and 2) which will enable a Thugyi, when appointed an Excise-officer, to exercise the powers of arrest, seizure and search conferred by sections 28 and 29 of the Act. The Thugyi, who is a collector of revenue and also assists generally in the administration, does not receive a monthly salary. He cannot, therefore, on a strict construction of those sections, be held to be an officer in receipt of a monthly salary of not less than ten rupees.

3. We have also in section 2 of the Bill made a further slight amendment of section 29 of the Act, by providing that, where the Excise-officer making a search is himself an officer of Police in the receipt of a monthly salary of not less than ten rupees, the presence of another Police-officer is not required.

4. We have at the suggestion of several of the Local Governments amended the original section of the Bill (now section 3). We have given the Local Government power to invest any Police-officer with powers under section 27 of the Act, as we consider that these powers may be safely entrusted to any Police-officer. The more extensive powers conferred on certain Excise-officers by sections 28 and 29 of the Act should not, we think, be exercised by Police-officers unless they are in charge of a station or of or above the grade of head constable or sergeant. We have provided accordingly.

5. The use of the word "complaint" in section 47 of the Act, a section providing certain restrictions on prosecutions, has given rise to doubts, and we have, therefore, at the suggestion of the Government of North-Western Provinces, altered the wording of that section.

6. The publication ordered by the Council has been made as follows :—

*In English.*

<i>Gazette.</i>	<i>Date.</i>
<i>Gazette of India</i> ... ..	25th October, and 1st and 8th November 1884.
<i>Bombay Government Gazette</i> ... ..	13th November 1884.
<i>North-Western Provinces and Oudh Government Gazette</i> ... ..	8th, 15th and 22nd November 1884.
<i>Punjab Government Gazette</i> ... ..	6th, 13th and 20th November 1884.
<i>Central Provinces Gazette</i> ... ..	8th, 15th and 22nd November 1884.
<i>British Burma Gazette</i> ... ..	22nd and 29th November and 6th December 1884.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Punjab ... ..	Urdú ... ..	1st, 8th and 15th December 1884.
British Burma ... ..	Burmese ... ..	29th November, and 6th and 13th December 1884.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Signed) J. W. QUINTON.

( " ) C. P. ILBERT.

( " ) A. COLVIN.

The 30th January 1885.

R. J. CROSTHWAITE,  
 Offg. Secy. to the Govt. of India.



## LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January 1885 :—

We, the undersigned Members of the Select Committee to which the Bill to amend the Indian Ports Act, 1875, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

2. At the suggestion of the Government of Madras we have inserted in the Bill a section (1) amending section 42 of the Act. That section directs that the orders of a Local Government made in pursuance of the Act shall be, in addition to other modes of publication, fixed up in the custom-house, if any, of every port subject to this Act. A difficulty is experienced in carrying out this direction, and we consider that it will be sufficient to provide that the order shall be fixed up in some conspicuous place in the office of the Conservator, and at the custom-house, if any, of every port to which the order relates.

3. We have amended section 1 of the Bill (now section 2) so as to provide for cases where the service of a person entitled to pension has been partly at the port and partly elsewhere.

4. At the request of the Bombay Government we have provided in section 3 of the Bill that money may be spent from the Port Fund Account for the support of hospitals for seamen or for providing sanitary superintendence and medical aid for the shipping and seamen belonging to ships in the ports.

5. We have altered the rate of port-dues prescribed in the first schedule of the Act for the Cuttack ports, as the Government of Bengal finds that the present rate does not yield an income sufficient to meet the necessary expenses of the ports.

6. The publication ordered by the Council has been made as follows :—

*In English.*

<i>Gazette.</i>	<i>Date.</i>
<i>Gazette of India</i> ... ..	13th, 20th and 27th October 1883.
<i>Port St. George Gazette</i> ...	30th October 1883.
<i>Bombay Government Gazette</i> ... ..	18th, and 25th October and 1st November 1883.
<i>Calcutta Gazette</i> ... ..	27th and 31st October and 7th November 1883.
<i>British Burma Gazette</i> ... ..	3rd, 10th and 17th November 1883.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bombay	Guzaráthí	8th November 1883.
	Kanarese	8th November 1883.
	Maráthí	15th November 1883.
Bengal	Bengali	13th and 20th November 1883.
	Hindi	27th November 1883.
British Burma	Burmese	17th and 24th November 1883.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Signed) C. P. ILBERT.  
 ( " ) A. COLVIN.  
 ( " ) H. J. REYNOLDS.

The 30th January 1885.

R. J. CROSTHWAITE,  
 Offg. Secy. to the Govt. of India.