

*Friday,
5th February, 1904*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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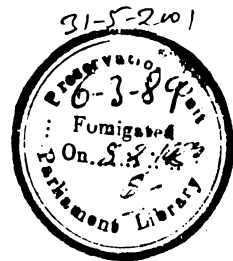
ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA:
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

1904

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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 Government House, Calcutta, on Friday, the 5th February, 1904.

PRESENT :

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

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. T. Raleigh, C.S.I.

The Hon'ble Sir E. F.G. Law, K.C.M.G., C.S.I.

The Hon'ble Major-General Sir E. R. Elles, K.C.B., K.C.I.B.

The Hon'ble Sir A. T. Arundel, K.C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. A. W. Cruickshank, C.S.I.

His Highness Raja Sir Surindar Bikram Prakash Bahadur, K.C.S.I., of Sirmur.

His Highness Agha Sir Sultan Muhammad Shah, Agha Khan, G.C.I.E.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. E. Cable.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Mr. F. S. P. Lely, C.S.I.

The Hon'ble Mr. H. Adamson, C.S.I.

The Hon'ble Mr. A. Pedler, C.I.E., F.R.S.

The Hon'ble Mr. T. Morison.

The Hon'ble Dr. Ramkrishna Gopal Bhandarkar.

The Hon'ble Mr. J. B. Bilderbeck.

The Hon'ble Mr. D. M. Hamilton.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Dr. Asutosh Mukhopadhyaya, D.L., F.R.A.S., F.R.S.E.

QUESTIONS AND ANSWERS.

His Highness THE AGHA KHAN asked :—

" I.—Will the Government be pleased to state the total number of troops other than Imperial Service Troops maintained by all the Native States of India combined ?

[His Highness the Agha Khan; Major-General Sir [5TH FEBRUARY, 1904.]
Edmond Elles.]

"II.—Will the Government be pleased to name the Native States that employ above 400 ordinary troops, and yet do not possess any Imperial Service Troops?

"III.—Will the Government be pleased to state whether there are any British Indian subjects serving as officers in the Imperial Service Troops, and, if so, by whom have they been appointed, and what qualifications ought a person to possess before being so appointed?"

"IV.—Will the Government be pleased to state whether the guns of the Royal Artillery Batteries stationed in India are of the same calibre and utility as the guns given to the batteries stationed in the United Kingdom, and, if not so, what type are they, and in what essential points do they differ?"

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES replied :—

"I.—According to the latest returns available, which are those for the year 1901, the total number of troops other than Imperial Service Troops maintained by all the Native States in India is 92,357.

"II.—The States that do not maintain Imperial Service Troops, but have local military forces of over 400 men, are the following :—

In Rajputana—Mewar, Tonk, Dholpur, Kota, Jhalawar, Karauli and Khetri,

In Central India—Rewa, Orchha, Datia, Panna, Samthar and Ajaigarh,

In Bombay—Baroda, Kolhapur, Cutch, Idar, Gondal and Palanpur,

In Baluchistan—Kalat and

In Madras—Travancore.

"III.—One of the main principles of the Imperial Service movement is that the different corps shall be composed only of subjects of the States to which they belong.

"In the ordinary course there would thus be no British Indian subjects serving as officers in Imperial Service Troops. In the majority of instances, however, the nucleus of the existing bodies of Imperial Service Troops was provided by the ordinary troops of the States, in which many British Indian subjects (often retired native officers of the Indian Army) have from time to time been employed.

"There are thus a few such persons serving in the Imperial Service Troops,

[5TH FEBRUARY, 1904.] [*Major-General Sir Edmond Elles ; Mr. Cable ; Sir Denzil Ibbetson ; Rai Sri Ram Bahadur.*]

but they are being gradually eliminated. In 1903 the actual number was only 13.

"Appointments of officers in the Imperial Service Troops are made by the Native Chiefs themselves, who, in making their selections, generally consult the British Inspecting Officers.

"Owing to the varying conditions of different States, no definition can be given of the qualifications necessary for such appointments, but, generally speaking, the officers are either Sirdars of the States or are promoted for merit from the lower ranks of their own corps.

"IV.—The Royal Horse and Field Artillery are ordinarily armed with similar guns in all parts of the world, although it occasionally happens, at times when re-armament is in progress, that there is a temporary diversity of pattern. At the present moment, as a result of the war in South Africa, new patterns of field guns have just been adopted for use by Horse and Field Artillery, the re-armament will commence next year, and some time must necessarily elapse before all batteries, both at home and abroad, are equipped with the new armament."

