

*Friday,
5th November, 1897*

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

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 5th November, 1897.

PRESENT:

His Excellency the Earl of Elgin, Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding*.

His Excellency Sir G. S. White, G.C.I.E., G.C.B., V.C., Commander-in-Chief in India.

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

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Sir H. T. Prinsep, Kt.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

LEPERS BILL.

The Hon'ble MR. RIVAZ moved that the Bill to provide for the segregation of pauper lepers and the control of lepers following certain callings be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Mr. Sayani, the Hon'ble Mr. Nicholson, the Hon'ble Rai Bahadur Pandit Suraj Kaul and the mover. He said that the Bill was introduced in the Council on the 30th July, 1896, and was circulated in the usual way for opinions. These opinions had been received, and the Bill had now arrived at the stage when it should be referred to a Select Committee. After having consulted the Hon'ble Legal Member, he now proposed that the Committee should consist of the Hon'ble Members named in the motion.

The motion was put and agreed to.

COURT-FEES ACT (1870) AMENDMENT BILL.

The Hon'ble MR. RIVAZ said:—"The Bill to amend the Court-fees Act of 1870 was introduced in this Council by the Hon'ble Sir John Woodburn .

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on the 8th July last, and a Select Committee was appointed, composed of the Hon'ble Sir James Westland, the Hon'ble Mr. Chalmers, the Hon'ble Sir H. Prinsep, the Hon'ble Nawab Sir Amir-ud-din Ahmad, and the Hon'ble Sir J. Woodburn. As the Hon'ble Sir J. Woodburn has taken leave and the Hon'ble Nawab Sir Amir-ud-din Ahmad has been replaced in the Council by the Hon'ble Rai Bahadur Pundit Suraj Kaul, I beg leave to move that the Hon'ble Rai Bahadur Pundit Suraj Kaul be substituted on the Select Committee for the Hon'ble Nawab Sir Amir-ud-din Ahmad, and myself for the Hon'ble Sir John Woodburn."

The motion was put and agreed to.

OUDH COURTS ACT (1891) AMENDMENT BILL.

The Hon'ble MR. RIVAZ moved that the Bill to amend the Oudh Courts Act, 1891, be taken into consideration. He said :—"This Bill was introduced in this Council by the Hon'ble Sir John Woodburn on the 1st October last; and, as then explained, the present Act provides for a Court of two Judicial Commissioners, but owing to the pressure of work it will be necessary to appoint a third Judicial Commissioner for a time. The Bill therefore provides for a third Judicial Commissioner being appointed for one year in order to bring the list of appeals which have been accumulating for some time within reasonable limits. It is also provided that in the case of a difference of opinion between the two Judicial Commissioners sitting as a bench a reference shall be made to the third Judicial Commissioner, and not to the High Court at Allahabad as was the case under the Act of 1891; and the judgment will be given in accordance with the opinion of the majority of the Judges of the Court. Opportunity has also been taken to add to the law in Oudh a provision which has been taken from the Lower Burma Courts Act by which the Judicial Commissioner is empowered to make rules for the recording of judgments, and the taking of evidence, in order to shorten and simplify the procedure of the Court. This, it is hoped, will speedily dispose of the great mass of litigation now pending. The Bill is not one on which it has been found necessary to collect opinions, and I beg now to move that it be taken into consideration."

The motion was put and agreed to.

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

The motion was put and agreed to.

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PETROLEUM BILL.

The Hon'ble MR. RIVAZ moved for leave to introduce a Bill to further amend the Petroleum Act, 1886. He said :—"It has been found necessary to extend the definition of 'petroleum' as contained in the present Act so as to meet the case of the importation, possession or transport of paints, varnishes and other similar substances containing inflammable material. Accordingly an addition has been made to the definition of 'petroleum' in section 3 of the Act, after consulting experts in England. Provision has also been made with regard to the Schedule to the Act, which refers to tests and apparatus, to enable the Governor General in Council from time to time to prescribe such additional tests as may be necessary on notification in the Gazette of India by altering or adding to the Schedule."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ introduced the Bill.

The Hon'ble MR. RIVAZ 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 may think fit.

