

Thursday,
25th September, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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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, Simla, on Thursday, the 25th September, 1884.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

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

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

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

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

MARRIAGE LICENSES VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864 be taken into consideration. He said :—

“The object of this Bill is, as clearly appears from the preamble, to remove from the existing Christian Marriage Acts a flaw which, if it were allowed to remain and if its existence became generally known, might cause cruel hardship to innocent persons. The Bill has been circulated for opinion, and its provisions have met with general approval. The only suggestions for its amendment which I need notice here are contained in papers from Mr. Justice Mahmúd of the Allahabad High Court and from Mr. Justice West, the latter of which did not reach me until yesterday.

“Mr Justice West remarks that, while the Bill makes a necessary provision for the case of Ministers licensed under Act XXV of 1864, a similar provision seems equally requisite, or may be so, for the case of Ministers licensed under Act V of 1865 and celebrating marriages without a fresh license under Act XV of 1872. But it will, I think, be found that this latter case is already covered by

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the second paragraph of section 2 of Act XV of 1872, which saves licenses granted under the Act of 1865 though not licenses granted under the Act of 1864. Mr. Justice West also suggests that Ministers should be commanded to do all things required by the Act in force when they celebrate any marriage. If the meaning of this suggestion is that a marriage under the licenses with which the Bill deals should not be valid unless the conditions are observed which under the Act in force are essential to the validity of the marriage, then I think it is clear that this would be the effect of the Bill as drawn.

“ And, lastly, both Mr. Justice West and Mr. Justice Mahmúd suggest that, if the Bill is to be made retrospective, as we propose to make it, there should be savings in favour of civil rights acquired under the law as it stands, and of persons who through the retrospective operation of the Bill, may become bigamists subject to punishment, though, when actually married the second time, their first marriages were substantially void.

“ Mr. Justice Mahmúd refers, as a precedent for such a saving clause, to the legislation proposed for altering the law as to marriage with a deceased wife's sister. But I should point out that there is a material difference between the objects of such legislation and the objects of the present Bill. It is one thing to make legal marriages which were intentionally made illegal, and are notoriously illegal, and quite another thing to declare the effect of the existing law to be what it was undoubtedly intended to be, and what it is generally believed to be. A much closer parallel to the present Bill is to be found in numerous other English Statutes which have been passed for similar purposes. The Statute which is most closely analogous is perhaps one which was passed in 1868 (31 & 32 Vic., c. 61) for validating marriages solemnized before persons acting as Consuls. This Act does not contain a saving clause. Then a large number of Statutes have been recently passed for curing such formal defects as the insufficient publication of banns or the celebration of marriages in a wrong building. I find that the great majority of these Statutes contain no saving clause, and that the very few exceptions may be accounted for by special circumstances, such as the fact that litigation had taken place or was still pending with reference to the questions which the Act was intended to set at rest, or that the validity of the marriages to be legalized was notoriously a matter of general doubt, on grounds quite different from the technicalities of Statutes. For instance, there had, I believe, before the passing of an Act of 1879, been great and general doubt about the binding efficacy of marriages solemnised before officers of Her Majesty's Navy, and this doubt was not confined to lawyers. In such exceptional cases there has been occasionally a

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proviso that the enactment shall not render valid any marriage which before the passing of the Act had been declared invalid in a Court of competent jurisdiction, or any right dependent on the validity or invalidity thereof, or render valid any marriage where either of the parties has before the passing of the Act and during the lifetime of the other party lawfully intermarried with any person.

“ But in the present case there is not the slightest ground for believing that the validity of any marriage contracted under the licenses with which we propose to deal has ever been questioned in a Court of law, and it is extremely improbable that any person has married again on the faith of his first marriage being held invalid in consequence of the flaw which we are now seeking to remove. In fact, the knowledge or suspicion that there is such a flaw has been probably confined to an extremely small number of legal experts. If there be any person so astute as to have discovered the flaw, and so unscrupulous as to have taken advantage of it, I think we should do no substantial injustice by leaving him to the mercy of the Criminal Courts. The nominal sentence which would probably be passed on him would be far from commensurate with his moral deserts, and he might count himself, as bigamists go, a remarkably fortunate man. But on the whole I think that the extreme improbability of any case having occurred for which a saving clause is required fully justifies us in following the precedent which is supplied by the vast majority of English Statutes *in pari materia*, and in not inserting any such clause. I have therefore not proposed to make any amendment in the Bill as introduced.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION ACT, 1877, REPEAL, AND EMIGRATION ACT, 1883, AMENDMENT, BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1853. He said :—

