

*Friday,
21st December, 1888*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVII



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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 pro-
visions of the Act of Parliament 24 & 25 Vict., cap. 67.*

The Council met at Government House on Friday, the 21st December, 1888.

PRESENT :

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

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

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

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

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

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble D. M. Barbour, C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of
Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

NEW MEMBERS.

The Hon'ble SYUD AMEER HOSSEIN, the Hon'ble RÁJÁ DURGA CHARN LAHA and the Hon'ble MR. EVANS took their seats as Additional Members.

METAL TOKENS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Barbour be substituted for Mr. Westland as a member of the Select Committee on the Bill to prohibit the making or issue by private persons of pieces of metal for use as money and the making of coins in resemblance or similitude of coins of Foreign States, and that the Hon'ble Messrs. Steel and Halliday and the Mahárájá of Vizianagram be added to the Committee.

The Motion was put and agreed to.

[*Mr. Scoble; Mr. Barbour.*] [21ST DECEMBER,

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Messrs. Barbour and Steel, the Hon'ble Sir Dinshaw Manockjee Petit and the Hon'ble Rájá Durga Charn Laha be added to the Select Committee on the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

The Motion was put and agreed to.

SALT-DUTY BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Barbour be substituted for Mr. Westland as a Member of the Select Committee on the Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof, and that the Hon'ble Mr. Steel and the Hon'ble Sir Dinshaw Manockjee Petit be added to the Committee.

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters be referred to a Select Committee consisting of the Hon'ble Messrs. Hutchins, Barbour and Evans, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

The Hon'ble MR. BARBOUR moved that the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Hutchins and Evans, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Bill to consolidate and amend the law relating to Cantonments be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Hutchins and Quinton, the Mahárájá of Vizianagram, the Hon'ble Syud Ameer Hossein and the Mover.

The Motion was put and agreed to.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved that the Bill to amend the law relating to Fraudulent Marks on Merchandise be referred to a Select Committee consisting of the Hon'ble Messrs. Hutchins, Barbour and Steel, the Hon'ble Sir Dinshaw Manockjee Petit, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to consolidate, amend and add to the law relating to Railways in India be referred to a Select Committee consisting of the Hon'ble Sir Charles Elliott, the Hon'ble Messrs. Hutchins and Steel, the Hon'ble Sir Dinshaw Manockjee Petit and the Mover.

The Hon'ble RAJA DURGA CHARN LAHA said :—" Before the Railway Bill is referred to the Select Committee I wish to say a few words on the subject. I see there is no provision made in it for the retiring accommodation of third class passengers. This is an urgent necessity, and which, I am sure, cannot be entirely ignored by the railway authorities, and I may state that the public feeling outside is very strong on the point.

" The British Indian Association made a representation on the subject to the Railway Conference which lately sat at Simla, and this representation will no doubt be placed before the Committee and carefully considered. It suggests several important improvements. The greatest inconvenience experienced by third class passengers arises from an absence of some sort of retiring accommodation in the trains, and it is particularly so in the case of female passengers. In my opinion, some provision should be made in order to remove the inconvenience so keenly felt."

[Mr. Scoble.]

[21ST DECEMBER,

The Hon'ble MR. SCOBLE said:—"I may say that I invited my hon'ble friend Rájá Durga Charn Laha to become a member of the Select Committee on this Bill in order that he might represent his views on the point, but unfortunately his engagements will not permit him to serve on the Committee; but I am sure the Committee would be glad to give him an opportunity of expressing his views on this or any other points of the Bill during its discussion in Committee."

The Hon'ble RAJA DURGA CHARN LAHA said:—"I do not think I shall be able to attend during the whole course of the sittings of the Committee, but I shall be glad to attend on occasions when this or any other particular point is to be considered."

The Hon'ble MR. SCOBLE said:—"I have no doubt the Committee will be glad to give the hon'ble member an opportunity of attending their meetings whenever he desires to do so."

THE PRESIDENT said he presumed this would meet the views of the hon'ble member.

The Motion was put and agreed to.

BURMA FINANCIAL COMMISSIONER'S BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to provide for the appointment of a Financial Commissioner for Burma and for the definition of his functions be taken into consideration. He said:—

"The object of this Bill is to provide much-needed relief for that very hard-worked official, the Chief Commissioner of Burma. The administration of that great province involves a vast amount of labour, of a portion of which it is not only expedient but necessary that he should be able to divest himself. As some of his duties, especially in relation to revenue matters, are imposed upon him by legislative enactment, an Act of this Council is required to enable him to transfer those duties to another officer. The Bill accordingly provides that the Financial Commissioner shall be the Chief Revenue-authority in Burma, and shall exercise such functions as the Local Government, with the previous sanction of the Governor General in Council, may delegate to him. And, as a Financial Commissioner was appointed some months ago, the Bill further validates his proceedings since the date of his appointment."

