

*Thursday,
20th October, 1892*

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

1892

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1893

*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 20th October,
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PRESENT:

The Hon'ble Sir P. P. Hutchins, K.C.S.I., *presiding*.

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

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

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

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble G. R. Elsmie.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Report of the Select Committee on the Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management be taken into consideration. He said:—

“ I shall not trouble the Council with many general remarks on the policy of this Bill. It is enough to remind them of the fundamental principle upon which it rests, namely, that it is only for the benefit and protection of private proprietors that the State undertakes the management of their estates, and that consequently all expenditure incidental to such management, including a fair share of the pay of supervising officers, ought be provided for out of the income of the estates, and not out of funds levied from the general taxpayer. The Bill has been favourably received in all the provinces, and, I believe, by the Press also so far as it has been noticed at all. I may therefore pass on at once to a brief statement of its principal details, noticing in particular those in which the Select Committee has made any material alteration.

“ Of the definitions contained in the second section the most important is that which indicates the income upon which the Government rate or commission

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is to be calculated. We have made it clear that borrowed money is not to be taken as income. The sale-proceeds of immoveable property have all along been excluded; we have now exempted also the proceeds of such moveable property as would itself be properly classed as capital. I will illustrate what is meant by an example. Jewels could not be properly classed as income, but are capital. Accordingly, if the Court of Wards ever finds it expedient to sell any of its wards' jewels, the money realized will not be regarded as income and will not be liable to the rate. On the other hand, there are obviously many kinds of moveable property which could not be classed as capital. Such, for instance, are the crops raised on the proprietor's home-farm, the produce of his cattle, and in horse-breeding districts his young stock. Where these are sold the proceeds will be regarded as income. The Bengal Government wished to assess the rate on the 'current demand,' or rents payable by the tenants of the estate, but we preferred to adhere to the draft Bill in this respect, as the alternative proposal would have left out of account all such items as I have just indicated.

"Then comes section 3, which empowers the Government to levy a rate on all income, defined as I have stated; but this rate is subject to two limitations: it must not be more than sufficient to cover a reasonable estimate of the cost of establishments and contingent expenditure, and it must in no case exceed 5 per cent. The maximum first proposed was 4 per cent., but instances have been adduced from Bengal, the Punjab and Ajmere which seem to show that a somewhat larger percentage may occasionally be required. We have accordingly allowed a maximum of 5 per cent. This rate will cover, among other things, all ordinary legal advice, and it will of course be subject to the other condition that no more is to be taken than the estimated value of the services rendered.

"Power is reserved to the Local Government to reduce or remit the rate whenever this seems equitable, and the Committee has inserted a proviso to make it clear that whenever any considerable special establishments are entertained for an estate its claim to a reduction shall receive due attention.

"I have been asked how this will work, and in reply it may be convenient that I should explain how I anticipate that Local Governments will ordinarily proceed. General estimates of the cost of supervision and management have already been framed in all provinces, and the probable income of each estate

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will be shown in its annual budget. As soon as the budgets are ready for next year—or at once upon the estimates of the current year—the Court of Wards or Financial Commissioner will probably submit a statement showing the amount to be raised, the aggregate income, and what estates have special managers or any other special establishments which would give them a claim to reduction. They will also propose a general rate and such reductions as appear to them appropriate; and thereupon the Local Government will determine the rate and what reductions or remissions shall be allowed. In subsequent years, if matters have generally remained the same, it will only be necessary to show changes which have taken place or are proposed. As an instance of a case in which reductions should be allowed, I may refer to a province in which most of the smaller estates are under the direct management of tahsildars, although others have special managers. The former would naturally be made subject to the full rate, while the latter would be entitled to a reduction.

“The next section to be noticed is section 5. This provides that nothing in the Act is to apply to establishments specially entertained, or to expenditure specially incurred, for any estate or group of estates. It has been objected that the Bill gives no power to charge such special expenditure to the estates; but the reason is obvious. Every estate is clearly liable for its own special expenditure under the general law. The only doubt has been whether the cost of general supervision and management could be levied from all estates by a general rate, and it is that doubt which will now be removed. For the same reason it has not been thought necessary to provide that the rate shall take precedence over private debts. Creditors can only look to the net income, or, in other words, to the gross income less the cost of management and other expenditure incurred in the realization of the income.

