

*Wednesday,
25th July, 1888*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
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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
provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 25th July,
1888.

P R E S E N T :

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 Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

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. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

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

The Hon'ble J. Westland, C.S.I.

The Hon'ble G. R. Elsmie.

INDIAN TELEGRAPH ACT, 1885, AMENDMENT BILL.

The Hon'ble SIR CHARLES ELLIOTT moved for leave to introduce a
Bill to make an addition to the Indian Telegraph Act, 1885. He said :—

“ The Statement of Objects and Reasons explains that the object of this
Bill is to remedy an oversight.

“ The nature of that oversight is this. The officials of the Telegraph De-
partment have to enter occasionally on private property for the purpose of setting
up telegraph posts, and may have to do damage to private property, chiefly in the
way of cutting down trees, in order to clear the line for their telegraph wires : and
it was necessary in the Telegraph Act to provide that certain officials should
have power to authorise this entrance on private property, and to assess the
damages payable to the owners for the injury done.

“ In the first draft of the Telegraph Act the words used were that these
officers should be such as the Local Governments should appoint ; but
eventually, with a view to greater precision and definiteness, it was decided
that it would be better to specify those officers by their titles, and in the
Act as finally published it was provided that the powers in the first class
of cases should be exercised by the Magistrate of the district, and in the second

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class of cases by the District Judge. It was, however, overlooked at the time that there were certain areas, namely, the three presidency-towns, in which no District Magistrate existed, and that in these and also in Rangoon no District Judge exists. This is the oversight which it is now necessary to remedy, and it is proposed to do this by providing that in the three presidency-towns the Commissioner of Police should exercise the powers of a District Magistrate, and that the Chief Judge of the Small Cause Court should exercise those of a District Judge. In Rangoon the latter powers are to be exercised by the Judge of the Small Cause Court. These proposals have been circulated among the Local Governments and Local Administrations concerned, and they have all agreed that these are the proper officers to exercise such powers."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES ELLIOTT also introduced the Bill.

The Hon'ble SIR CHARLES ELLIOTT 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.

SALT-DUTY BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a 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. He said :—

"It is important to explain, in the first place, that this project of law has no connection with any present intention of altering the rate of the salt-duty. It is brought forward to correct certain inequalities in the existing law which made themselves evident at the time of the change of the salt-duty in January last. The intention to remedy these inequalities by legislation was formed in January last, but it was considered inadvisable to take up the subject until trade had resumed its natural course and the question could be discussed both by the Government and by the salt-traders as one that had no reference to existing facts or existing intentions.

"It is to be noted that the moment an increase in salt-duty is announced the immediate effect is to send up prices by the full amount of the duty; because it is obvious that any holder of salt on which the lower rate of duty

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has been paid, if he wants to realise the higher price, has only to hold back his stock until the more highly taxed salt comes into consumption. The consumer therefore has immediately to pay the new rate of duty. Now, by the operation of an existing provision of law, namely, the proviso to section 37 of the Sea Customs Act of 1878, we are obliged to continue to levy the smaller rate of duty only upon all salt that is at sea at the time the enhancement of duty is announced. The consequence is that those who happen to be the holders of that salt are by this artificial arrangement of the law—and not by any natural operation arising out of the course of trade—placed in such a position that they can realise the enhancement of duty from the consumer without having in their turn to pay the enhancement into the treasury. I believe I am correct in saying that mercantile opinion, or at all events some very adequate exponents of mercantile opinion, consider that this proviso to section 37 works unequally even in its effect upon ordinary customs-duties, and that it is in no way necessary to make the concession to holders of goods at sea that they should be able to import them at a favoured rate of duty. But the difference in the case of other goods is a very small one, and at most the treasury only temporarily gives up a small amount of the leviable duty to prevent loss to importers who may have made contracts for sale on the basis of the old duty. But the case of salt is quite different; in the first place, the amount of money at stake is enormously larger, and the proportion of the possible enhancement or decrease of duty to the value of the article ex-duty is very much greater; and, in the second place, the custom of trade—at least in Calcutta, which is the principal port of importation—is such that the holders and buyers of salt at sea, when they sell or buy to arrive, are unaffected by any change which may be made in the rate of the duty before their salt arrives, and thus do not incur the loss from which it was the object of the proviso to save them.

“The grounds therefore on which this proviso is based, even if they be admitted to be just in respect of other articles, have no application to the case of salt; and there is no reason whatever why we should not, in the case of enhancement, claim for the treasury the full increase of the duty which the consumer has to pay. In fact, I may say in stronger terms that, the special conditions imposed by us upon the salt-trade being such that from the moment of the announcement of an enhancement of duty the consumer has to pay at the fully enhanced rate, we have no business to maintain an entirely exceptional provision of law by which the enhanced duty which the consumer pays goes into the pockets of some private individuals instead of into the coffers of the State.

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"The first and main object of the proposed legislation is therefore to apply to the levy of duty upon sea-borne salt a more equitable system than that by which we found we were bound when we enhanced the duty in January last.