BURMA FINANCIAL COMMISSIONER; BURMA MUNICIPAL ACT, 1884, AMENDMENT. 203

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[*Mr. Scoble.*]

“One alteration only has been made in the Bill since it was introduced by my hon'ble friend Sir Charles Aitchison on the 25th of October. It is now proposed that the Act, if passed, shall come into force at once, instead of at such time as the Local Government, with the previous sanction of the Governor General in Council, might appoint. As the Financial Commissioner is already at work, I think the Council will agree with me that this amendment may properly be accepted.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Burma Municipal Act, 1884, be taken into consideration. He said :—

“This Bill was introduced by my hon'ble friend Sir Charles Aitchison on the 25th of October. It has the approval of the Chief Commissioner of Burma, and it has been published, in conformity with the orders of this Council, in the Burma Gazette.

“Its object is simple. Under the Burma Municipal Act of 1874 two classes of taxes are allowed to be levied. The first class, under section 41, are property taxes for general purposes, payable by the person in possession, that is, the owner for the time being. The second class—water, lighting and scavenging rates imposed under sections 42, 43 and 44—are service taxes and payable by the occupier. In theory this apportionment is perfectly correct. The former are ordinary taxes on property, and as such are rightly payable by the owner; but the taxes levied to meet the cost of the water-supply, of the lighting of the streets, and of the conservancy of the town, are payments made in respect of special services from which the occupiers of houses, as distinguished from the owners, derive immediate benefit. This theoretical distinction, however, has produced practical inconvenience. It is represented that most of the houses in the business part of Rangoon are let in portions, that the tenants are constantly changing, and that in many cases the tenancies are from day to day. The occupiers of these tenements are of the poorest classes. As the Chief Commissioner points out, ‘the difficulty of justly apportioning the amount of

tax payable under these circumstances would be great, and, even if it were possible to apportion the incidence of the taxes in question, the difficulty of realising the taxes demanded by any process of attachment is practically insurmountable.' 'Moreover,' he adds, 'it is stated that, these taxes having for a long time been paid by owners, rents had been adjusted so as to enable the owner to recover from the tenant the amount of the tax.' This, I think, is more than probable.

"A recent decision of the Recorder of Rangoon has placed owners of houses in the position of being able to decline to pay these taxes, without, so far as has been ascertained, making a corresponding reduction in the rent claimed from their tenants. It is calculated that in consequence the municipality will be unable to collect Rs. 50,000 out of a total demand of about Rs. 2,50,000 on account of the taxes in question, and the municipal committee of Rangoon,—a thoroughly representative body,—at a meeting at which there were present one official member and fourteen non-official members, of whom there were six Europeans, four Burmans, two Muhammadans, one Hindu and one Chinese, unanimously recommended that the alteration in the law which is now proposed should be made.

"I think the case is fully made out as regards Rangoon, and, as the state of things which prevails there is not unlikely to be found to exist in other municipalities in Burma, it seems desirable that the alteration of the law should be of general and not particular application.

"The effect of the Bill will be to make owners and occupiers jointly and severally liable for these taxes; in this way the municipality will certainly get its dues, while at the same time provision is made that an occupier who has paid an owner's rate under section 41 may deduct it from the rent, and an owner who has paid service rates under sections 42, 43 and 44 may recover them from his tenants, in the absence of an agreement to the contrary.

"There is also a provision by which Government is in some respects exempted from the liability of an owner under the Municipal Act. This is suggested by special circumstances, into which it is unnecessary to enter, and is intended to avoid the raising, upon the side issue of liability to taxation, of difficult and inconvenient questions of title between Government and the owners of house-property in Rangoon."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

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[*Mr. Hutchins.*]

BURMA RURAL POLICE BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble and Quinton and the Mover. He said:—

“This Bill was introduced by Sir Charles Aitchison on the 25th October last, and I have succeeded to its charge. The Chief Commissioner has proposed some trifling amendments in the Bill, and I think it desirable that they should be considered by a small Select Committee.”

The Motion was put and agreed to.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to abolish the office of Coroner of Madras. He said:—“The Bill which I have now to bring before the Council is, as its title indicates, a Bill to abolish the office of Coroner of Madras. It has only a local interest, and Your Excellency and the Council will probably be satisfied if I am able to show that the authorities, having special knowledge of the circumstances of the city of Madras, are unanimously in favour of the measure.