The motion was put and agreed to.

INDIAN POST OFFICE BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to consolidate and amend the law relating to the Post Office in India. He said :—"The existing law governing the Post Office is an Act of 1866, and it is notorious that during the last thirty years the business of the Post Office has very largely expanded. The law by which the Post Office is governed, therefore, is more out of date in this sense than that of any other Department of the Government. The progress of the Post Office since 1866 has been both in developing the then existing branches of business in respect of which that legislation gave it authority and powers, and also in adding new branches to its business. Moreover, the Postal Union has brought us into close relations with foreign countries, and has laid down rules and systems of business in which we must necessarily co-operate if we are to follow the progress of the Post Office in other countries, but which were not contemplated in the Act of 1866. In that Act practically only two branches of business were contemplated. The first relates to letters and newspapers, and the Act necessarily takes no cognisance of the subsequently introduced system of postal

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cards and of reply postcards; reply postcards are peculiar in this respect that the sender has the privilege of sending through the Post Office the fee which has to be paid upon the reply sent to him—a procedure which was not provided for in the Act of 1866. The second branch of business referred to in the Act of 1866 is what we now call the parcel post, and so far as the existing parcel post is concerned, it is based entirely upon the legislative provisions of the Act of 1866. But the mere name given to it in the Act of 1866 is a proof of the singular anachronism, and the inadaptability to present conditions, of the law. The parcels post is there called 'the banghy post'—a banghy being that double-headed bamboo which a coolie lays across his shoulders to bear a burden. The only conception which the Act of 1866 had of the parcel post was that of a coolie plodding his weary way along the road between his double burden, and section 14 of the Act, which lays down the rates of postage, contemplates a journey of this kind of 1,200 miles. Provisions of that sort are suitable enough for a state of the country such as that which existed in 1866, when there was less than 4,000 miles of railway open; but it is quite impossible to adopt them in 1897, when the number of miles open is 20,000. The charge according to the Act of 1866 is proportional to distance, but this reckoning has long been abandoned, and the charge is now regulated by executive order in exactly the same way as the letter post, that is to say, entirely irrespective of distance. In the case of parcels, carried over any considerable distance, the charge which the Post Office demands now is in some cases only a fifth part of the charge contemplated in the Act of 1866. Then, of the new branches of business added for which there is no legislative provision whatever, are the system of insurance, the value payable post, and money orders. These have no legislative basis at all; that is to say, the business of the Post Office is conducted under the executive orders of Government, and the result of that system is that each transaction becomes a contract between the Post Office on the one side and some individual on the other, and is regulated by the ordinary provisions of the law, exactly in the same way as a transaction between an individual and a private firm carrying on business would be regulated. The Post Office in these respects has no special powers and no special protection. Many inconveniences have arisen out of this condition of affairs. The business is far too vast to be carried on under the ordinary provisions of the law. Even a private Railway Company requires special laws, as ordinary carriers, for the conduct of its business with the public, and with a business so vast as the system of money orders and value payable parcels, it is necessary in the same way, for the conduct of business, to ask the Legislature for

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special powers and for special protection. It must be remembered that the Post Office in dealing with these matters has no choice whatever of its constituents. It cannot refuse any business brought to it, and the Department has to deal with many thousands—I should say rather, with many millions—of uneducated people.

“ This enumeration of defects will show the direction in which it is necessary to ask the Legislature to modify the existing law. The general lines on which the Bill is based are those of a Bill which was introduced into Parliament two years ago, namely, that, apart from the provisions for protection and the special powers given, and the penalty clauses, the ordinary administration of the Department is left to be provided for by rules and regulations issued partly by the Governor General in Council and dealing with such matters as the fixing of fees, or rules, for the breach of which it is necessary to impose penalties; and partly by rules or orders issued from time to time under the authority of the Director General. The English Bill has not yet passed into law, but it has been of great assistance to us in drafting the Bill now before the Council.

