

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 14

Jan to Dec

1875

P L

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1875.

WITH INDEX.

VOL. XIV.



Published by the Authority of the Governor General.

Gazettes & Enactments Section
Parliamentary Library Building
Room No. FB-025
Block V

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1876.



Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 2nd September 1875.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

The Hon'ble T. C. Hope.

OPIUM BILL.

The Hon'ble Sir W. Muir introduced the Bill to amend the law relating to Opium, and moved that it be referred to a Select Committee with instructions to report in three months. He said that in accordance with the permission he had received at the last meeting of the Council, he had now the honour to introduce the Bill to amend the law relating to Opium. On that occasion he had explained the necessity which existed for the measure. The provisions were very simple. Under section 3 it was proposed to enact that the cultivation and manufacture of opium, its possession, transport or sale, should be permitted only in accordance with rules framed under the Act and by section 4 the Local Governments were empowered, with the sanction of the Governor General in Council, to make such rules. The remainder of the Bill provided appropriate penalties for contravention of the law. These were in accordance with the provisions of the law as they now existed in Bengal for the control of the cultivation, possession, transport and sale of opium.

The present measure had no bearing whatever on the system for realizing the Government revenue from opium. Although the measures now proposed had heretofore been in force only on this side of India, yet they were equally required everywhere. The advocates of the Bombay system, under which the Government revenue was realized by an export duty, disapproved of the State manufacture and monopoly prevailing in Bengal, and desired that endeavour should be made to substitute the export duty arrangement for it and he himself had long shared these views. But if such experiment were to be made to-morrow in any part of Behar, the North-Western Provinces or Oudh, it would be necessary to have equally stringent checks as now existed in Bengal—perhaps checks of even greater stringency—for controlling the cultivation and manufacture, the possession, transport and sale of opium; and these checks were equally required under the existing system in Bombay and Madras. The Bill therefore, as now introduced, had no reference whatever to the policy of the Government in this respect, either one way or the other.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR also moved that the Bill be published in the several *Gazettes* of the Local Governments in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.]

MERCHANT SEAMEN'S ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to amend the law relating to Merchant Seamen. He said that the Council were aware that we had already upon the stocks a Bill for the general consolidation of our law relating to Merchant Shipping and for introducing certain amendments into it. But that Bill had been suspended, owing to the delay in proceeding with a similar Bill which was before the British Parliament. The subject was one in which it was necessary that the Indian legislation should be framed very carefully with reference to the Imperial legislation, because, not only was the subject-matter closely related, but the Imperial Acts, to a great extent, included India, and therefore we had Imperial laws in working, and in detailed working, in India. Some of those laws were subject to the operations of this legislature; others of them were not, and therefore we had to be exceedingly careful in all our legislation to see what was the course of legislation in England. Under those circumstances the Secretary of State was of opinion, some years ago, that we had better

not proceed with our general consolidation Act, and it was waiting at this moment for the action of the British Parliament. From time to time, however, isolated matters had arisen with regard to which it was desirable to amend the law; and the Council would remember that only in the beginning of this year we passed an Act for the purpose of amending our Merchant Shipping Act with reference to one separate but important topic, namely, the constitution of tribunals for enquiries into casualties affecting ships and the conduct of officers.

There were one or two other points, none of them perhaps of very much importance, but all requiring some amendment of the law, with which we found ourselves in a position to deal. Therefore we thought it better to deal with those as the opportunity had arisen instead of waiting, perhaps for two or three years, until we were enabled to consolidate the whole of the law. He would just mention the principal of those topics.

One related to the subject of distressed seamen. In the English Acts there were certain provisions which enabled the Governments of all British possessions to send British seamen, who were in a state of distress, back to England on board British ships, and to provide for the payment of the expenses out of certain funds over which the Board of Trade had control. Well, it had been found that disputes arose with respect to the fact whether a seaman was a distressed seaman or not, and it had occurred that the Master of the vessel objected to receive the seaman on the ground that he was not. It was obvious that such a dispute might arise in any case, and when those disputes had once arisen, they had a great tendency to multiply themselves. They all arose under a critical state of circumstances; that was, when a ship was just going to sail, and when it was very inconvenient to decide the dispute by any lengthened process. Therefore it was proposed in the first place to provide a summary method of deciding such disputes and in the second place, to impose a penalty payable in India on the Master of any vessel who, after the proper certificate was given that the seamen was a distressed seaman, declined to receive him on boardship.