“In conclusion I have only to mention that we have added a section, at the instance of my hon'ble friend the Lieutenant-Governor of Bengal, repealing enactments which provide in that province for very nearly the same matters as are dealt with by this Bill, but not so comprehensively.”

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

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LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved that the Report of the Select Committee on the Bill to further provide for the Administration of Towns in Lower Burma be taken into consideration.

He said that he had nothing now to add to what he had said when he introduced the Bill. The Select Committee had received no criticisms whatever from the public, and the Bill had been accepted as it stood by the Local Government.

The Motion was put and agreed to.

The Hon'ble SIR CHARLES CROSTHWAITE also moved that the Bill be passed.

The Motion was put and agreed to.

LANSDOWNE BRIDGE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to remove doubts as to the levy and collection of tolls upon the Lansdowne Bridge over the Indus at Sukkur in the Presidency of Bombay, and for other purposes, be taken into consideration.

He said that the Bill, as he had explained at the last meeting of the Council, was merely intended to meet an accidental draftsman's error in the Bombay Act, III of 1875; it had not been considered that there was anything in the Bill which required its reference to a Select Committee; and he would, therefore, ask the Council now to take it directly into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said :—

" Before I make the next Motion I must ask the permission of the Council to move an amendment in this Bill of which I have not given notice. The fact is that I was so much taken up with other matters that I was not able until this morning to settle the exact terms in which the amendment is to run.

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The last clause of the Bill is very badly drawn, and as I drew it myself I have the less hesitation in saying so. As drawn it would appear only to apply to public roads or bridges already made, whereas it is quite clear that a similar slip might occur in the case of a road or bridge which may hereafter be made. It is therefore desirable to alter the clause so as to make it clear that in such cases also this Act shall apply.

"As hon'ble members have the Bill before them I will not trouble them by reading the clause, as it stands, but I will read it as I propose that it shall stand. I propose that it shall run in this way:—

'When any public road or bridge has or shall have been made and repaired at the expense of the Government of India and no other adequate provision shall have been made for the levy and collection of tolls thereon, the Governor General in Council may, by notification in the Gazette of India, apply this Act to such road or bridge, and thereupon all the provisions of this Act shall apply to such road or bridge as if the same had been herein named in addition to the said Lansdowne Bridge.'

"The last alteration, namely, the substitution of the words 'in addition to' for the words 'instead of', I am making at the suggestion of Sir Philip Hutchins, who pointed out that the words as they stood might have the effect of cutting out the Lansdowne Bridge from the operation of the Act, if it were applied to any other road or bridge.

"I move therefore that section 4 of the Bill be amended so as to run in the manner in which I have read it."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

MERCHANT SHIPPING BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea. He said:—

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"The Bill which I ask leave to lay before the Council is at present in the form of two Bills, but on account of certain difficulties connected with the Rules of Business, which it is not necessary for me to go into at any length here, I feel myself obliged to propose to introduce one Bill only, although I give notice now that when we go before the Select Committee I will ask that Committee to restore the arrangement and separate the Bill into two Bills. The Bill, or at least a substantial part of it, has been settled in communication with the Finance Department.

"This Bill, then, comprising 415 sections, consolidates 14 entire Acts and portions of 10 other Acts, or, in other words, some 506 entire sections, besides portions of other sections. It carries the process of consolidation as far, I think, as is practicable. There may be some few scattered enactments on the Indian Statute-book which might be included in the Bill, and which further examination at leisure, or the reports of Local Governments, may bring to light; but at present I believe the Bill comprises all enactments which can conveniently be included in it.

"The reasons for the exclusion from this Bill of certain subjects (which I will enumerate in a moment) which seem at first sight intimately connected with it are given at length in a very able and exhaustive note by Mr. F. G. Wigley, of the Legislative Department, which will, I trust, be circulated along with the Bill, and to which I would take the liberty of referring any hon'ble member who may be desirous of looking more closely into the question.

