

*Friday,
7th January, 1887*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVI

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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

VOLUME XXVI



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1888.

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 Friday, the 7th January, 1887.

PRESENT :

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

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

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

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

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble J. B. Peile, M.A., C.S.I.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Maharaja Luchmessur Singh, Bahadur, of Durbhunga.

The Hon'ble R. Steel.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Syud Ameer Hossein.

The Hon'ble Peari Mohan Mukerji.

The Hon'ble W. S. Whiteside.

INVENTIONS AND DESIGNS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to consolidate and amend the law relating to the Protection of Inventions and Designs. He said :—

“ The present law is contained in three Acts of Council—Act XV of 1859 in regard to patents, Act XIII of 1872 in regard to patterns and designs, and Act XVI of 1883 in regard to inventions exhibited at public exhibitions.

“ The Act of 1859, introduced by Sir Barnes Peacock in 1855, was in many respects an improvement upon the existing English law of patents. In England the principle prevailed of giving an inventor his exclusive privilege by a grant from the Crown. In India it was thought preferable that he should derive it under the Act itself, subject to certain restrictions. The substantive law of patents for India was thus contained in the Act of Council,

which laid down in clear terms the conditions which must be fulfilled to entitle an invention to protection under the law.

"The procedure established by the Act was also of the simplest description. On petition and leave given to file a specification, and on the specification being filed within the prescribed period, the exclusive privilege sprang into existence by mere operation of law, provided, of course, that the claim was well-founded in substance—a matter of which the claimant, as in England, took the risk.

"In the Bill which I now ask leave to introduce these main characteristics of the Act of 1859 have been carefully preserved. But a quarter of a century's experience of the working of this Act has shown, as might be expected, difficulties to be removed and improvements to be effected. The work of alteration has not been lightly undertaken, and the measure which I submit is the result of the labours of my distinguished predecessor, after communication with the Secretary of State and the authorities of the Board of Trade in England.

"I will now briefly refer to the leading features of the Bill. It is divided into two Parts, the one relating to inventions and the other to designs. The former Part reproduces the Act of 1859 with certain modifications: the latter Part is an adaptation of the essential provisions of Part III of the English Act of 1883.

"With regard to the machinery by which the law is to be worked, the general superintendence will be by the Government of India, with the assistance of the High Courts and District Courts in contentious matters. The jurisdiction now exercised by the High Courts at Calcutta, Madras and Bombay will be extended to the High Court at Allahabad, the Chief Court of the Punjab and the Recorder of Rangoon. And as Government has had under consideration the constitution of an Inventions Office under the superintendence of the Secretary to the Government of India in the Revenue and Agricultural Department, and the transfer to him of the functions exercised under Act XV of 1859 by the Secretary to the Government of India in the Home Department, power is taken to accomplish this object by an administrative arrangement.

"The next important point is as to specifications. The petition for leave to file a specification of an invention presented under section 1 of the Act of 1859 not infrequently furnishes only a vague description of the inven-

1887.]

[Mr. Scoble.]

tion which it is sought to protect, and, when a fuller and clearer description is called for, it is at times only supplied under protest. The Bill therefore provides that the specification must describe with reasonable precision and detail the nature of the invention, and be supplemented by such further particulars relating to the invention, and by such drawings or models illustrative thereof, as the Governor General in Council may see fit to require. This, I think, is only right, for, as Sir Barnes Peacock well observed when introducing the Bill of 1859, 'the only thing which an inventor gives to the public as a consideration for the exclusive privilege conferred upon him, is a knowledge of his invention. He ought, therefore, before he obtains an exclusive privilege to communicate to the public such a knowledge of his invention as will enable them to practise it as soon as his exclusive privilege expires.'

"The next point is this. When an application for leave to file a specification has been made, it becomes the duty of the Government, in the public interest, to enquire into the merits of the application. Successive Advocates General have advised that the existing law imposes upon the Government the duty of making enquiry to an extent which must at times seriously delay the progress of an application, without producing any commensurate advantage. The Bill proposes to leave to the Governor General in Council a discretion as to the nature and extent of such enquiries, permitting a reference to experts in cases in which it seems desirable, and leaving to Government, instead of to the High Court, as at present, the settlement of the expert's fee.

"-While upon the question of fees I may say that this part of the Act is based on section 24 and the second schedule of the English Act, and on the first schedule to the Patent Rules, 1883, made by the Board of Trade under the Act. Light fees are proposed to be levied in respect of applications for leave to file specifications and in respect of the filing of specifications, and increasingly heavy fees periodically in respect of the continuance of an exclusive privilege. Under section 8 of the Bill an exclusive privilege will cease if any fee in respect of its continuance is not paid within the time limited for the payment.

