

*Friday,
14th February, 1890*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIX

Jan.-Dec., 1890

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1890

VOLUME XXIX



Published by Authority of the Governor General.



CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1891

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 Vict., cap. 67.

The Council met at Government House on Friday, the 14th February, 1890.

PRESENT :

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

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

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

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

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

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

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

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

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

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

The Hon'ble Maung Ōn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

REVENUE RECOVERY BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to make better provision for recovering certain public demands be taken into consideration. He said :—

“The Bill has not been materially altered in Select Committee, and of the amendments made three only require explanation.

“It has been pointed out that some of the local land-revenue laws contain provisions for the recovery in one district of an arrear of land-revenue which has accrued in another district in the same Province. As the Bill is not in-

tended to interfere with these provisions but merely, to supply defects in the law, section 7, clause (a), has been amended so as to make it clear that nothing in the Act is to affect the provisions of any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue.

"The next amendment which I have to notice is also in section 7 of the Bill. The arrest of the defaulter is one of the processes by which an arrear of land-revenue can be recovered, but by section 61 of the Punjab Municipal Act, 1884, and by section 36 of the Central Provinces Municipal Act, 1889, it is provided that a person shall not be arrested in default of payment of certain taxes which are recoverable as an arrear of land-revenue. This exemption from arrest should not be withdrawn if the defaulter happens to be in a place to which the Act granting the exemption does not extend. We consider also that it is unnecessary to allow a defaulter to be arrested for the recovery in one Province of arrears of municipal taxes which have accrued in another Province. We have, therefore, added to section 7 of the Bill a clause to the effect that nothing in the Act is to be deemed to authorize the arrest of any person for the recovery of any tax payable to a municipal authority.

"The third important amendment is the addition of section 8, by which we have provided for the realization in British India of arrears of land-revenue payable in territories which, though situate beyond British India, are administered by the Governor General in Council. This section will, for instance, enable a Collector in the Berars, if the Act is applied to the Berars, to realize an arrear of land-revenue payable to him by a defaulter who is in the Central Provinces.

"The other amendments made in the Bill by the Select Committee do not call for remark, but misapprehension appears to exist in some quarters as to the meaning of section 3 of the Bill, and it will be as well to say a few words to remove this misapprehension. It has been thought that, on a certificate being received by a Collector in Bengal from a Collector in the North-Western Provinces, the former Collector can realize the arrear without following the procedure prescribed by the law in force in Bengal. I may say that I can see no grounds for apprehending that any such construction can be placed on the section. It says distinctly that the Collector shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district. Now, a Collector cannot recover an arrear of land-revenue which has accrued in his own district except by means of the provisions of the land-revenue law in force in that district. Consequently,

1890.] [*Mr. Crosthwaite ; Rájá Durga Charn Laha ; Rao Bahádúr Krishnaji Lakshman Nulkar.*]

the Bengal Collector, on receiving a certificate under section 3 from a Collector in the North-West, will have, in order to recover the arrear, to follow the procedure prescribed by the Bengal Act, VII of 1880. A notice will have to be issued to the defaulter, who will be able, as provided in that Act, to file a petition objecting to the demand. The certificate under section 3 of the Bill merely gives the Collector receiving it power to recover the amount stated therein. If the Collector has to take measures to enforce the payment of the amount, he must proceed in accordance with the law in force in his district."

The Hon'ble RÁJÁ DURGA CHARN LAHA said :—"From the explanations afforded by the Hon'ble Member in charge of the Bill it is quite clear that the chief object of the Bill is the transfer of certificates from one Province to another so as to provide for the speedy collection of arrears of revenue. There was, however, some little misapprehension in certain quarters as to the effect of the Bill. But sub-section (3) of section 3, and section 7, clause (a), go to show that it is not at all intended to interfere with the practice and procedure which obtain in the Province where the certificate is transferred, and that such certificate will be dealt with in accordance with the law in force in that Province. The Collector on receipt of the transferred certificate has nothing else to do but to proceed in the same way as if the claim had accrued in his own district. Such being the case, I have no objection to offer to the passing of the Bill."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said :—"Before this Motion is put to the vote I wish to mention that among the suggestions which the Select Committee had before them was one to the effect that section 4, sub-section (2), should be so amended as to enable the defaulter to sue for refund the Collector making the demand for arrears in the Court of the place where the defaulter may have gone or where his property may be found. It appeared to us that such an amendment was calculated rather to defeat the object of this legislation by facilitating a contest against the demand in a Court not ordinarily competent to easily arrive at a just conclusion owing to differences in the fiscal laws of the two places. As the Bill now stands, the Collectors making the demand will be expected to satisfy themselves of the justice of the claim before signing the certificate under section 3, sub-section (2), and the Collector of the other district will be expected to give due weight to any just objection against the demand before actually enforcing the same, as he would do 'if it were an arrear of land-revenue which had accrued in his own district' under sub-section (3). For these reasons the amendment in question could not be adopted."