"It is obvious that in a system of law like ours there must be many subjects which are so intermingled that no one of them can be dealt with exhaustively by itself, and all that you can do is to make your classification as complete as may be, so as, on the one hand, to bring together in convenient groups those matters which are closely allied, and on the other to avoid the temptation of casting your net too wide, so as to make your Acts unwieldy in themselves besides swelling the Statute-book to an unnecessary and burdensome extent.

"The various enactments relating to local ports, quarantine, sea customs, emigration and Courts of Admiralty, all of them more or less connected with the subject of merchant shipping, have therefore been excluded from the present Bill; if necessary, each of these matters may conveniently form the subject of separate consolidation.

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"The Bill embodies, besides the Indian Acts already referred to, as many of the provisions of the English Merchant Shipping Acts, 1854 to 1892, as are within the legislative powers entrusted to this Council and as it seemed desirable to include in a Bill, like the present, for consolidating and bringing up to date the Indian Statute law. On the other hand, it leaves outstanding many provisions of those Acts which incidentally apply to India but which it is beyond the power of this Legislature to repeal or re-enact.

"Accompanying the Bill will be found four statements, marked A, B, C and D, respectively, showing the corresponding clauses of the existing Acts (Indian and English) and of the Bill in parallel columns. These statements have been prepared with great care by Mr. Wigley, and, though I have not had time to go completely through them and verify the references one by one, I have found them, wherever I have had to make use of them, thoroughly accurate, and I have no doubt that hon'ble members may implicitly rely upon them as correct.

"The Bill is divided into forty-five chapters, which have been grouped in ten parts.

"Part I contains the usual preliminary clauses, of which I need only call attention to section 4, which, in anticipation perhaps of future invention, provides that the clauses affecting steam-ships shall be applicable *mutatis mutandis* to vessels driven by electricity or other mechanical power.

"Part II, which deals with measurement and registry of British ships, has been intentionally limited in its operation. It seems doubtful whether the authority of this Council in this matter has not been accidentally limited by English legislation, and it has also been deemed expedient to pay a certain amount of deference to a somewhat questionable opinion of the Board of Trade, expressed in a letter dated 4th May, 1869, to which I will call attention by and by.

"The subject of registration has presented much difficulty, delicate issues both of law and policy constantly arising, and it is therefore desirable that I should state the position somewhat in detail.

"The Statute 3 & 4 Vict., c. 56, sections 3 and 4, conferred the following powers on the Governor General of India in Council:—

- (a) power to declare that ships built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects for

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whom the Governor General in Council has power to legislate, and belonging to British Indian ports, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope and the territories and dependencies thereof;

(b) power, upon such declaration being made, to make regulations—

(i) concerning the registering, licensing, and ascertaining the admeasurement of the tonnage and burden, of such ships, and

(ii) generally, for the trading of such ships within the limits aforesaid; and

(c) power to make regulations for admitting to all or any of the privileges and advantages of British ships for the purposes of trade within the limits aforesaid any ships—

(iii) belonging to Native Princes or States in subordinate alliance with, or having subsidiary treaties with, the East India Company, or

(iv) owned by subjects of any such Prince or State;

such regulations to provide for the granting to such ships of licenses or passes, and generally for the trading of such ships within the limits aforesaid.

“These powers were exercised by the Proclamation appended to Act X of 1841, by that Act itself, and by Act XI of 1850; and it was provided by the first-mentioned Act that ships of Native States, to obtain passes, should be commanded by a British subject for whom the Governor General in Council has power to legislate.

“These regulations were in a certain sense superseded by the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), Part II of which provides for the registration of ships not only in the United Kingdom but throughout Her Majesty's dominions. The Statute 3 & 4 Vict., c. 56, was, however, saved by section 108 of the Statute of 1854, and consequently the registration of ships under the Indian Acts of 1841 and 1850 continued to be lawful. But, for some reason, which may be guessed at, though never authoritatively explained, the sections of the Statute 3 & 4 Vict., c. 56, which I have read were repealed by the

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Statute Law Revision Act, 1874, No. 2 (37 & 38 Vict., c. 96), with a saving, however, which continues the Indian Acts in force as they stood at that date.