"I now come to that part of the Bill which relates to the privileges granted to inventors. A question has recently arisen as to whether a person is precluded under the existing law from proceeding to acquire concurrently a patent under the English Act and an exclusive privilege under the Indian Act; and it has been held, on the advice of the Hon'ble the Advocate General of Bengal, that he is not so precluded, provided he can truly state at the time

of applying for leave to file his specification in India that his invention is not publicly used or known in the United Kingdom. It is proposed therefore to provide in the Bill, on the analogy of the provisions of sections 103 and 104 of the English Act, that, if an inventor applies for leave to file a specification in India within one year from the date of his application for a patent in England, he shall have the right to do so.

"In regard to concurrent applications in respect of contemporaneous inventions it has been found that applications have been made by two or more persons at the same time to obtain exclusive privileges of the same manufacture; and we propose to follow the English rule and authorise both or all the applicants to file specifications.

"Then, as cases of hardship have occurred owing to there being no provision for extending the period of six months within which section 4 of the Act of 1859 requires a specification to be filed, after an order authorising the filing of it has been made, it is proposed to empower the Governor General in Council, on cause shown to his satisfaction, to extend the period from six to nine months.

"It is also proposed to obviate another hardship by permitting the holder of a patent obtained in England to apply to the Governor General in Council, within twelve months from the day on which the patent was actually sealed, for leave to file a specification in this country.

"In England the date of application and of the sealing of the invention are supposed to be the same, but in point of fact they are on different dates, there being sometimes a difference of 18 or 20 months between them. It is therefore proposed to give the holder of an English patent the fullest opportunity of availing himself of the Indian Act by making the date of actual sealing the starting point of the period within which he may make his application.

"In the case of new manufactures exhibited at exhibitions in India, it is proposed, in repealing Act XVI of 1883, to protect such inventions not merely from the date of the opening of an exhibition but from the date of their admission into the exhibition. The English Act is about to be amended in this respect, and it only seems fair that this should be done.

"Under section 20 of the Act of 1859, it was provided that, where a patent for an invention has been obtained in the United Kingdom, an exclusive privilege in respect of the invention in India is not to extend beyond the term granted by the patent. It has been found that this rule has proved in

1887.]

[*Mr. Scoble.*]

many cases to be a hardship, and under the advice of the Board of Trade it is proposed to rescind it.

“ A matter of some difficulty in legislation of this kind arises upon the question whether servants of Government and of public bodies, such as municipalities, should be allowed the same privileges as private individuals in regard to inventions made by them in the course of their employment. Without entering into the argument—and there is a good deal to be said on both sides—I will merely say now that the Bill follows section 27 of the English Act in making an exclusive privilege have the same effect against the Crown as it has against a subject. But it authorises officers of the Crown to use the invention for the services of the Crown on terms to be before or after the use thereof agreed on with the approval of the Governor General in Council, or, in default of agreement, on terms to be settled by the Governor General in Council.

“ In another respect, which will probably provoke less animadversion, we have followed the English Act in providing for the grant of compulsory licenses where an inventor who has acquired an exclusive privilege does not make his invention accessible to the public on reasonable terms.

“ The last point to which I think it necessary to refer in connection with Part I of the Bill is a provision by which, when the extension of an exclusive privilege is sought for a further period, the Governor General in Council may, if he thinks fit, refer the application to a High Court for report. This is in analogy to the practice in England, where such references are made to the Judicial Committee of the Privy Council.

“ Part II of the Bill relates to designs, and requires but little comment from me. It is admitted that Act XIII of 1872 has failed to effect the object for which it was passed, and that if designs are to be protected here, as they are in every civilized country, legislation is necessary. The present Bill is a mere adaptation of Part III of the English Act of 1883. It extends from three to five years the period during which copyright in a design is to continue. I see no reason to doubt that this measure, which is working well at home, will be equally effective here.

“ These, I think, are the main provisions of the Bill which I now ask leave to introduce.”

The Motion was put and agreed to.

6 SEA CUSTOMS ACT, 1878, EXCISE ACT, 1881, AND INDIAN
TARIFF ACT, 1882, AMENDMENT.

[Sir A. Colvin.]

[7TH JANUARY,

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons 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.