The Motion was put and agreed to.

24 *REVENUE RECOVERY; RAILWAYS; AMENDMENT OF ACTS VI
AND VII OF 1884.*

[*Mr. Crosthwaite; Mr. Scoble; Sir David Barbour.*] [14TH FEBRUARY,

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

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India. He said :—

“As this is a measure of considerable importance, I propose, with Your Lordship's permission, not to take the discussion of the Bill until this day month, the 14th of March.”

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend Acts VI and VII of 1884 (*Inland Steam-vessels and Indian Steamships*). He said :—

“In introducing this Bill I explained that its object was to effect two amendments in the existing law. It authorised a Local Government to delegate to a competent person the power of granting a certificate of survey, whether under the Inland Steam-vessels Act or the Indian Steamships Act; and it also provided a penalty for the offence of carrying in an inland steam-vessel passengers in excess of the number specified in the certificate of survey as that which the vessel was fit to carry.

“These provisions have been retained by the Select Committee, which also thought it expedient to make a few other amendments of the law of a simple nature, and to which there is practically no opposition.

“Provision has been made under the Inland Steam-vessels Act for the grant of a certificate of service to persons who have served as masters, engineers or engine-drivers of steam-vessels before 1st April, 1890.

“This certificate of service will have the same effect as a certificate of competency granted under the Act after examination, and the object of the provision is to protect the interests of persons who have proved their competency by actual service in the past without compelling them now to undergo an examination.

1890.] [Sir David Barbour; Mr. Scoble.]

"Authority is also given to Local Governments to make rules for the protection of passengers in inland steam-vessels, and to require a sufficient supply of drinking-water to be provided, and the prices of passenger-tickets to be printed or otherwise denoted on such tickets. In some cases a supply of fresh water need not be carried, as it could always be obtained alongside the vessels, and for certain voyages the prices of tickets vary in such manner as to prevent them from being denoted on the tickets; such questions can therefore be more correctly dealt with under rules to be made by the Local Governments concerned than by positive provisions in an Act of the Legislature.

"Doubts have been raised whether a fee can be levied for a second survey under the Act, when the master or owner of the vessel or ship is dissatisfied with the results of the first survey. The Select Committee has inserted such provisions in the Bill as will remove all doubt regarding the legality of levying the fee for a second survey, whether the second survey be made under the Inland Steam-vessels Act or the Indian Steamships Act."

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMEND-
MENT BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*) be taken into consideration. He said:—

"I so fully stated the objects of this Bill when I presented the Report of the Select Committee a fortnight ago that I need not now detain the Council by any lengthened exposition. The changes in the law proposed by the Bill are mainly administrative. Some will come into operation on the occurrence of vacancies in the offices of Administrator General and Official Trustee of Bengal: others will take effect at once. It is proposed, as the Council will remember, eventually to divide the Presidency of Bengal, which now practically includes the whole of British India except the Presidencies of Madras and Bombay, into Provinces having Calcutta, Allahabad, Lahore and Rangoon for their respective centres, and to appoint for each such Province an officer in whom the two offices of Administrator General and Official Trustee will, or may, be combined. It will rest with the Government of India to determine at the proper time the exact manner in which this re-distribution shall be carried out, and its object will be, in any new arrangement, to ensure that the services of

[*Mr. Scoble; Mr. Hutchins.*] [14TH FEBRUARY, 1890.]

these officers shall be made available in the manner likely to be most convenient to the public, without any diminution of the security which attaches to the offices as at present constituted.

"The immediate changes proposed by the Bill are to place Upper Burma under the charge of the Administrator General of Bengal, who already includes Lower Burma in his domain; and to place British Baluchistan in the charge of the Administrator General of Bombay, who already exercises like functions in the adjoining Province of Sind. The Bill further proposes to give a High Court power to fix a higher remuneration for an Official Trustee in regard to existing trusts than the rate of commission fixed by Act XVII of 1864, which is found to be so low as to prevent the acceptance of such trusts in many cases; and to allow a District Judge to employ the property of a deceased person which has come into his hands in paying certain necessary expenses. Finally, the Bill affords a long-needed relief to Indian executors and administrators by enabling them to remit any balance in their hands to the legal representative of a deceased's estate in the country of his domicile, for distribution among the persons entitled thereto outside British India.