“ I wish now to make a few remarks on some of the sections, chiefly on those in which the old law has been modified, or which introduce new provisions on matters which are not regulated by the law of the country. The first of these is section 12—one which provides a summary procedure for the recovery of petty sums due to the Post Office. The application of this section is not very clear in the Act of 1866, or at any rate there are Magistrates in the country who declare that it is not clear. We therefore make the language of that section, and the power of the Post Office to recover sums due to it, more clear than they are in the existing law. One of the penalties which the Post Office is empowered to impose of its own motion upon persons who owe it money and refuse to pay, is that of declining to deliver to them postal articles until they do pay. Under the existing law this power may be exercised by any officer in charge of a Post Office; by the Bill proposed the power is only enforceable by the Post Master General.

“ Another power which it is necessary to take is in section 14, which declares that the official marks of the Post Office—marks of date, etc.—are to be taken as *prima facie* evidence of the facts which they are intended to indicate. The necessity of providing this means of giving evidence of the facts which it is necessary to establish before a Court of Justice will take any action in respect of complaints brought before it, is obvious.

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"Section 18 makes a certain provision regarding the redelivery of letters once posted. The present Post Office Act provides that letters or other articles once posted may be redelivered to the sender as a matter of grace, subject to such rules as the Governor General may prescribe; and this provision it is proposed to retain in a modified shape. The declared principle of the Postal Union Convention to which India is a party is to allow the writer or sender of a letter or other article to recall it, or require that the address should be altered, at any time previous to its actual delivery, subject to the payment of certain charges and to considerations of postal convenience. The article of the Convention, however, in which this principle is laid down is permissive, and England and the Colonies, other than the Australian Colonies, have not accepted it, and India has also declined to accept it. In England it is well known that a letter or other article, once posted, cannot be recalled. In these circumstances we have not thought it right altogether to adopt the Union principle in introducing new postal legislation; but, with a view to remove a doubt which has been raised, it has been expressly provided in this Bill that if and when it is adopted the redelivery of a letter or other article in accordance with rules framed by Government can be made without reference to the consent of the addressee.

"Section 20 is a new and obviously necessary section, its object being the prohibition of the transmission of obscene and indecent articles. Another section of the law provides for their destruction.

"Section 22 gives a power to postpone parcels when the work of any post office is too much to enable the ordinary post to be despatched within time. It will be seen that this provision does not permit the postponement of newspapers; and I gather from some portions of the Public Press that a postponement or a mistake in the delivery of a newspaper is an offence of the most serious magnitude and calls into question the whole constitution not only of the Post Office but of the Government of India generally. We do not therefore in any way diminish the preference given to newspapers along with letters, but we provide that books, parcels and similar articles, if they accumulate in too great measure, may be kept back for such time as may be found necessary in the post office.

"Section 26 gives in the case of articles transmitted through the Post Office the same power of interception on the part of the State as that which exists in the case of telegraphs. In this respect we copy the English law. The English Bill does not directly make any special provision of this

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kind, but it implies it in imposing a penalty upon a Post Office official who delays or intercepts any article otherwise than by direction of the State; and a special section is added at the end of the Bill which indicates that such powers as legally or constitutionally vest with the Governor General in Council in cases of this kind are not in any way diminished by the legislation now proposed.

"Chapter VI relates to the system of insurance and value-payable post and is, therefore, mostly new. It defines the limit and conditions of insurance which may be accepted by the Post Office.

"Chapter VII relates to undelivered articles. These, by the present law of 1866, must in every case be kept for a year before being destroyed or in any way disposed of. The result of that provision is that the post offices in this country are blocked with heaps of newspapers, magazines and trade circulars for which it is impossible to find an addressee. They have to be piled up for a whole year before any postal official can do anything to get rid of them. The provisions we intend to introduce in respect to these articles will be of a wider and more varied character, and will depend on rules which will be laid down by the Governor General in Council.

"Chapter VIII relates to ship letters: that is to say, the obligation on ship-masters generally to carry postal articles when called upon to do so. Very little change is made in the law as it at present stands in this respect.