SEA CUSTOMS ACT, 1878, EXCISE ACT, 1881, AND INDIAN TARIFF
ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A COLVIN moved for leave to introduce a Bill to amend the Sea Customs Act, 1878, the Excise Act, 1881, and the Indian Tariff Act, 1882. He said :—

“ Although one of the objects of this measure is to a certain extent to extend and modify the duties at present in force upon the import of European liquors, the aim of the Government is not to increase its revenue from that source, however unobjectionable a source of income the excise on imported liquor may be, but to meet certain representations which have been put before it from time to time by firms engaged in the importation of European liquors.

“ Under the tariff as it now stands imported spirit is charged with a duty of four rupees a gallon when it is of the strength of London proof, the duty being rateably increased as the strength goes above London proof, though no allowance is made when the strength falls below proof.

“ Representations have been made from time to time by importers of spirit, urging that, as the tariff provides for an increase of duty when spirit exceeds London proof in strength, it should in fairness provide for a reduction of duty when the strength falls below London proof. When these representations were first made to the Government about five years ago, it was not considered expedient to make the change proposed. The claim, which was put forward by European importers of the better classes of spirit, was based on the ground that the revenue suffered and would continue to suffer by the practice enjoined by law. The argument was that spirit imported in bottles, always much under proof, to the extent of 15° or 20°, paid the full duty of four rupees as if it were proof spirit, and that this charge was an inducement to importers to land their spirit in wood and of a strength much over proof, and bottle it in this country after dilution, bringing it down much below

1887.]

[Sir A. Colvin.]

proof. It was held by the Government that, though the argument was reasonable in principle, the result threatened was not likely to arise in practice, for the value to the consumer of good brands of spirit rested on the well known marks and labels on the bottles in which it was imported, and there was little fear of a change of practice which would certainly largely diminish the value of the class of spirit imported by firms like that which made the representation. For this reason, and also because the change would lead to a loss of revenue which could not be afforded, it was decided not to take any action in the matter, and the tariff was left unchanged.

“ It was found, however, in 1884, from a communication received from the Government of Bombay, that dealers in low class spirit had discovered the advantage of importing strong spirit in wood, to be diluted and bottled off in this country, and that the practice had become quite common, with an increasing loss to the revenue. This fact changed the aspect of the case altogether, for with the increasing use of cheap foreign spirit by Native consumers the practice must every year lead to a larger loss of revenue. There was also the loss in the excise on country liquor displaced by this unduly favoured cheap foreign spirit. There was unfairness to the importers of spirit of the better kinds, who were unable to follow the same plan, and who paid as on proof spirit for their bottled spirit imported at a strength of from 15° to 20° below proof. Lastly, there was certainly a risk of adulteration in bottling off this cheap spirit in the premises of unscrupulous dealers in liquor.

“ Enquiry was therefore made in view to taking action which would on the one hand give equal justice to all importers, and on the other prevent a loss to the revenue. It was found on reference to the other Local Governments that the practice reported from Bombay was by no means uncommon, and the next question to consider was the nature of the remedy to be adopted.

• “ There were three courses open. We might have retained the four-rupee rate of duty on proof spirit, and have allowed a *pro rata* reduction for spirit below proof; or we might have fixed the limit of strength for the four-rupee rate at 15° or some other limit below proof, and have increased the duty with increased strength, not allowing any reduction for lesser strength than that fixed for the standard; or we might have increased the rate of duty on proof spirit, and allow for reduced strength and charge for increased strength.

“ The first of these courses means in fact a reduction in the present rate of taxation on liquor. Now we are not prepared to bear any loss in any

8 SEA CUSTOMS ACT, 1878, EXCISE ACT, 1881, AND INDIAN
TARIFF ACT, 1882, AMENDMENT.

[Sir A. Colvin.]

[7TH JANUARY,

direction at present, and if there were any prospect of relief being given to the tax-payer it might certainly be given in many other directions in preference to a reduction of the tax on liquor.

"The second of these courses would be ineffectual; for, if we now fixed, say, 15° below proof as the limit of strength for our standard rate, we should at once have importers of still weaker spirit clamouring against the unfairness of charging on spirit of 20° or 25° under proof the same rate of duty as on spirit of 15° under proof, and the argument would be quite as reasonable as the argument used against the present rate.

"We have decided therefore to adopt the third course, and raise the rate of duty on proof spirit to five rupees the gallon, allowing a rateable reduction on strengths below proof and charging a proportionate increase on strengths above proof. We could not approve any proposal which will diminish the liquor revenue, and this alteration of the tariff, which gives to importers the equitable treatment for which they ask, is the only way we think in which this can be done without loss to the State. The measure will entail some expense and inconvenience consequent on the introduction of differential rates of import-duty; but it is believed that the expense will not be considerable and will be quite covered by increased receipts. The gain to legitimate trade from the removal of the practice at present obtaining, and the fact that differential rates were suggested by the trade itself, may be balanced against the prospect of any inconvenience which may follow on the introduction of the revised system.