"Registration under Acts X of 1841 and XI of 1850 is optional, and confers the privileges of a British ship within certain limits only, *viz.*, those of the old East India Company's Charter, whereas registration under the Merchant Shipping Act, 1854, is good all over the world: consequently, certain classes of ships (namely, those of European build,) have long been registered in British India under that Act, so that registration in this country is carried on, in different cases, under both English and Indian Acts. Besides those Acts there is a local Act (XIX of 1838) which makes compulsory the registration under it of 'vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay, and employed on the coasts of the territories subject to the Government of Bombay or in trading coastwise,' and 'fishing vessels and harbour craft belonging to any of Her Majesty's subjects.'

"We thus have three sets of provisions for the registration of ships in British India (excluding Bombay Act I of 1863, which refers only to the river Indus)—

- (1) the English Merchant Shipping Acts,
- (2) Act XIX of 1838 (Bombay Coasting Ships), and
- (3) Act X of 1841, as amended by Act XI of 1850 and subsequent enactments.

"The Council will perceive that by the repeal of 3 & 4 Vict., c. 56, ss. 3, 4, the power of the Governor General in Council to re-enact the provisions of Acts X of 1841 and XI of 1850 in the present Bill has apparently been taken away, although those Acts, so long as they remain unrepealed, are by virtue of the saving clause already mentioned preserved in full force and validity. It has therefore been considered advisable to omit from the consolidation now proposed those provisions of the Acts in question which it is thought necessary to keep alive. This of course mars the symmetry of the present Bill, but that has been thought preferable to running any risk of our legislation being set aside as *ultra vires*.

"Further, it has been deemed advisable to restrict our legislation on the subject of measurement of tonnage to the case of native craft plying exclusively in our own waters, and, on the subject of registration generally, to enact pro-

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visions merely in adaptation of or ancillary to the English provisions on the same point, in deference to the views of the Board of Trade expressed in the letter already mentioned. This letter, which is dated the 4th May, 1869, and was written by the Board of Trade in reference to the Bill of 1867 for the consolidation of the Indian Merchant Shipping Law, contains the following passages :—

‘The Bill contains certain provisions which are already on the Imperial Statute-book, and which should remain on the Imperial Statute-book and on that Statute-book only.

‘The most important of these are the provisions which relate to the description, ownership and measurement and registry of British ships.

‘It is obviously the function of the Imperial Legislature, and of the Imperial Legislature only, to declare what shall entitle ships to claim British nationality; in other words, who are the persons entitled to own British ships and under what regulations they shall be placed on the register. It is also important, as a matter of imperial and even of international convenience, that the rules concerning the measurement of tonnage should be identical throughout the Empire; and it is no less important that the rules which govern title as conveyed by the register should be uniform. It is obvious that these objects cannot be effectually secured if each British Possession legislates independently on these subjects.’

“It is true that the position thus taken up by the Board of Trade is unconstitutional and untenable, and would not be admitted for a moment in any of our self-governing colonies. He would be a bold man who would read such a letter without disclaimer in the Parliament at Ottawa or Sydney. No representative body can have any authority to legislate directly for any territory not represented in it, whatever indirect power it may have by reason of its control over the persons, whether the Ministers of the Crown or a subordinate Legislature, in whom the territorial authority is directly vested.

“The doctrine of the Board of Trade’s letter, if carried to its logical conclusion, involves the principle of Lord North’s Stamp Act, which cost England the American Colonies, and of the declaratory Act of George I which would have cost her the possession of Ireland if it had not been promptly disclaimed just 110 years ago.