"I think the Council will agree with me that these are all objects of practical utility, which only need to be stated to commend themselves for adoption."

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.

FOREST BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887. He said:—

"When I introduced this Bill I explained at some length the nature and objects of the several provisions it contains. The Bill has not been materially altered in Committee, and I propose to reserve such further observations and explanations as may be required until I move that the Bill be taken into consideration by the Council."

AMENDMENT OF CENTRAL PROVINCES CIVIL COURTS ACT, 27
1885; AMENDMENT OF INDIAN FACTORIES ACT, 1881;
AMENDMENT OF ACTS I OF 1859, VII OF 1880 AND V OF
1883.

[14TH FEBRUARY, 1890.] [Mr. Crosthwaite; Mr. Scoble; Sir David Barbour.]

CENTRAL PROVINCES CIVIL COURTS ACT, 1885, AMENDMENT
BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to amend the Central Provinces Civil Courts Act, 1885. He said :—

“This measure is, as I explained on a former occasion, intended to facilitate the disposal of the business of the Civil Courts in the Central Provinces by providing that the rule contained in sections 16 and 32 of the Provincial Small Cause Courts Act, 1887, as to the exclusive jurisdiction of Small Cause Courts, shall not prevent the distribution of business between the ordinary Civil Courts and Courts exercising Small Cause Court powers.

“No amendments have been made in the Bill by the Select Committee.”

INDIAN FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Bill to amend the Indian Factories Act, 1881, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Rájá Durga Charn Laha, the Hon'ble Sir Alexander Wilson, the Hon'ble Rao Bahádúr Krishnaji Lakshman Nulkar and the Mover.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*). He said :—

“The changes in the law which are proposed do not involve any question of principle, and are in fact merely such improvements in minor matters as experience of the working of the Acts to which I have referred shows to be necessary or expedient. A very brief explanation of the changes which it is proposed to make will, therefore, be sufficient.

“Under the law as it now stands, crews serving in a foreign-going ship on a running agreement must in some cases be discharged at a port in India other than that at which they have agreed to be discharged, although the

[*Sir David Barbour.*]

[14TH FEBRUARY,

vessel is proceeding to the latter port and although such discharge is opposed to the wishes both of the master and the crew. It is proposed to make it lawful, with the sanction of the shipping-master, to renew the agreement for the voyage to the port originally contemplated as the port of discharge.

"If the shipping-master should require the master of the vessel to renew the agreement for the voyage to the port of discharge and the master of the vessel refuses to do so, the expense of subsistence of the crew and the cost of their passage to the port of discharge are made a charge against the ship.

"Provision is also made in the present Bill to indemnify the State against expenditure incurred in relieving lascars left abroad by foreign vessels and in returning them to India. This provision is not from a financial point of view of any great importance, but if an agreement has been made for the return of a lascar to India and the master of a vessel discharges such lascar at a foreign port, even with the lascar's consent, it is only reasonable that any cost which is thereby imposed on the State should be recoverable under the law.

"It is also proposed that all wreck found outside the local limits of the authority of a Receiver of Wrecks but brought within such limits shall be delivered to the Receiver. This is an amendment of the Indian Merchant Shipping Act, 1880, which is obviously necessary.

"The definition of the word 'coast' in the Indian Merchant Shipping Act, 1883, is also amended so as to make it include the coasts of creeks and tidal rivers, and provision is made for giving to a Local Government power to convene a Court of Investigation for inquiry into a casualty which has occurred within the jurisdiction of, or been reported to, another Local Government. Several failures of justice have occurred owing to the want of this provision, and it is convenient that it should be possible to hold the investigation at a place where the witnesses and parties to it may happen to be.

"It has been found to be expedient that the Government of Bombay should have power to delegate to the Resident at Aden authority to order an investigation into a shipping casualty in accordance with sections 7 and 8 of the Act of 1883, and the necessary provision is made in the present Bill.

"Authority is also given to Courts of Investigation under the Merchant Shipping Act of 1883 to cancel or suspend local certificates of competency or service. These Courts have authority to cancel or suspend Board of Trade and

1890.] [Sir David Barbour ; Mr. Hutchins.]

Colonial certificates, and they should possess the same power in regard to local certificates."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR 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, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Rájá Durga Charn Laha be added to the Select Committee on the Bill for the Prevention of Cruelty to Animals.

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st February, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM ;
The 18th February, 1890.