"When we alter the rate of duty on salt we can of course do nothing in respect of existing duty-paid stocks. Those who hold such stocks reap the full amount of profit when we enhance the duty; but against this they run the risk of loss when we diminish the rate. These two chances are the ordinary chances of trade, and they must be set against each other; in fact, they tend, on the whole, to the gain of the trader; for, whereas he necessarily reaps the full benefit when enhancement takes place, he does not sustain the full loss in case of diminution of duty, because the prices, as a matter of fact, take a little time to find their new level.

"The general rule to be aimed at in the case of salt, as in the case of other taxed articles of consumption, is that the duty should be taken at the rate in force at the time when the trader takes the salt into his selling stock. He is not obliged to take the salt into his selling stock till he wants it for sale, and therefore he is not obliged to pay duty until the prices are such that he can realise it from the consumer. We intend by the present Bill to apply this rule generally to sea-borne salt in the same way as it is already applied to salt manufactured under license from Government.

"This same rule we at present apply, and by the present Bill continue to apply, to salt manufactured and sold by the Government in the cases in which the purchase is made at the place of manufacture.

"But it is found necessary to make a special legislative provision with reference to the system of levy of duty on salt manufactured and sold by the Government. In order to give every facility to the salt-trade a system of through-booking, as it is called, has been established, by which salt-traders, paying price and duty into any treasury of the Government, can have salt forwarded to them by the officers of Government who are in charge of the manufacture. It is an obvious necessity of this system that the duty is received by the Government at least a day or two before the salt can be delivered. Now, an announcement of change in the rate of duty, and especially of an enhancement, must, notwithstanding what is said by our critics in the public Press, be made suddenly and without any notice. This is the provision of the legislature, and it is obvious that the result of any forewarning would be that during the period of notice the salt-merchants would buy from Government all the salt they

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could lay hands on ; and, as prices must at once rise (as I have already explained), the consumer would have to pay the enhanced duty into the pockets of the merchants and not into the treasury. It is surprising that our critics, when they claim that any project of enhancement of salt-duty should be announced and discussed like ordinary projects of law, should fail to realise such an elementary piece of political economy.

"Now, this sudden announcement being unavoidable, it necessarily catches some of the traders between the time they have paid in their money to Government and the time they can obtain delivery of the salt.

"In 1882, when the duty was lowered, these traders claimed that, not having obtained the salt before the new and lower rate was in force, they should obtain from the Government a refund of the difference between the rate in force at the time of payment and that in force when they obtained the salt. But in 1888, when the duty was enhanced, they claimed that, having paid the duty when the rate was low, they were entitled to obtain their salt as agreed upon and without any further payment. We were obliged to admit both these contradictory claims, the former of grace and from a feeling of justice, and the second because we believe it was technically a sound one. These claims, and our admission of them, were caused by the fact that there was no specific provision of law suited to the circumstances ; and therefore, when merchants paid their duty into the treasury, there was no specific understanding as to the conditions under which the payment was made.

"The proposed Bill remedies this defect, and establishes an understanding in this matter on what we think is an equitable basis.

"On the one hand, in case of an enhancement, the trader may reasonably consider that when he has paid his duty the contract with Government is complete, and he is entitled to receive his salt without more ado ; and that it is not through his fault, but is the result of delay in arrangements established by the Government, if he does not receive delivery of salt before the enhanced duty comes into operation.

"On the other hand, if we say that the duty is to be levied at the rate in force at the time when the money is paid into the treasury, we obviously, in the case of a diminution of the tax, place the payer at a disadvantage compared with those who have paid their money at the place of manufacture. He will feel that, if he had only arranged to pay the duty at the place of manufacture at the time he wanted the salt, instead of paying it at a distant treasury, two or three days before he wanted it, he would have obtained the benefit of the diminution.

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" Now, it is to our advantage to give every facility to the salt-trade, and therefore it is not to our advantage to impose any comparative disability upon those who desire to use the system of through-booking. We therefore propose to make for this case the special provision that, if a trader pays his money into a treasury, and if within three days thereof, and before he gets his salt, the rate of duty is diminished, he will get the benefit of the diminution. With ordinary diligence on his own part he can always get his salt delivered to him at the works within three days, and therefore, if he chooses (as some salt-traders occasionally do) to pay his money into the treasury more than three days before he wants his salt, and then lies by, we give him no advantage but put him in the same position as the merchants who have added to their selling stock before the time of the diminution of duty. So also we give him no advantage in respect of the salt he actually receives before the diminution comes into effect. But, so far as he has paid the duty within three days of the diminution and not received his salt, we consider he may fairly claim that the fact of his paying the undiminished rate instead of the diminished arises from his having taken advantage of the terms offered by Government under the through-booking system, and that he should be saved from any loss thereby.

" When the terms, based upon these considerations, are thus definitely laid down in the law, the trader will be able to regulate his business in accordance with them, knowing exactly what risks of loss by diminution of duty are before him, and what chance of gain by its enhancement.

