

*Thursday,
12th October, 1893*

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,

1893

VOLUME XXXII



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1893

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purposes of making Laws and Regulations under the provisions of the Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.

The Council met at Viceregal Lodge, Simla, on Thursday, the 12th October, 1893.

PRESENT :

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, K.C.B., G.C.I.E., V.C.

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

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. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. L. Mackay, C.I.E.

QUESTIONS AND ANSWERS.

The Hon'ble MR. MACKAY put the following questions :—

1. Is it the case that only 2,601,241 private inland telegrams were transmitted in India during the year ending 31st March 1892, about half of which were at the deferred or eight annas per eight words rate ?

2. Whether in view of the enormous population in India, amounting to something like 280 million souls, and the fact that more than 54 million inland telegrams are transmitted annually in the British Isles, where the rate is sixpence per twelve words, including address, with a population of only 37 millions, the question of introducing the four anna rate for deferred messages, with a corresponding ratio for ordinary and urgent telegrams, so as to bring the telegraph within reach of a really tangible portion of the masses, is engaging the attention of the Government of India, and, if so, whether the lower tariff is likely to be introduced, and, if so, when ?

The Hon'ble SIR CHARLES Pritchard replied :—

1. Yes.

2. A scheme for introducing a four-anna tariff has been under the consideration of the Government of India, and has been deferred because the present position of the Imperial finances is not such as would justify the acceptance of the heavy initial capital expenditure involved, together with the loss of revenue that might in the first instance be expected to result from the proposed reduction of the tariff.

[*Mr. Mackay; Sir Charles Pritchard; Sir Philip Hutchins.*] [12TH OCTR.,

3. Whether the telegraph system in India, of which Government hold the monopoly, is now giving a return, when State messages are paid for, of $4\frac{1}{2}$ per cent. on the whole capital expenditure, including the amount spent on military and political lines, after paying all working expenses ?

3. The latest available figures, i.e., those for the year 1892-93, show that the return is 4.46 per cent.

THE INDIAN FISHERIES BILL.

The Hon'ble *SIR PHILIP HUTCHINS* moved for leave to introduce a Bill to provide for certain matters relating to Fisheries in British India. He said :—

“The official literature on the subject of legislating for the protection of fish in India is very extensive. I have in my hand a blue-book of 250 pages which covers a period of three years only, from 1887 to 1890; but the subject first attracted attention nearly twenty years before that. I do not propose, however, to inflict on this Council even a brief summary of what these papers contain. The pith of them has been extracted and will be found set out as succinctly as possible in the Statement of Objects and Reasons. It does not seem necessary for me to do more at present than to explain first, the grounds for undertaking legislation, and, secondly, the general purport of the measure which I wish to introduce.

“I justify legislation on the short ground that throughout India fish form one of the most important food-supplies of many classes, and that the papers contain abundant evidence that they are almost everywhere wastefully destroyed and in many places becoming less plentiful. I shall not stop to quote the evidence, as I believe these two facts are generally admitted: I have certainly seen them repeatedly mentioned by the Press as well recognized and indisputable. The delay which has occurred in bringing the matter to a head has not been due to any doubt as to the expediency of legislating, but only to the difficulty of determining what remedial action can best be taken, due regard being had to the rights of private proprietors and to the habits and legitimate practices of indigenous fishermen.

“At various times the Government of India have been strongly urged to undertake at once a strict and comprehensive control over all the fisheries of the country, but I am glad to say that this heroic counsel has not prevailed. India is not yet ripe for elaborate legislation on the lines which have been followed in the United Kingdom, and I doubt if it ever will require to be dealt with in the same manner. Moreover, even if a minute supervision were in itself desirable, we are

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not yet in possession of sufficient information to enable us to determine the proper methods or limits of its application. The very modest Bill which I am about to lay on the table contains only two provisions which will have general effect and extend to private waters ; and one of these has for its object the protection of private rights in fish rather than the protection of the fish themselves.

"The Bill may be conveniently considered as made up of three parts. The first part may be said to consist of sections 4 and 5, with a schedule. Its effect is simply to forbid, everywhere and absolutely, the use of explosive or poisonous substances for the purpose of catching fish. It would be superfluous to offer any arguments to justify such an obviously reasonable provision. Poison and dynamite destroy all life within the area over which they are effective. By their action, fish that are fit for food are rendered more or less uneatable, while multitudes of fry, useless at the time for food but upon which the food-supply of the future depends, are destroyed prematurely.