The Hon'ble MR. CABLE asked :—

"Will the Government be pleased to say what is the reason for which they have refrained from consulting the High Court regarding the territorial reconstitution of Bengal?"

The Hon'ble SIR DENZIL IBBETSON replied :—

"As it is not proposed to alter the limits of the High Court's jurisdiction, it does not seem to the Government of India necessary to consult the Hon'ble Judges at the present stage."

The Hon'ble RAI SRI RAM BAHADUR asked :—

"Will the Government be pleased to publish the Report of the Commission appointed under the presidency of Sir Lawrence Jenkins to enquire into the Malkowal plague inoculation mishap, as its non-publication has caused misgivings in the minds of many people respecting the utility of inoculation, and has thus prevented them from availing themselves of this prophylactic against plague?"

The Hon'ble SIR DENZIL IBBETSON replied :—

"The Report of the Malkowal Commission is still under the consideration of His Majesty's Secretary of State for India, with whom the decision as to publication rests.

[Mr. Lely; Sir Denzil Ibbetson.] [5TH FEBRUARY, 1904.]

"As regards the misgivings to which the Hon'ble Member alludes, I may say that the prophylactic fluid prepared by the process which was in general use before the cold weather of 1902-1903, and which is still supplied by the Parel Laboratory, was subjected to searching enquiry by the Plague Commission of 1898, who pronounced its employment to be free from danger; and that it has been used on a large scale in various parts of India during the past six years without producing injurious effects. There is nothing in the Report of the Malkowal Commission to cast doubt upon this conclusion, or upon the utility of inoculation."

The Hon'ble MR. LELY asked :—

"Has the attention of the Government of India been drawn to a leader which appeared in the *Englishman* of Wednesday, the 3rd instant, upon the subject of the reply made by Government to a recent memorial from the Bengal Chamber of Commerce?

"In that leader the following passage occurs :—

But an admission in Sir D. Ibbetson's apology for the Home Department last year, to the effect that telegrams had passed between the Department and the Chief Commissioner of Assam, while the question of subjecting Mr. Bain to a second trial was pending, on a point which was not discussed, and could only in such an offensive explanation have been concealed because its disclosure would not strengthen the Government case, amounted, and justifiably amounted, in public estimation to corroborative evidence of their belief. The belief being that, besides the brief official correspondence which was all that was needed to set the law in motion in a particular case, telegraphic messages had passed, which would weight the scale on one side of a pending question, what was better proof, what more proof could be obtained in the circumstances, that such communication had actually passed, than an accidental confession on high authority that it had?

"Will Government be pleased to state the nature of the telegraphic correspondence thus referred to?"

The Hon'ble SIR DENZIL IBBETSON replied :—

"The telegrams to which the Hon'ble Member refers were as follows :—

From Government of India to Chief Commissioner.—Your letter 20th ultimo. Please wire whether Bain claimed to be tried as European British subject.

From Chief Commissioner to Government of India.—Your telegram No. 2233, fourth. Bain claimed to be tried as European British subject.

"The information was required in connection with a technical point of law which had been raised during the consideration of the case.

"I alluded to the telegrams in question in my statement in Council, partly because the necessity for the inquiry contributed to the delay which had been made a subject of adverse comment, and partly in order that I might be able to state—as I did state emphatically—that 'no instructions, official or unofficial, were issued, and no steps were taken by the Government of India, other than those which have been mentioned in this statement.'

"In alluding to these telegrams, I used the following words:—'A doubtful point of fact was cleared up by a telegraphic reference to Assam.' Had the telegrams been of such a nature as is suggested in the passage which the Hon'ble Member has quoted in his question, my description of them would have amounted to a misstatement of fact."

INDIAN OFFICIAL SECRETS (AMENDMENT) BILL.

The Hon'ble SIR ARUNDEL ARUNDEL presented the Report of the Select Committee on the Bill to amend the Indian Official Secrets Act, 1889. He said:—"My Lord, I beg leave to offer a few explanatory observations in presenting the Report of the Select Committee on the Official Secrets Bill.