“Moreover, although the ‘Imperial Parliament’ is a convenient phrase to denote the United Parliament sitting at Westminster, and was originally, I believe, used to distinguish that body from the Parliaments of Great Britain

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and of Ireland respectively, no body to which that name is really applicable is yet in existence, and, although it is by no means impossible that such a body may be established hereafter, I doubt very much whether the youngest man present will live to see that day. That the Parliament of the United Kingdom of Great Britain and Ireland (this is the correct title of the august body referred to) is not an Imperial Legislature is abundantly clear, if only from the fact that, within the last three years, two bodies, neither of which can compare with this Council either in dignity or importance—the States of Jersey and the House of Keys of the Isle of Man—have successfully resisted attempts to alter their institutions by direct Parliamentary action.

“ But I need not discuss this question at length, because under the circumstances it is of purely academical interest : (1) because the authority of Parliament over this Council, which is its own creature, is unquestionable, and (2) because, even if that were not so, it is obviously desirable that the systems of measurement and registry should be the same throughout the Empire, and that for that purpose the provisions of the English Statutes should be relied on for British Indian ships with such additional provisions as may be requisite to meet the case of ships belonging to the subjects of Native Princes or other special cases. This view was accepted by the Government of India in their despatch No. 13, dated 15th July, 1869, and under these circumstances it is proposed by the present Bill to repeal Act XIX of 1838 and so much of Acts X of 1841 and XI of 1850 as deals with the registration of ships, and to leave all registration in British India for the future to be conducted under the English Merchant Shipping Act, 1854, as amended by subsequent Acts, subject to the qualifications necessary to meet the peculiar circumstances of Indian shipping.

“ While, however, repealing those portions of Acts X of 1841 and XI of 1850 which relate to registration, the portions relating to the grant of passes to ships belonging to Native Princes or States or their subjects have been left untouched. It is desirable to maintain these provisions, but it is not possible, for the reasons already mentioned, to re-enact them at the present day.

“ The Government of India appears to have no information as to why section 4 of the Statute 3 & 4 Vict., c. 56, was repealed in 1874, but, as the repeal was effected by a Statute Law Revision Act, the probability is that, as the Act had been superseded in England by the later Merchant Shipping Acts, it was supposed to be spent, and the Statute Law Revision Committee did not notice

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that it still was operative to authorize this Council to do what it could not do without such authority, *viz.*, to confer the privileges of British ships on ships which do not fulfil the conditions specified in section 18 of the Merchant Shipping Act, 1854. It has been suggested that the Secretary of State should be addressed on the subject and asked to bring in a Bill for reviving the section, with such amendments as present circumstances require. It is not understood why the useful power conferred by the section should have been withdrawn, and it is, moreover, inconvenient that there should be on the Indian Statute-book enactments which the Indian Legislature is powerless to amend or re-enact. With that, however, we are hardly now concerned. The Merchant Shipping Act, 1854, section 547, confers on the legislative authority of any British possession power to repeal wholly or in part any provisions of that Act relating to ships registered in that possession, subject to the approval of Her Majesty by Order in Council; and this power has been relied upon, so far as may be necessary, for legalising the provisions of Chapter II of the present Bill.

"It might be urged against this plan that the provisions of the English Statute law on the subjects of measurement, marking and registration, and the orders of the Board of Trade under them, are so scattered that it will be difficult for registrars in Indian ports to ascertain what their duties will be. This inconvenience exists at present in cases where ships are already registered in British India under the English law, although it is to some extent minimised by the periodical publication of the rules and orders of the Board of Trade in pamphlet form; and care will be taken further to reduce it as far as possible when a new edition of Pearson's Digest is taken in hand. I admit that it would be preferable, if it were possible, to embody in the Bill a simple law for the registration of coasting craft; but the Government of India, as I have already explained, is not free to pass such a law, and must wait for the necessary powers if and when Parliament may choose to confer them.

"Part III of the Bill, which contains eighteen chapters, or nearly one-half of the whole, deals with masters, seamen and apprentices.