“ The Bill which I am now asking for leave to introduce is not very complicated in its machinery ; but it brings to a close a controversy which has been going on in a sort of triangular way between three Governments for the past twelve years—the Straits Settlements Government, the Madras Government and

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the Government of India. Under the Emigration Law of 1872, emigration to the Straits Settlements was free for the most part of India, and, under the more recent Act of 1888, the Straits are expressly excluded by the definition of 'emigration,' but from Madras it has always to a certain extent been controlled; however, from the greater part of India there is no emigration to the Straits; the only emigration of importance is from Madras, and, when the Emigration Act of 1872 was under consideration, the Straits Settlements Government were moving the Government of India to allow emigration to go free and unrestricted, and the Madras Government were anxious to maintain the same system towards the Straits as was in force with respect to other Colonies. The Government of India rather inclined, I think, at that time to the Straits Government, but acted as judicious bottle-holder, and finally the controversy for the time being was settled by the compromise which Sir Arthur Hobhouse proposed, and which took effect, after a very long incubation, in the shape of Act V of 1877, which I am now asking leave to repeal. The difference between the system which was brought in under Act V of 1877 and that in force in the different Colonies is this: as a rule in the case of Colonial emigration the emigrant enters into a contract in this country with the Agent of the Colonial Government, and the Government takes upon itself the responsibility of feeding him and conveying him to the colony, and does not attempt to recover those expenses from him. Under the system of Act V of 1877 the Straits Government was entirely unwilling to take upon itself that responsibility, and for very good reasons I think. The consequence was that the emigrant had to depend for the necessary advances to cover those expenses upon the individual employer of labour with whom he contracted. Then the question arose, how was that money to be recovered? The Government of Madras objected to the emigrant starting life in a new colony with the burden of the debt of those advances upon him, and the Colonial Government did not in the least see why their general tax-payers should be taxed in order to pay the expenses of the labourers of a small class; the result was that a curious conflict of law came about. The Straits Ordinance which was supposed to enforce our law made those advances recoverable, and provided for their recovery. Section 16 of our Act provided that all contracts made for the recovery of such advances from subsequent wages were illegal and void. Each Government legislated according to its own view, and, notwithstanding the provision in the Straits Ordinance of 1876, Act V of 1877 was passed. None the less from that day to this these illegal contracts have been enforced, and the money advanced has been recovered.

"The other provisions of Act V of 1877 referring to the incidence of control are not very important. They provide for a three years' indenture, maximum

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hours of labour, minimum wages and the protection of the Protector, the latter being an officer appointed by the Madras Government, but drawing his salary and receiving his orders from the Straits Government. When the Act was introduced, Sir Arthur Hobhouse was apparently not very strongly impressed in its favour, and what he said about it was this :—

‘He confessed that he was in hopes that, when a sufficient law had been passed on the other side of the water, nothing would have been found necessary on our side beyond the mere removal of the shackles placed on emigration by the Act of 1871.’

“But he accepted the opinion of the Madras Government, and consequently Act V of 1877 became law. At the same time, Sir Andrew Clarke, who as Governor of the Straits had made himself personally acquainted with the conditions of the problem, said :—

‘There was no doubt that the Tamil population of the Straits were in a better condition than their countrymen whom they had left in India; great numbers of them were well-to-do, with large properties; and anything which would check that emigration from the coast of India was undesirable, at the same time that it would cripple and reduce the large industries in sugar and other tropical staples which were valuable to that part of the country and to interests both English and Indian.’