"Chapter IX relates to money orders, and, as I have already mentioned, it is entirely new, so far as the law of the country is concerned. In 1880 the Post Office undertook the work of issuing and paying money orders, which had previously been done, under certain restricted conditions, by the civil treasuries, and the work has hitherto been carried on under the authority of the executive orders of Government. It is unnecessary at the present moment to dwell upon the popularity of the Post Office agency for the purpose of remitting small sums of money. The number of money orders issued yearly has risen from $1\frac{1}{2}$ millions in 1881 to 11 millions in 1896, the average amount of each order being less than twenty rupees. We now propose to place this system on a legislative basis; and in doing this we have provided that, when neither the payee nor the remitter of a money order can be found, the amount of the money order will be forfeited to Government at the end of a year from the date of its issue. As a matter of fact, if a claim can be substantiated after the expiry of this period, the amount would always be repaid; but, with the millions of orders issued yearly, it is necessary that a legal period should be fixed beyond which claims cannot be entertained as of

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right, and in fixing this period at one year we have followed the regulations of the English Post Office on the subject. We have also followed the English law in exempting Government and officers of the Post Office from liability in respect of loss caused by delay in paying money orders, and have further provided, in accordance with the present rule on the subject, that Government and such officers are not liable for a wrong payment when it is caused by incorrect information given by the remitter, or by incomplete information given by him if the officer who issued the money order had reasonable grounds for believing that the information was sufficient for the purpose of identifying the payee. We have also introduced a new provision that the amount of a money order wrongly paid to any person may be recovered from him, if he refuses to refund the amount, by summary procedure, as if it were an arrear of land-revenue due from him.

“Chapter X relates to penalties. It has been found necessary in this Bill to introduce one or two new penalties. By an omission in the present law the wilful detention of a letter or other article by an officer of the Post Office is not punishable, nor is the opening of a letter by an officer of the Post Office punishable, unless it is known that this was done with the intention of fraudulently appropriating the contents. It is now provided, in accordance with the English law on the subject, that the opening of a letter by an officer of the Post Office contrary to his duty, or the wilful detention of a letter by such an officer, shall be an offence. Another new penalty has also been provided to strengthen the hands of the Post Office executive. Serious inconvenience and even loss of mails has occasionally been caused by the desertion of mail runners or by their taking leave without permission. In some parts of India difficulty is always experienced at certain seasons of the year in retaining the services of these servants of the Department, and occasions not infrequently arise when a sudden demand for labour, and the offer of high wages, in connection with railway works, for instance, leads to something like a general desertion on the part of the runners employed on mail lines in the vicinity of such works. On these occasions the continuity of the mail service is imperilled, as there is no power to prevent runners from giving up their employment under the Post Office without warning. It has, therefore, been determined that the withdrawing from employ on the part of mail carriers, without permission, or without giving previous notice of one month, should be constituted an offence punishable with fine which may extend to fifty rupees.

“These are the provisions of the proposed legislation which I lay before the Council, and, in doing so, I wish, on the part both of the Hon'ble Legal Member and myself, to express our obligations to Mr. Fanshawe, Your Excellency's

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Director General of the Post Office. In the preparation of this Bill he has given us the most valuable assistance. The Post Office is a Department of most minute organization; and it requires very expert knowledge of the working of the Department to realize both in what respects legislation is required and to prevent what may appear to be most harmless provisions of the law from interfering with its work. Few people who receive a letter have any conception of the amount of organisation and arrangement which is necessary to enable that letter to proceed from the place where it is posted to the place of its delivery. Yet a million such articles pass every day through the Post Office addressed in half a hundred different languages and in a dozen different alphabetical characters. They are delivered, with the whole history of their transit stamped upon them, with a regularity and a punctuality which is almost perfect; the number of cases in which letters go astray, or in which they are undelivered, is an infinitesimal fraction of the number which is posted, and even of that infinitesimal fraction, in respect of only a small part can the blame be laid at the door of the Post Office.

"The legislation which I now propose to the Council will, if the Council accepts it, enable the officers who control this vast organization to maintain the perfectness of their work and to realise what has been their constant wish and effort, namely, to make the Post Office Department still more worthy of the confidence which the public place in it."

The motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND introduced the Bill.

The Hon'ble SIR JAMES WESTLAND 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 may think fit.

The motion was put and agreed to.

The Council adjourned *sine die*.

J. M. MACPHERSON,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 5th November, 1897.