"It is practically a reproduction of the existing law except where that differs from the law of England, to which it is proposed to assimilate it in several respects, the most important of which will be found at section 31 in Chapter V, which follows closely the provisions of the Merchant Shipping Act, 1854, sections 136, 137, as to the certificates to be required for the officers of foreign-going

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ships, and section 33, in the same chapter, which requires foreign steam-ships carrying passengers locally in British India, *i. e.*, from one British Indian port to another British Indian port, to have on board certain officers with British certificates unless specially exempted therefrom by the Local Government with the sanction of the Governor General in Council.

"There are also some useful provisions inserted with a view to securing that seamen shall not be bound by agreements which have not been properly explained to and understood by them.

"I ought perhaps to call particular attention to section 93 in Chapter XI, which gives the Court before which any proceeding is pending relating to a dispute between master and seaman or master and apprentice an equitable power of going behind the bond. The section is copied verbatim from the Merchant Shipping Act, 1880, section 8, and, though the Courts concerned, which include even any Magistrate, seem hardly of weight enough to be trusted with so important a discretion, it may, I presume, be accepted. I believe it has not been found productive of any practical inconvenience in the twelve years during which it has been law in England.

"Sections 97 and 100, which relate to the recovery of the wages of seamen or apprentices who are lost with their ship, are taken from the provisions of the Merchant Shipping Act, 1862, section 21, with certain alterations in procedure to adapt the section to local circumstances.

"Section 106 introduces into India provisions similar to those enacted for the United Kingdom by sections 3, 4 and 6 (2) of the Merchant Shipping Act, 1892, passed last June. The necessity for inspecting seamen's provisions has been felt in India as well as in England. The recent case of the *Crofton Hall* at Calcutta is one in point. It is hoped that this section, in conjunction with section 109, which is a reproduction of Act I of 1859, section 71, will be found to make sufficient provision for the inspection of provisions and water for the crews, both lascar and European, of ships, both home-trade and foreign-going.

"Section 114 requires special notice. It purports to limit the size of lascars' chests to a maximum of six cubic feet—rather less than two full-sized office boxes. It is inserted merely for discussion, in accordance with the wish of the Finance Department. The policy of the section has been questioned by His

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Excellency the Viceroy, and it is intended to refer the matter to Local Governments for further consideration.

"Section 135 adapts to India the provisions of section 7 of the Merchant Shipping Act, 1871, and section 9 of the Merchant Shipping Act, 1873, for the protection of seamen charged with desertion in cases where the defence consists of an allegation of unseaworthiness or unsafety of the ship, or insufficiency of accommodation for the crew.

"I do not think there is anything else in this Part of the Bill to which I need direct your attention. There are numerous small amendments of the law, almost invariably taken from the provisions of the English Acts, and none of them of sufficient importance to require specific mention at present.

"Part IV deals with safety and prevention of accidents. Chapter XXI, with which it begins, is entirely new. It enacts for India the provisions of the Merchant Shipping (Life-saving Appliances) Act, 1888 (51 & 52 Vict., c. 24). That Statute already incidentally extends to India, since it applies to all British ships and is not locally restricted; but the practical working of the Statute depends entirely on the making of rules under section 3, and the rules made by the Board of Trade do not apply to India. The Board, as constituted in 1889, seem to have taken a more constitutional view of their functions than their predecessors of twenty years previously, and they accordingly announced on the 21st December in that year that they 'did not propose to take any steps with regard to the life-saving appliances on board ships leaving ports out of the United Kingdom,' and that 'it would be competent for the Government of India to take such steps as they might think fit with regard to the enforcement of the rules in India.' The proper course appears to be to re-enact the provisions of the Statute for India and to give the Local Governments (with the previous sanction of the Governor General in Council) power to make rules for working it, and this is the course now proposed to be taken.

"The rest of this part is practically the re-enactment of existing law, including the Load-lines Act of last year, and does not seem to call for any specific mention.

"Part V deals with wrecks, casualties and investigations. There are only two points in it which seem to call for remark.

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"Under the existing law (Act V of 1883, section 10,) the Local Government may direct an independent investigation into a charge of incompetency or misconduct to be made by—

(a) a Court of Admiralty, or

(b) (where there is no Court of Admiralty) a principal Court of ordinary criminal jurisdiction.