“These were the circumstances under which Act V of 1877 was passed. But the controversy did not end here; it has been going on at intervals ever since; and especially the necessity for reconciling the Indian Act with the Straits law has been continually urged upon the Government. An inquiry was held in the Straits, and very complete information was obtained regarding the coolies who emigrated there, and on the whole the inquiry was very satisfactory, and it was in these circumstances that the matter came again before the Government of India a little more than two years ago. The question had then to be entirely reconsidered, for it appeared that side by side with this system of protected emigration under our law there had grown up another system of free and unrestricted emigration of coolies who found their own way across from Madras to the Straits and paid their own passage as passengers. Most of them were helped by advances received from the chetties and contractors, who took their chance as to the possibility of recovering those advances from the wages of the labourers on the other side; and, to show how strong that system was, I find that the figures given during the enquiry of 1882 showed 20,000 free emigrants in recent years as against 5,000 emigrants who had gone under our law; and in that particular year the protected emigrants were 850 as against 5,000 who had gone free. In other words, while we had taken great pains to discourage and repress free emigration, that system had the logic of

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facts on its side, and showed remarkably successful results as against our restrictions, and the main tendency of our law had been to drive away the business from the port of Negapatam, where it was supervised by the Madras Government, to the French port of Karikal, where it was under no supervision. When, therefore, the papers came before the Government of India, they saw that Act V of 1877 was a failure, and they cast about them to see if some *modus vivendi* could not be effected between the two systems which would secure for the Madras Government that their emigrants would be protected in the Straits, and for the Straits Government that there should be no restriction in regard to the coolies leaving Madras. The Straits Government undertook to meet the Madras Government half way, and to provide an adequate system of protection when the emigrants got to the Straits. It seemed that there was no apparent impossibility in reconciling those two objects, but it would have been obviously hopeless within a reasonable time to bring a three-cornered controversy of this kind to a result in writing, and so the Government decided to depute Mr. Buck to see what he could do towards effecting a speedy settlement of the matter in person. This mission he successfully accomplished. He first visited Madras, to ascertain the points on which they mainly insisted; and with their views in his possession he proceeded to the Straits, laid the matter before the Government there, and got them to agree to pass an Ordinance incorporating the points which the Madras Government insisted upon; and we have now before us the terms of the Ordinance which they have framed. This Ordinance the Madras Government have accepted as sufficient, and they are now willing that we should withdraw the restrictions imposed upon emigration by Act V of 1877. The effect of these arrangements will be that there will be no interference whatever with the embarkation of emigrants; the emigrant will be registered, and a complete nominal roll of all the emigrants going in one ship will be made by the Agent, handed over to the master of the vessel, upon whom there is the responsibility of delivering that nominal roll to the authorities at the Straits, and of admitting no further emigrants on board. All this requires no fresh legislation; it can be done by executive authority under the Passenger Ships Act. No contract will be entered into on this side of the water, but when the emigrant arrives at the Straits he will enter into his contract under the supervision of the officer appointed by the Straits Government. I may mention that one alteration to be effected is this, that the Protector hitherto appointed by the Madras Government, but paid by and receiving his orders from the Straits Government, will in future be appointed by the Straits Government, while the Madras Government will have the power to send an officer from time to time to

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the Straits to inspect and report, who will have full legal powers of entry and examination.

“The protection after arrival is dealt with by the Straits Ordinance. It is confined primarily to those who contract for employment on agricultural labour, but the Straits Government has power to make the Ordinance applicable to other classes of labourers.

“Recovery of advances made to assist emigrants is provided for, but only to the maximum extent of 12 dollars and at the rate of one dollar a month.

“The Ordinance also provides for a minimum scale of wages, which vary according to sex and age and to the length of service in the Straits; the term of indenture is three years, which is the old term. The other provisions of the Ordinance as to protection on the spot, that is to say, the provisions as to house-accommodation, hospital-accommodation, rations, medical inspection, inspection by the Agent, penalties for desertion and neglect, penalties for offences against the emigrant—all these follow very much the lines of our own legislation and are considered adequate.

“The Madras Government are satisfied with the action of the Straits Government, and having secured, as Sir A. Hobhouse said, efficient protection on the other side of the water, we may, I think, safely abstain from further ineffectual interference with the freedom of emigration on this side.”

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma.

BURMA LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the law relating to Local Self-government in British Burma.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the presentation of the Report of the Select Committee on the Bill to confer powers and impose

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duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of Water in that Town.

Leave was granted.

PANJÁB COURTS BILL.

The Hon'ble MR. BARKLEY presented the Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb.

BENGAL TENANCY BILL.

The Hon'ble SIR STEWART BAYLEY moved that the Hon'ble Peári Mohan Mukerji be added to the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 2nd October, 1884.

SIMLA;
The 1st October, 1884. }

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