"On the 4th December, I said, with reference to the speeches of the Hon'ble Nawab Saiyid Muhammad and the Hon'ble Mr. Gokhale on the motion to refer the Bill to a Select Committee, that the numerous criticisms which had been received would be carefully considered by the Select Committee, and that I hoped important objections would be met and even that a general approbation of the Bill would not be wanting. And on the 18th December, on my motion to add the Hon'ble Nawab Saiyid Muhammad to the Select Committee, Your Lordship concluded your speech by saying you believed that when the Select Committee met, they would find that their labours were neither so severe nor so contentious as had been supposed, and that a satisfactory measure could be placed on the Statute-book, which need not strike terror into the heart of a single innocent person, but which would give to the confidential secrets of the State the protection which no reasonable man would willingly deny to them. The first of Your Lordship's anticipations has been fulfilled in the Report I have now to present; the fulfilment of the second is, I venture to hope, not far distant.

"A perusal of the amendments which have been introduced into the Bill by the Select Committee will show that the objections on which so much stress

[Sir Arundel Arundel.] [5TH FEBRUARY, 1904.]

was laid, both in this Council and by the public press, have been substantially met and removed.

"The objections as summarized by the Hon'ble Mr. Gokhale in this Council were three.

"First, that civil affairs were placed on a level with naval and military, and that even if they were brought within the purview of the Bill, to which however he objected, there was no distinction between matters of smaller and greater importance.

"This first objection has been removed by a definition of civil affairs which limits them as regards this Bill to matters of major importance.

'Civil affairs' means affairs—

(a) affecting the relations of His Majesty's Government or of the Governor General in Council with any foreign State or

(b) affecting the relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other matters of State, where these affairs are of such a confidential nature that the public interest would suffer by their disclosure.

"This definition of course governs all references to civil affairs throughout the Bill, and as far as sub-clause (b) is concerned, it would be necessary to prove to the satisfaction of the Court that the affairs mentioned were of such a confidential nature that the public interest would suffer by their disclosure.

"The second objection was that whereas the Act provided that a person who enters an office *for the purpose of wrongfully obtaining information*, is liable to punishment, the Bill provided that whoever without lawful authority (the proof whereof shall be upon him) enters a Government office, in which he is not entitled to be, commits an offence.

"This objection, which I admit to be valid, has been met, first by removing the word 'office' from section 3 (1) (a) (i) of the Act and relegating it to clause (ii); so that the entering or being in an office without lawful authority or permission is no longer an offence; secondly, by restoring to the section the words 'for the purpose of wrongfully obtaining information'. At the same time to meet the difficulty of proving wrongful intention, the Bill provides that

[5TH FEBRUARY, 1904.] [Sir Arundel Arundel.]

where a person commits an act specified in sub-head (a), of sub-section (1), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information.

"The third objection to the Bill was that it proposed to make all offences under the Act cognizable and non-bailable.

"This objection, the validity of which I recognize, has been met by making all offences with regard to civil affairs non-cognizable and bailable.

"In addition to this, while leaving all offences with regard to naval and military matters cognizable, we have limited the right of arrest in respect of them to public servants, and we have made them all bailable. We have also limited jurisdiction in such cases to Courts of Session, and to Magistrates of the first class who, of course, also possess authority to discharge an accused person if there is no *prima facie* case against him. The Naval or Military Officer Commanding also possesses power to discharge an accused person brought before him.

"Lastly, no Magistrate or Court can proceed to the trial of any person for any offence under the Act, whether naval, military or civil, except with the consent of the Local Government or the Governor General in Council.

"The Hon'ble Messrs. Gokhale, Nawab Saiyid Muhammad and Bose have signed the Report subject to dissent on two points, one of which was not alluded to by them in this Council on the former occasion, and both of which will generally be admitted to be of less importance.

"The Hon'ble gentlemen consider in the first place that the words 'or any other matters of State' should come out of sub-head (b) of the definition of 'civil affairs'. They admit that the deletion of these words might in certain exceptional cases cause administrative inconvenience. But it is urged that their retention will confer too wide a power on the Government in so far as it will enable the Government to set the law in motion in regard to the unauthorized publication of any 'civil' information which they may desire to keep from the public.

"Now, I beg leave emphatically to traverse this inference of the Hon'ble Members. Government will *not* have power to set the law in motion in regard to the unauthorized publication of *any* 'civil' information, which they may

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desire to keep from the public. The law could only be set in motion if the information related to matters of State of such a confidential nature that the public interests would suffer by their disclosure, and this would have to be proved to the satisfaction of the Court.