“But, before I proceed to quote their recorded opinions, I wish to anticipate a possible objection,—the only objection which, I think, is possible,—and that is, why should we treat Madras differently from the other presidency-towns? If we pass this Bill, will it not be a first step towards the abolition of the Coroners of Calcutta and Bombay also? The simple answer to these questions is that Madras is already in this very matter treated differently from her sister cities. The Coroner of Madras only acts in a portion of the town of Madras: in the rest his duties are performed by the police. The law establishing Coroners in the three presidency-towns is an Act of 1871. Before ten years had elapsed, it was found impossible for the Coroner of Madras to exercise his functions throughout the numerous hamlets included within the city boundaries, which enclose an area of no less than twenty-seven square miles. Accordingly, another Act (X of 1881) had to be passed to

enable the Local Government to regulate the local limits within which the Coroner should act. Section 3 of that Act provided that 'the Governor of Fort St. George may, from time to time, with the previous sanction of the Governor General in Council, by notification in the Fort St. George Gazette, alter the local limits of the jurisdiction of the Coroner of Madras.' Under these powers the Local Government has greatly curtailed the Coroner's limits, and in the excluded areas inquests are already held by or under the authority of the Commissioner of Police. It would be competent for the Local Government to carry this process further and even to reduce the Coroner's jurisdiction to something merely nominal. This Bill therefore proposes to do little more than can already be accomplished by an executive order. As the Local Government, which is empowered to make such order, wish to abolish the office of Coroner, I think we may readily agree to give effect to their recommendation. We shall thereby get rid of a very inconvenient dual jurisdiction which now exists only in Madras, and we shall bring the whole of Madras, as far as inquests are concerned, under the very same conditions which prevail in the greater part of it, as well as in Allahabad, Karáchi, Lahore, Rangoon and other large towns of the Indian Empire.

"The measure does not at all involve an attack upon the office of Coroner as an institution, and I do not propose to say a word against its undoubted usefulness in the days of our forefathers, or even against its appropriateness to the present time. Some disparaging expressions may perhaps be found in some of the papers I have before me, but I shall only quote enough to show that the Local Government, the High Court, the Presidency Magistrates and the Commissioner of Police all agree that the office need not be continued, and to satisfy you that the proposal to abolish the Coronership is not a mere outcome of zeal for financial economy, although it originally emanated from the Finance Committee.

"In a letter dated 21st June, 1888, addressed to the High Court, the Local Government said:—

'In the class of cases which form the most important subjects of a Coroner's enquiry, that officer is to a great extent dependent on the aid rendered by the police. When crime, or even a suspicion of crime, is present, it is on the police and the magistracy that the public really rely. If it be undesirable to entrust the police with the preliminary enquiry, of which an inquest consists, namely, whether a death has been due to natural causes, it should be much less expedient to impose on them the

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[*Mr. Hutchins.*]

graver and more difficult investigation which often follows an inquest and on which invariably depends the detection of crime in suspicious cases. There is also much force in the Commissioner's observation that the necessity for withholding the power to hold an inquest from the police would be much greater in obscure rural parts of the country than in the presidency-town, where it is highly improbable that cases would be successfully suppressed in the face of public opinion and diffused sources of information.'

"To this I may add that the city police are far more strictly supervised and kept better in hand than is possible in the mufassal. The Government went on to say—

'The present system of territorial division between the police and the magistracy is justly characterised by the Commissioner as illogical and unsatisfactory, but it has served to show that the work done under it by the police during the last six years has been in no way inferior to that performed by the Coroner.'

"In replying to this letter the High Court did not take objection to the abolition of the office, but they were at first desirous that the work of the Coroner should devolve on the Presidency Magistrates. It was found, however, that it would not be possible to transfer the Coroner's duties to the Magistrates without causing great public inconvenience and interruption of the business of the Courts. An unburied corpse, it was observed, demands instant attention, and a Magistrate might have to leave his Court and drive some miles to hold an inquest. But in order to meet the views of the High Court the Government undertook to make certain precautionary rules. I do not think I need trouble the Council with these rules in detail. Suffice it to say that the power to make such rules as may be required is reserved to the Government by section 4 of the Bill, and that, in view of the safeguards proposed by the Government, the High Court, on the 7th August, 1888, withdrew their objections and finally consented to the abolition of the office. The remarks of the Local Government which I have just read are adopted substantially from a report made by the Commissioner of Police, Colonel Weldon, who was himself for many years Chief Presidency Magistrate, and his views on the matter are shared by the present Chief Magistrate. It will be thus seen that all the local authorities are agreed that the office of Coroner in Madras may now be abolished."

The Motion was put and agreed to.

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

[*Mr. Hutchins.*] [21ST DECEMBER, 1888.]

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th January, 1889.

S. HARVEY JAMES,

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

FORT WILLIAM;
The 27th December, 1888. }