

Wednesday, March 20, 1878

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Government of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

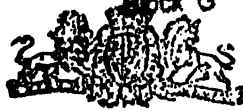
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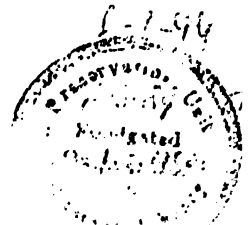


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1879.



*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 Government House on Wednesday, the 20th March, 1878.

PRESENT :

The Hon'ble Sir B. C. Bayley, K.C.S.I., Senior Member of the Council of the Governor General, *presiding*.

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.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahārājā Jotindra Mohan Tagore.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

PANJÁB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872, be taken into consideration. He said that the changes made in the Bill were not very considerable, and he proposed to state them as shortly as possible. The Select Committee had recast the clauses of the new section 12 of the principal Act, relating to the order in which the various claimants of the right of pre-emption were entitled, and had provided that, where several persons were equally entitled to the right, the vendor or mortgagor might determine which of them should exercise it. The Bill as introduced provided that such determination should be made by lot. But, as the Panjáb Government had observed, so far as the right of pre-emption was enforced, there was interference with ordinary freedom of trade; and to permit the vendor to select his purchaser, whenever it was possible for him to do so consistently with the maintenance of the law, was a step in the direction of returning to the freedom of contract which the law itself unavoidably curtailed. A mode of determination would thus be provided by which the resort to lot,—a course to which there were patent objections, and which could only be adopted where there were no means of deciding at all,—would be entirely obviated.

The Committee had further saved the landlord's right of pre-emption under section 34 of the Panjáb Tenancy Act, 1868, and provided that, "if the landlord refuse or neglect to exercise the right conferred on him by that section, such right belongs, first, to the tenants (if any) with rights of occupancy in the property concerned, and secondly, to the tenants (if any) with right of occupancy in the village in which such property is situate."

They had modified the new section 14 of the principal Act in two particulars, namely, first, by giving the claimant of pre-emption an option of tendering at his own risk what he considered to be the fair market-value of the property, instead of the price demanded by the vendor, which might obviously be, by collusion between the vendor and his purchaser, much overstated, and secondly, by allowing the money to be deposited in Court, instead of being tendered to the vendor.

A similar change had been made in the new section 15 as regards the former of these particulars.

They had inserted in the principal Act a new section, 16A, conferring on the Court in which a suit to enforce a right of pre-emption was instituted, a discretionary power to require the plaintiff to pay into Court the price or market-value of the property, or the amount of the mortgage-money, as the case might be, under pain of having his plaint rejected. This would obviously tend to prevent the institution of vexatious and frivolous suits.

Section 7 of the Bill had been added to supply an omission in the Panjáb Laws Amendment Act, 1875, and to validate certain penalties which had been imposed, and the legality of which, owing to that omission, had been deemed open to question. The Chief Court had decided that, as the matter now stood, the penalty provided by the second clause of section 50 of Act IV of 1872, which had been repealed by Act XV of 1875, no longer attached to a breach of rule made under the first clause of that section.

In section 8 of the Bill they had, at the suggestion of the Revenue, Agriculture and Commerce Department, provided a power to recover advances made to agriculturists for the relief of distress, the purchase of seed and cattle, the construction and repair of buildings, and other purposes not contemplated by the Land Improvement Act, 1871. Such advances would be recoverable as if they were arrears of land-revenue.

The other alterations were merely of a formal or trifling nature, and called for no particular notice here.

He would only add that the Committee thought, and did, he believed, still think, that the clause in the new section, 12 (*d*), giving the Local Government a right of pre-emption in respect of land bearing Government trees, might now be omitted, as the new Forest Act seemed to provide sufficiently for this matter. In deference to the contrary opinion of His Honour the Lieutenant-Governor, who had been consulted by telegraph on the subject, the clause had been allowed to stand.

The Motion was put and agreed to.

The Hon'ble Mr. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRESSED SEAMEN'S EXPENSES RECOVERY BILL.

The Hon'ble Mr. STOKES also moved that the Report of the Select Committee on the Bill to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices be taken into consideration. He might remind the Council that the primary object of this Bill was to facilitate the recovery of wages due to, and expenses incurred in respect of, distressed Native seamen and seamen belonging to ships connected with British India.

Section 3 had been added to supply an accidental omission in the Indian Merchant Shipping Act, 1875, recently brought to notice by the Board of Trade, and owing to which a question had been raised as to whether, in certain cases, the certificate of a master, mate or engineer could be cancelled or suspended on proof of a wrongful act or default by him causing the loss or abandonment of, or serious damage to, a ship, or loss of life.

Section 4 had been added with a view to supplying a power (the want of which had recently been felt) to direct enquiry into casualties to foreign vessels occurring on the coasts of British India, and section 5 had been added at the suggestion of certain members of the mercantile community in Bombay, to compel persons recovering bales of goods, ships' stores and other property, which might have fallen overboard or otherwise got adrift in a port, to deliver up such property to the Conservator, and to regulate the right to salvage, about which it was said disputes sometimes occurred.

The Hon'ble Mr. HOPE said that, with regard to this Bill, he had only to remark that, owing to what doubtless were sufficient legal reasons, it had not been possible to carry out the whole of the suggestions of the mercantile community in Bombay which he had had the honour of bringing to the notice of the

Executive Department. The amendment which had been made related only to salvago in ports. There was still no provision with regard to wreck found outside a port and brought into it, and there recognized by the person to whom it might belong. He trusted a suitable opportunity might soon occur for supplying this further want, and thus completely carrying out the recommendations made by the Bombay Chamber of Commerce.

The Motion was put and agreed to.

The Hon'ble Mr. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble Mr. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Leave was granted.

STAMPS BILL.

The Hon'ble Mr. COCKERELL moved that the Hon'ble Mr. Thornton be added to the Select Committee on the Bill to consolidate and amend the law relating to Stamps and Court-fees.

The Motion was put and agreed to.

The Council adjourned to Thursday the 25th April, 1878.

CALCUTTA,
The 20th March, 1878.

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D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.