The next topic related to the discharge of seamen, and to seamen who were imprisoned in India. It was obvious that if there was an unlimited power of discharging British seamen in foreign countries, a great many of them would simply become a burden upon the society of the country where they were discharged. Now the English Merchant Shipping Act provided in order to meet that difficulty, that no seaman should be discharged without the sanction of certain authorities in the country where it was proposed to discharge him. But that mere requis-

tion of sanction had been found insufficient. There was no penalty attached to it which we could enforce in this country, and besides that there had been disputes of rather a grave nature respecting the power of the authority in question to withhold his sanction under certain circumstances ; that was to say, it had been disputed whether it was a purely discretionary power, or a ministerial power which he was compelled, as a public servant, to exercise under certain circumstances. We proposed therefore, in the first place, to make our law quite clear upon that subject, and to put it beyond doubt that the power was simply a discretionary power. He (MR. HOBHOUSE) believed it to be a discretionary power according to the present law. It was certainly held so in England, and the Board of Trade had issued instructions in which they had asserted that the matter was one beyond dispute. The matter, however, was not beyond dispute in India, for a judgment had been passed by one Court of Law, luckily opposed by the judgment of another, to the effect that the power was a ministerial and not a discretionary power. It was proposed however to make that point clear. It was also proposed to add a penalty payable in India in case the Master of a ship discharged any seaman without the requisite sanction.

But one great temptation for the discharge of seamen here was found to be the unlimited facility that existed for getting lascars to serve on boardship for the voyage home. Some Masters preferred to have those lascars partly because they were less expensive than seamen, partly for other reasons ; and therefore it was proposed by the Government of Bombay (and their suggestion was adopted) that power should be given to the Local Governments to prohibit the engagement of Native seamen without sanction from the Government ; at all events in cases, in which British seamen had been discharged. That, it was conceived would strike at the root of the evil.

Another mode in which British seamen were detached from their ships was when they got into prison, and it was alleged that the Masters who desired to get rid of men preferred complaints against them for breaches of discipline and other petty offences, which probably would not have been preferred if the Masters did not desire to get rid of their men. Now in section 88 of Act I of 1859 power was given to Magistrates to release all sailors imprisoned for breaches of discipline if the Masters of the ships were willing to take them back ; but it was often found that the Masters were not willing to take them back ; in fact, the very object of getting them into prison was that they should be there when the ship was sailing, in order that the ship might obtain lascars and so depart from India. That mischief would partly be met by the proposal that the Government should have a veto on the engagement of Native seamen ; and it was proposed further to meet

it by giving power to Port authorities to call upon Masters to accept back those seamen who were imprisoned for petty offences, and if they did not choose to accept them back to require them to deposit a sufficient sum to cover the expense of the subsistence of the men during their stay in India, and of their passage home. That, it was thought, would be a test of the *bonâ fides* of the objection to receive back the men.

Then, with regard to the subject of desertions, there was at present a defective machinery for giving notice to the Government of desertions directly they took place, and we proposed to require Masters of ships to inform Government whenever a desertion took place. We proposed also that, when a sailor was imprisoned for desertion, the Master should deposit in the local Shipping office his wages and effects, and that there should be some machinery for settling claims between Masters and men.

Another topic we proposed to deal with was the increase of space on board ships. It seemed to be the prevailing opinion that the present law did not provide a sufficient amount of space. It was not intended to introduce any new principle of legislation on this point. Measurements of space were given by the present Merchant Shipping Act, and it was proposed slightly to increase the space required.

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. HOBBHOUSE also presented the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to the Courts in British Burma.

The following Select Committee was named—

On the Bill to amend the law relating to Opium—The Hon'ble Messrs. Hobbhouse, Eden, and Hope, and the Mover.

The Council then adjourned to Thursday the 16th September 1875.

SIMLA; The 2nd September 1875.	}	WHITLEY STOKES, <i>Secretary to the Government of India,</i> <i>Legislative Department.</i>
-----------------------------------	---	---