" As I said when I began, the Bill must be regarded as one of perfectly general application. It is introduced for the purpose of defining more accurately the conditions of the trade with reference to the duty, and not with any intention of paving the way for any measures at present in contemplation. I am obliged, in explaining it, to make continual reference to enhancement and diminution of the salt-duty; but my references, I repeat it, are purely theoretical, and I hope in the one case, and fear in the other, that it may be a long time before the present Bill has any practical operation."

The Motion was put and agreed to.

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

The Hon'ble MR. WESTLAND 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.

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CONTAGIOUS DISEASES ACTS REPEAL BILL.

The Hon'ble SIR CHARLES AITCHISON moved for leave to introduce a Bill to repeal certain enactments relating to Contagious Diseases. He said :—

“ My Lord,—In asking leave to introduce a Bill to repeal the Indian Contagious Diseases Act of 1868 I may explain that the object is to remove from the Statute-book an Act the operation of which has been already withdrawn from all places in British India and is not likely to be again brought into force. Fortunately it is unnecessary in this connection that I should advert to the controversies which have raged round the question of Contagious Diseases Acts both here and in England ; and a brief reference to the circumstances which have led to the suspension of the operation of Act XIV of 1868 will best illustrate the position which the Government of India has taken on this question so far as it affects the civil population of the country.

“ Act XIV of 1868 has always had a very restricted application. Its primary object, as explained by the Hon'ble Sir Henry Maine when he moved for leave to introduce the Bill, was ‘ to prevent the spread of venereal disease in the maritime towns of British India, and if possible to extirpate it.’ The measure was recommended by all the Local Governments which had such towns within their territories, and it was considered at the time to have become a matter of urgency through the statistics which had reached the Government concerning the condition of the seamen in those towns. In its final form, however, the Act was not limited to seaports but was made applicable to any place in India which Local Governments, with the sanction of the Governor General in Council, should specify. This change was effected mainly in consequence of the remarks of the Hon'ble Sir John Strachey, who drew attention to the results that had attended efforts to check venereal disease in the great city of Lucknow. Practically, however, the Act has been limited to the three presidency-towns, and to seaports in Burma. It has never been in force in more than nine towns in the whole of British India, nor at any time, so far as I can ascertain, in any town that is not a seaport, except Lucknow and one other town. Last year it was in operation only in Madras, Bombay and two other places ; and its operation has now been entirely suspended under orders of the Government of India issued on 19th May last.

“ As regards the effect of the Act opinions are somewhat divided not only among the public but among medical and statistical experts. It is admitted to have been beneficial in checking disease among the sailors in Bombay. Elsewhere

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the success which has attended its application in the large towns in the whole or parts of which it has been in force is doubtful. It certainly has not had the anticipated effect of extirpating the disease, and if, as Sir Henry Maine observed, the 'sole justification for this sort of legislation was that it should be thorough,' there are few I think who could successfully maintain that the Act has justified itself. In 1880 it was found in Calcutta to be unworkable except under rules and practices which the High Court condemned. Proposals to make the law more stringent and to extend it to the suburbs were not accepted. As an alternative the application of the Act was restricted to the parts of the town frequented by soldiers and sailors, but with no better results. A committee consisting of four medical experts, with the Hon'ble B. Colvin as president, was meantime appointed to investigate the whole subject; and, as the result of their inquiries, together with a call made by the Secretary of State for an opinion on the general question of the working of the Contagious Diseases Act, the Government of India, in January, 1882, recommended the repeal of the Act on the ground that it did not, and with any practicable amendment could not, effect appreciable good, was unpopular, liable to abuse and costly. At that time, however, a Select Committee of the House of Commons had reported against the repeal of the English Contagious Diseases Acts or any modification of their stringency. It was therefore considered to be better to wait and not repeal the Indian Act, but the Government of India was given discretion to withdraw its operation. Accordingly the Act was suspended in Calcutta on 15th March, 1883, since which date it has not been in force there. A representation made by the Calcutta Health Society in 1887 in favour of the re-introduction of the Act met with considerable opposition, and the Government of Bengal, in submitting its views on the proposal, was of opinion that it would not suffice to put the present law in force, that it would have to be greatly strengthened and its area extended so as to include the distant suburbs, and that the Government of India would be well advised to decline to reconsider the decision arrived at in 1883.

"I need not trace at any length the history of the question as it affects Madras and Bombay. These Governments were of opinion in 1883 that it was undesirable to suspend the Act in the presidency-towns. Consequently the Act was left to its operation in the towns of Madras and Bombay. In 1887, however, the question was re-opened by the Secretary of State, to whom certain memorials had been submitted, and the result of further inquiry and consideration was the issue, as I have stated, of the orders of 19th May, 1888, suspending the operation of the Act in the towns to which at that time its operation was limited.

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"The object of the Bill which I now ask leave of the Council to introduce is to remove from the Statute-book Act XIV of 1868 and any Acts subsidiary to and dependent on it; to do, in short, what the Government of India if permitted would have done six years ago. The question as it affects cantonments is under separate consideration."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON 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.

The Council adjourned to Wednesday, the 8th August, 1888.

S. HARVEY JAMES,

SIMLA;	}	<i>Secretary to the Government of India,</i> <i>Legislative Department.</i>
<i>The 27th July, 1888.</i>		