"It is proposed by section 263 to empower the Local Government to select for the purpose of holding such an investigation a Presidency Magistrate or (for the Mufassal) a Magistrate of the first class. I am doubtful of the advisability of this provision; I do not think that the substitution in England of a Metropolitan Police Magistrate for the Wreck Commissioner has been a happy one, but there can be no harm in calling attention to the question.

"The other point is not, I think, open to controversy. It arises on section 270. When an investigation has been held into a shipping casualty, or into the conduct of a master, mate or engineer, it is desirable that the Local Government should, if sufficient cause arises, have power to order a re-hearing. The only power under the existing law to order a re-hearing is that conferred on the Board of Trade by section 2 of 42 & 43 Vict., c. 72, and section 6 of 45 & 46 Vict., c. 76. The provisions of the sections named, as to re-hearing, have been incorporated, with the necessary alterations, in section 270 of the Bill, the Local Government being substituted for the Board of Trade. The section will not of course interfere with any power the Board may have to order a re-hearing on its own account, as to the extent of which power it is not necessary for me to offer any opinion.

"Part VI deals with assistance to passengers abroad. It does not call for any remark at present, but I think it should be referred to the Home and Revenue Departments for any suggestions which they may wish to make for its amendment. Amongst other things, the enumeration of voyages in section 272 may need revision.

"Part VII incorporates and consolidates the law affecting native passenger-ships. A Commission was appointed in 1890 to enquire into the administration of the Native Passenger-ships Act (X of 1887). This Part reproduces that Act revised in accordance with such of the recommendations of the Commission as have been accepted in the Finance Department.

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"The principal amendments are that the definition of a long voyage has been altered so as, amongst other things, to include all voyages to Aden and beyond, and that quite new definitions have been inserted of shelter-port voyages and excursion voyages, and that general provisions for all voyages and the special provisions for long voyages on the one hand, and short, shelter-port and excursion voyages on the other, have been put into separate chapters. Some extra penalties have also been provided for breaches of duty on the part of the master, and the power of making rules has been extended so as to provide for proper deductions from the calculated space measured for passengers in cases where live-stock are carried in such space.

"Part VIII embodies the law as to coast-light dues. The only point in it requiring notice is that by section 330 power has been given to abolish coast-light dues either entirely or in respect of any class of ships. It is expedient that the Government should possess this power, to be exercised when it is found that certain ships are made to pay dues which derive no benefit from the lights, or when the receipts are much in excess of the expenditure.

"Part IX contains a number of miscellaneous clauses of an ancillary nature such as are now usually inserted in Acts of this Council, and most of which merely reproduce the existing law.

"Section 344 provides that offences against the Act or any rule made thereunder shall be triable by a Presidency Magistrate or a Magistrate of the first class, following in that respect the provision in Act VII of 1884, which seems the most reasonable of the provisions to be found in the Acts consolidated. It is not of much consequence perhaps what the rule may be, but it certainly should be uniform: at present what it is depends not upon the character of the offence, but upon the Act under which the offence is tried.

"There are one or two other amendments of matters of procedure, of which the most important is contained in section 346, which combines the provisions of Act I of 1859, Act V of 1883 and Act X of 1887 as to the use as evidence of depositions of absent witnesses. These provisions have been applied to all legal proceedings under the Bill with certain alterations, namely:—

- (1) Depositions are made admissible if the defendant or the person accused, as the case may be, fails to produce the witness, instead of, as at present, on proof that the witness cannot be found within

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the jurisdiction. As the deposition must have been taken in his presence, and full power and opportunity of cross-examination must have been reserved for him, there can be no injustice in throwing upon him the onus of producing the witness, if within the jurisdiction, and if he thinks it worth his while to do so.

- (2) The clause as to cross-examination of the witness whose deposition it is proposed to receive in evidence is applied to civil as well as criminal cases. Without cross-examination no evidence is reliable, and there can be no reason why a witness in a civil suit should be exempted from the ordeal.
- (3) It is provided that, where such a cross-examination has taken place, the deposition shall not be received in evidence unless the cross-examination is recorded as part of the deposition. This is to prevent a cross-examination from being burked; if the examination-in-chief could be used without producing the cross-examination, the prosecution might in some cases be tempted to throw the onus of producing the cross-examination on the accused.

