

*Thursday,
31st July, 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 Viceregal Lodge, Simla, on Thursday, the 31st July,
1890.

P R E S E N T :

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

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

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

The Hon'ble Sir A. R. Scoble, G.C., K.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 R. J. Crosthwaite, C.S.I.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

PETROLEUM ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Schedule to the Petroleum Act, 1886, be taken into consideration. He said :—

“ Although Act XII of 1886 was passed in March, 1886, it has not yet come into force. Under its first section it has to be brought into force by a notification in the Gazette of India. Elaborate rules to regulate the importation, storage, possession and transport of petroleum have been framed under sections 8 and 11 by the different Local Governments, the necessary testing apparatus have been provided, and I have been most anxious to introduce the Act, and have only refrained from doing so on account of the ambiguity in the schedule, of which I gave some explanation at the last meeting of the Council. This objection will be removed if the Bill now on the table is allowed to become law.

“ Before they consent to pass the Bill, Hon'ble Members will doubtless like to know what are the precise amendments which have been made in the schedule as passed in 1886. A copy of the Bill is before each Member and perhaps

[*Mr. Hutchins; Mr. Crosthwaite.*]

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he will kindly refer to it. The alterations are as follows. In line 3 of the third clause the word 'two' has been substituted for 'the'. At line 8 the following clause has been interpolated, *viz.*, 'and if in no instance the flash has taken place within 8° of the temperature at which the testing is commenced'. Again, at line 16 of the same clause and at line 9 of the fourth clause a like provision has been inserted. On the other hand, words to the like effect, but which from their position had given rise to ambiguity, have been omitted from the beginning of the fourth clause. The proviso at the end of the fourth clause is practically the only new matter, and I explained last week why it was necessary.

"As the schedule is purely technical and the amendments are but slight and have been approved by the best scientific authorities, I ask that the Bill may now be taken into consideration and passed, so as to enable the Government to give early effect to an enactment which has remained idle on the statute-book for upwards of four years."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE moved that the Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins and the Mover, with instructions to report after two months.

The Motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Indian Emigration Act, 1883. He said :—

"The main object of this Bill is to do away with the necessity of an entirely fresh survey of a steamer simply because it proposes to carry emigrants. Under our Emigration Act of 1883 no vessel can embark emigrants without a license ;

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[*Mr. Hutchins.*]

the master is required to apply for a license through the Protector of Emigrants ; and section 56 goes on to provide that the Protector 'shall cause the vessel to be surveyed by a competent person at the cost of the master, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage.' Hon'ble Members will observe that this direction is absolute—the Protector shall cause a survey to be made. The steamer may be a new one and of the highest class ; it may have been fully surveyed, and have obtained a certificate of seaworthiness a month or even a day before ; but, unless such survey was held under the orders of the Protector, it is ineffectual and the certificate goes for nothing, so far as the embarkation of emigrants is concerned.

" Now in 1883 and for a few years afterwards I do not suppose that many steam-vessels were offered for the Indian emigration service, and no inconvenience was experienced. But of late, I am glad to say, the use of steamers for this purpose has become quite common, very much to the comfort and advantage of natives of India proceeding to our colonies. This Council will certainly be anxious to encourage the best class of steamers to offer themselves for the carriage of emigrants, and therefore to remove any unnecessary restrictions tending to make such service vexatious or unremunerative. I understand that to open up a ship and her machinery for a complete survey involves a loss of at least a week at Calcutta ; and at Madras, our other great emigration port, it is reported to be quite impossible fully to carry out the letter of the law. Owing to the want of docking accommodation, a complete survey of the hull of a vessel is impracticable, and even the internal examination cannot be properly conducted, since steamers which now take emigrants from Madras invariably arrive there with cargo on board. In practice, therefore, at Madras the law, as it now stands, does not appear to be fully obeyed, while at Calcutta the requirement of an altogether fresh survey involves a great deal of delay and needless expense, and has deterred, and is likely to deter, the best and largest steamers from tendering for emigration service.

" Of course, I am not proposing to send emigrants to sea without having taken all reasonable precautions that the vessel in which they are to be conveyed is fit for the voyage. I merely submit that where a survey certificate of seaworthiness has been granted by a competent authority, and is still in force for other voyages, it is needless to insist on an entirely fresh survey simply because the steamer is to carry emigrants. In a matter of this kind we may well follow the

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lead of British legislation, and the Merchant Shipping Act of 1876 contains just such a provision against double survey in the case of emigrant steamships as I ask to be allowed to introduce here. Section 18 of that Statute runs as follows :—

‘ In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of the Merchant Shipping Act, 1854, and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery..... but.....such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with; and so long as a steamship is an emigrant ship, that is, a passenger ship within the meaning of the Passengers Acts....., and the provisions contained in the said..... Acts as to the survey of her hull, machinery and equipments have been complied with, she shall not be subject to the provisions of the Merchant Shipping Act, 1854, with respect to the survey of and certificate for passenger steamers.....’