"A further amendment of the tariff has also been made on this occasion which requires explanation. When the tariff was amended in 1882, perfumery, with most other articles, was struck out of the list of articles subject to duty, perfumed spirit being alone left liable to duty when imported in bottles or vessels containing more than four ounces. The immediate effect of this provision was an enormous increase in the importation of perfumed spirit—mostly called eau de Cologne—in bottles of four ounces and less. In 1884-85 some 37,000 gallons were thus imported. A very large proportion of these imports—probably the great mass of them—consists of strong raw spirit very slightly perfumed; and it has now been ascertained beyond a doubt that this stuff is commonly drunk by certain classes who, being ashamed to buy liquor in its common form, save appearances by buying and drinking this liquor (sold to them by dealers who pay for no liquor license and unfairly compete

1887.]

[*Sir A. Colvin.*]

with licensed liquor vendors) under the disguise of perfumery. This practice obtains largely in the Bombay Presidency, and though not so common, is by no means unknown in other parts of India. It is very desirable to arrest the progress of this pernicious practice, and we have decided therefore to charge all perfumed spirit, irrespective of the capacity of the vessel containing it, with a duty of six rupees the gallon. We propose to levy this rate irrespective of the strength of the spirit, because the process of testing for strength when the spirit is really intended as a perfume and is imported under the labels of well-known makers would not be practicable. When bottles of such perfume are opened before sale they lose their value. This rate of duty may be considered high, but the temptation to secret drinking in respectable classes of unwholesome spirit thus disguised, to the detriment of the regular and open liquor trade, is very strong, and a high duty is required to counteract it and prevent the loss to the revenue which is now found to occur.

“ It has been found convenient also to include in the same Bill certain other amendments on cognate though not closely connected points.

“ When section 6 of the Tariff Act was repealed by Act IX of 1885, a reference to the repealed section in section 23 of the Excise Act was overlooked. The necessary alteration in the Excise Act has therefore now been made.

“ An omission in the same section of the Excise Act is also corrected. That section as it now stands provides for the levy of duty on spirits imported by land from beyond the limits of British India, the import of which does not fall within the terms of the Tariff Act. This provision has been extended to wine also in the Bill. The need for this had not before arisen, as wine has not hitherto been manufactured in India or in any place from which wine could be imported without being liable to the duty imposed by the Tariff Act. It has now arisen in consequence of the manufacture of wine in Kashmir. The particular case of Kashmir could have been met by declaring Kashmir to be foreign territory under section 5 of the Tariff Act. But it is deemed preferable to make a general provision in the Excise Act as has been done in the Bill.

“ Lastly, the Madras Government has found that certain provisions of the Sea Customs Act do not fit in with the excise arrangements now in force in

10 REPORTS OF SELECT COMMITTEES; SELECT COMMITTEES.

[Mr. Scoble.] [7TH JANUARY,

that Presidency. These require that the transport of country spirit by sea from one part of the Presidency to another under bond should be permitted, while Chapter XIV. of the Sea Customs Act does not allow this procedure. The Act has therefore been amended so as to render legal the Madras excise arrangements, and to make it clear that the duty on spirit so transported is the excise-duty as provided in the Sea Customs Act and not the tariff rate prescribed by section 7 of the Tariff Act."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also introduced the Bill.

REPORTS OF SELECT COMMITTEES.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill for further shortening the language used in Acts of the Governor General in Council, and for other purposes.

The Hon'ble MR. SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872.

The Hon'ble MR. SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Companies Act, 1882.

SELECT COMMITTEES.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Rana Shankar Baksh Singh Bahadur be added to the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Rana Shankar Baksh Singh Bahadur be added to the Select Committee on the Bill to amend the law relating to Imprisonment for Debt.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Rana Shankar Baksh Singh Bahadur be added to the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

The Motion was put and agreed to.

1887.]

[*Mr. Peile.*]

The Hon'ble MR. SCOBLE also moved that the Hon'ble Rana Shankar Baksh Singh Bahadur be added to the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

The Motion was put and agreed to.

REPORT OF SELECT COMMITTEE.

The Hon'ble MR. PEILE presented the Report of the Select Committee on the Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body.

The Council adjourned to Friday, the 14th January, 1887.

S. HARVEY JAMES,

*Offg. Secretary to the Govt. of India,
Legislative Department.*

FORT WILLIAM; }
The 11th January, 1887. }