"These alterations have been specifically approved after examination in the Home and Legislative Departments.

"The tenth Part of the Bill is that which is printed separately under the name of the Inland Steam-ships Bill. It may be dismissed in comparatively few words. It is practically a reprint of the Inland Steam-vessels Act (VI of 1884) as amended by Acts III of 1890 and XII and XIII of 1891, and it is obviously necessary in dealing with merchant shipping generally that these Acts should be consolidated.

"Mr. Ilbert in his speech in Council on this subject on the 2nd March, 1883, expressed an opinion that it was desirable to keep the provisions as to inland steam-ships in a separate Act, rather than to embody them in an Act dealing with merchant shipping, because the law on the latter subject is liable to be affected by legislation in England, while the regulation of inland steam-ships is a matter solely within the scope of Indian legislation. In deference to that opinion the enactments with reference to inland steam-ships have been prepared in the shape of a separate Bill, but there have been found inconveniences connected with the Rules of Business which render it impossible for me at this moment to

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introduce them as a separate Bill. I therefore propose to introduce them as a part of the Merchant Shipping Bill and as Part X of that Bill; but in deference to Mr. Ilbert's view I shall ask the Select Committee to whom the Bill will formally be referred to separate and reconstitute the Bill into two Bills.

"The amendments now proposed, as distinguished from mere consolidation and re-arrangement, are very few, and for the most part merely formal.

"Only three of these amendments seem to require any notice on this occasion. Two of them are identical with amendments already mentioned as forming part of Part V of the Merchant Shipping Bill, and relate to the Courts to be empowered to hold investigations arising out of wrecks and other casualties, and the remaining amendment proposes to make what may be called a graded list of the certificates mentioned in it. It has been inserted as a means of avoiding complicated clauses in the next following section of the Bill (which is equivalent to section 28 of Act VI of 1884).

"I have now reached the schedules. These comprise—

- (1) the list of enactments proposed to be repealed;
- (2) provisions as to certificates granted under Acts passed prior to 1884;
- (3) various lists of fees;
- (4) the agreement with France concerning wrecks, dated 23rd October, 1889;
- (5) form of certificates of expenditure on account of shipwrecked passengers; and
- (lastly) a list of the voyages in respect of which coast-light dues are payable.

"The language of the Bill will, I think, require alteration in some respects, but that will be a question for the Committee stage, which is still a long way off, and it need not detain us at present. It is inevitable in a work of consolidation of this kind that the language of the Acts to be consolidated should not always be consonant, and that variations of expression and the like should survive even the most careful examination of the draft.

"In conclusion I desire to express the very strong sense I feel of the skill, labour and attention which have been bestowed upon these Bills by Mr. O'Connor, Mr. Bestic and Mr. Wigley, the general excellence of the drafting, the painstaking manner in which the several Acts have been compared, and the careful

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accuracy of the references, which will be found extremely useful by any hon'ble member who may wish to look into the matter for himself: I do not invite any one to take it on trust from me.

"In particular I have on my own personal account to thank Mr. Wigley for his very accurate and detailed note upon these Bills, of which I have availed myself largely in preparing this resumé, which I have found of the very greatest service, and without the aid of which I could not possibly, in the limited time at my disposal, have attempted to fathom the scheme of the Bills myself, much less to have made it—as I hope I have to some extent succeeded in doing—intelligible to the rest of the Council."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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 Maritime Governments think fit.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER obtained the leave of the Council to withdraw the subsequent Motions standing in his name, namely:—

- (1) The Motion to move for leave to introduce a Bill to consolidate and amend the law relating to Inland Steam-ships.
- (2) The introduction of the Bill.
- (3) The Motion 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 Maritime Governments think fit.

The Council adjourned *sine die*.

S. HARVEY JAMES,

SIMLA ;
The 26th October, 1892. }

Secretary to the Government of India,
Legislative Department.