“ The employment of steamers for the conveyance of passengers to or from British Indian ports is regulated by our Act VII of 1884. Section 4 forbids any steamship to carry more than twelve passengers unless she holds a subsisting certificate of survey granted in accordance with the provisions of that Act; but section 5 makes several exemptions from this prohibition, and among them the following :—

- ‘ (a) any steamship having a certificate of survey granted by the Board of Trade or any British Colonial Government, unless it appears from the certificate that it is inapplicable to the (particular) voyage.....or service....., or unless there is reason to believe that the steamship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient;’

“ In other words, a certificate of the Board of Trade or of a British Colonial Government is treated *primâ facie* as equivalent to one granted after a survey under our own Act. A certificate granted under the Act continues in force for one year, unless some shorter period is stated in the certificate itself. I confidently submit that any of these certificates, whether obtained from the Board of Trade or from a British Colonial Government, or from the officers appointed in that behalf under our own Act, may safely be accepted, so long as they remain in force, as *primâ facie* proof of continuing seaworthiness. So far, then, as the hull and machinery are concerned, it is unnecessary that the surveyor appointed under the Emigration Act to examine a vessel holding such a certificate and tendered for the conveyance of emigrants should do more than satisfy himself by a general inspection, by examining the ship’s log, and by such other enquiries as he

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is able to make, that the hull and machinery have not sustained any substantial injury or otherwise become inefficient since the date of the certificate. Of course, he will not be relieved in any way from the duty of making a close personal examination of the space set apart for the emigrants, or of the ship's ventilation and equipments, such as the condensing apparatus, boats, fire-gear and tackle.

"There is one other respect in which I ask leave to propose an amendment of the law relating to emigration. Hon'ble Members will remember that emigration from British India is conducted upon two very different systems. There is, first, the very elaborate system laid down in the Act of 1883, which is applicable to the colonial possessions specified in the schedule to that Act; and then there is the system of free emigration to the Straits Settlements, regulated only by some very simple rules outside the Act, which by section 102 declared that a person who satisfies the definition of emigrating in all other respects shall not be deemed to emigrate if his destination is the Straits Settlements. Subsequently, by Act XXI of 1884, this exemption was extended so as to include 'any protected Native State adjoining the Straits Settlements' which the Governor General in Council may notify in the Gazette of India. A further field in the same direction has now been opened up to emigration from Southern India. This is British North Borneo, and it is proposed to carry on the emigration to that territory, as to the Native States just mentioned, through the agency of the Government of the Straits Settlements. My Bill will therefore include a further extension of the exemption contained in section 102 of the Act of 1883, as amended by Act XXI of 1884, so as to cover any colony to which emigrants, or persons who would be emigrants if they were going elsewhere out of India, are conveyed through the agency of the Government of the Straits Settlements."

The Motion was put and agreed to.

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

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 local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

[*Sir David Barbour.*]

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INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Salt Act, 1882. He said :—

"In 1882 the great inland customs line of India was abolished and the duties levied on sugar under the Inland Customs Act of 1875 were remitted. The duty on salt ceased to be collected by means of a customs line, and was levied at the places where the salt was produced or manufactured.

"The provisions of the Inland Customs Act of 1875 consequently became to a great extent obsolete, and that Act was repealed, and only so much of it as appeared to be required was re-enacted in the Indian Salt Act of 1882, which consolidated a number of enactments relating to salt.

"Although the inland customs line was abolished and the levy of duty on sugar and salt crossing that line consequently ceased, a preventive line, of minor importance was still kept up. This was the Indus preventive line, which lies along the upper portion of the river Indus in British territory, and which is intended to prevent the passage of the lightly taxed Kohat salt into the cis-Indus districts.

"It is impossible to say now whether the existence of this preventive line was overlooked in 1882, or whether it was hoped that it would be found possible to abolish it. However this may be, it has not been found possible to abolish the Indus line, and it has continued to exist up to the present time, although certain powers for the regulation of traffic and certain rights of search which are essential for the effective maintenance of the line had been taken away by the repeal of the Inland Customs Act of 1875.

"These powers had been exercised for many years before 1882, and they have been exercised since that year, although the legal basis on which they rested had been withdrawn. So long as these powers were exercised with the consent of the persons affected, or at any rate without any opposition on their part, no practical inconvenience arose. But it has now been brought to light by a decision in a Criminal Court that there is no longer a legal basis for the exercise of the powers in question, and that if the persons affected choose to object to their exercise they can no longer be put in force.

"It is therefore proposed to restore, so far as regards the Indus preventive line, such of the powers formerly given by the Inland Customs Act of 1875 as are necessary for the effective maintenance of the line.

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[*Sir David Barbour.*]

"It has been found possible to make the provisions of the present Bill somewhat less stringent than those of the Act of 1875; and as it is hoped that we may be able to shorten the preventive line, and effect a useful reform, by abandoning the lower portion of the line and substituting a preventive line running westward from the Indus to the frontier, the necessary provision for this purpose has been made in the Bill."

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 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 Thursday, the 28th August, 1890.

S. HARVEY JAMES,

SIMLA;
The 1st August, 1890.

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Secretary to the Government of India,
Legislative Department.