"The second part comprises sections 6, 7 and 8 with the definition of 'private water' contained in section 3. This part merely re-enacts with some slight modifications an Act (No. II) which was passed by the Bengal Government in 1889 for the prevention of poaching in private waters. As the Council will probably remember, that enactment arose out of certain judicial decisions to the effect that fish not strictly confined, but having means of ingress or egress, must be regarded as *feras naturas*, which are not property and may therefore be lawfully captured. The Bengal Act remedied this by making it an offence to fish, or to place any engine for the capture or destruction of fish, in any water which is the exclusive property of any person, or in which any person has an exclusive right of fishery and fish are not confined but have means of ingress and egress. My Bill re-enacts this provision and makes it of general application throughout India. The only material modification is that I propose to omit the clause about the means of ingress and egress. I take it that it was inserted because it was thought that if the fish were so strictly confined that they could neither get in nor out even in a time of flood, they would be regarded as property and their capture would be punishable as theft. This opinion is probably correct, but it seems to me that no harm will be done if the present enactment somewhat overlaps the Penal Code, while on the other hand the retention of the clause in question might give rise to lengthy and unprofitable enquiries as to the height of floods and the possibility of fish escaping. If it is to be an offence to take fish which can at such times escape, *o fortiori* it should be an offence to take fish which are strictly confined and I can see no harm in saying so.

[*Sir Philip Hutchins.*]

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"The third and last part of the Bill relates only to waters which are the property of the State, or for the control of which by the State the private owners and all other persons interested have given their consent. It consists of one long section, the ninth, divided into sub-sections, and its effect is to enable a Local Government by rules to prohibit or regulate in such selected waters any of the following matters :—

- (a) the use of fixed engines for the capture of fish ;
- (b) the construction of weirs ;
- (c) the use of nets with a mesh smaller than a minimum to be specified in the rules ;
- (e) the diversion or baling of the water for the purpose of catching fish.

"The rules may also (d) prescribe a close season on such waters for all or any kinds of fish, may prohibit their capture or sale during such close season, and may even [sub-section (4)] prohibit fishing altogether for a period not exceeding two years. The rest of section 9 and section 10 contain mere subsidiary provisions, which call for no special notice.

"It is intended that this power to make rules for the strict control of fishing shall be applied with great caution and restricted for the present to a few selected hill-streams and head-waters, to which many of the species of fish most prized for food resort for spawning purposes, and in which, owing to the small size of the river-beds, their capture is easy. The principal and ultimate object of course is to protect the spawning fish and the young fry in such localities and at a times when they obviously need protection : but another and not unimportant object is to gain information and experience as to the sort of protection needed, as to the private rights and customary practices (if any) which the public interests require to be controlled, and as to the best lines on which any more elaborate or extensive legislation (if such should be required) may hereafter be based. It seems tolerably certain that no restrictions are either necessary or practicable on the larger rivers of the plain-country. They are not required because the spawning season seems to be coincident with the monsoon, when the natural floods provide adequate protection : they would not be possible because, when such rivers are in fresh, no small conservancy staff such as the State can afford would be able to exercise any effective control.

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"These considerations, as is remarked in the Statement of Objects and Reasons, practically confine the issues involved to the smaller rivers or head-waters, and even as regards them we desire to proceed cautiously and tentatively. I have been warned from several quarters there will be great difficulty in discovering State-waters even for such limited and experimental treatment, but I am sanguine enough to hope that there are many private riparian proprietors with sufficient public spirit and intelligence to come forward and co-operate with the State for the important purposes in view. The ultimate benefit to themselves should in most cases be a sufficient inducement, but special circumstances may justify the Local Government in taking a lease of private water or otherwise securing its control for a reasonable consideration. I can only add that, if my expectations in this respect are disappointed, it may become necessary to undertake further legislation for the purpose of expropriating private rights of fishery, and perhaps even of asserting the supreme rights of the State. At present, however, the Government of India prefer trusting to the voluntary co-operation of those privately interested.

"As regards the several objects to which the rules may be directed, and which I have already enumerated, I do not think that any detailed explanation is called for. The power entrusted to Local Governments is merely enabling, and they may be trusted to exercise it with due regard to local circumstances and to practices hitherto permitted; the necessity of satisfying the Governor General in Council in each case will itself go far to ensure caution. There is, however, one point on which I find serious misgivings have been widely entertained, and that is the prescription of a minimum mesh for nets. This indeed, as will be seen from the Statements of Objects and Reasons, was one of the points upon which the members of the Conference, convened at Delhi in 1888 to discuss the whole subject, were unable to agree. But it must be remembered that what they were considering was a comprehensive measure which was to have universal application. So far as I am aware, it has never been disputed that at certain time and places it is absolutely necessary to regulate the mesh of nets; and, if such a provision is ever needed, surely it is required when the young fry lately hatched are descending to the larger rivers where they may have some chance of attaining maturity."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

[*Sir Philip Hutchins.*]

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The Hon'ble SIR PHILIP 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.

The Council adjourned to Thursday, the 19th October, 1893.

S. HARVEY JAMES,

Secretary to the Government of India,

SIMLA ;
The 13th October, 1893. }

Legislative Department.

NOTE.—The Meeting fixed for the 5th October, 1893, was subsequently postponed to the 12th idem.