"The second point of dissent urges that as regards Native States the disclosure in a newspaper of information regarding them should not be an offence unless the information was wrongfully obtained. 'A Native State may on occasion find it necessary to supply information to some influential newspaper for the purpose of putting its case more effectively before the Government, and the publication of information so supplied should not be made penal'.

"I am not at all sure that Native States will be grateful for this championship. It would mean that the Editor of a newspaper might publish any information, however detrimental to the interests of a Native State, or to the dignity of its ruler, or to the character of its employes, provided only that the information had not been 'wrongfully' obtained.

"Surely this proposed modification of the Bill would be a doubtful kindness to those for whose comfort it is suggested. On the other hand, if newspaper report is to be trusted, opposition has been expressed to this Bill by some of the inhabitants of a certain Native State on the ground that the Durbar would adopt its provisions for the protection of the interests of the Native State itself. I differ altogether from the view taken by my Hon'ble dissentient friends. Editors of newspapers cannot escape the natural, and indeed inevitable, responsibilities of their profession. It is surely not only reasonable, but would be indefensible, that they should be conceded a latitude in their disclosures about the confidential affairs of Native States that is neither claimed nor granted in respect of any other confidential affairs.

"The Bill as now amended gives the Editor the amplest protection. He cannot be convicted of an offence under section 3 (3) of the Act, unless (1) the information he communicates regarding the Native State is a matter of State of such a confidential nature that the public interest would suffer by its disclosure, (2) he must wilfully communicate the information, and (3) he must know that in the interests of the State he ought not to communicate it *at that time*. All these three conditions would have to be proved to the satisfaction of the Court in case of a prosecution.

"I do not think any further protection for the Editor could reasonably be asked for, but it is conceivable that a Native State might think that the protec-

*INDIAN OFFICIAL SECRETS; LOCAL AUTHORITIES LOAN; 23
CO-OPERATIVE CREDIT SOCIETIES; NORTH-WEST
BORDER MILITARY POLICE.*

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Sir Edmond Elles.*]

tion of its interests from undesirable publicity might have been better safeguarded. The wording, however, is that of our Act and of the Act of Parliament as regards naval and military affairs, and no alteration in it seems necessary.

"I trust that this brief explanation will satisfy Hon'ble Members of this Council that the labours of the Select Committee have been successful in removing from the Bill the main objections that have been urged against it, and that it now contains nothing that the Government, in the interests of the State, may not legitimately demand. All these matters will no doubt be discussed when the Report is taken into consideration at a later date."

LOCAL AUTHORITIES LOAN BILL.

The Hon'ble SIR EDWARD LAW presented the Report of the Select Committee on the Bill to make further provision regarding the borrowing powers of certain local authorities.

CO-OPERATIVE CREDIT SOCIETIES BILL.

The Hon'ble SIR DENZIL IBBETSON moved that the Hon'ble Mr. Hamilton be added to the Select Committee on the Bill to provide for the constitution and control of Co-operative Credit Societies. He said:—"Hon'ble Members will have seen the Hon'ble Mr. Hamilton's letter which is printed as Paper No. 15 to the Co-operative Credit Societies Bill, in which he makes a most generous offer to advance Rs. 20,000 to finance experimental societies under certain conditions. I do not know that we shall be able to accept his suggestions exactly in the shape in which they stand at present; but I hope that we shall be able to give him substantially what he asks for, and in any case we shall be very glad to have his assistance in the Committee in threshing out the details of the Bill."

The motion was put and agreed to.

NORTH-WEST BORDER MILITARY POLICE BILL.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved for leave to introduce a Bill to provide for the Regulation of the Border Military Police Force in the North-West Frontier Province. He said:—"Now that the Military Police maintained on the North-West Frontier have become a considerable

NORTH-WEST BORDER MILITARY POLICE.

[Major-General Sir Edmond Elles.] [5TH FEBRUARY, 1904.]

force, the want of any code to govern the members and of any legal authority for enforcing discipline among them has made itself felt and been brought to the notice of the Government. The object of the present Bill is to remove these defects. The measure, which in the main follows the provisions of the Bengal Military Police Act, 1892 (V of 1892), has been drawn so as to apply in the first instance only to the Border Military Police ; but it is proposed—see clause 18—to reserve power for the Local Government, with the previous sanction of the Governor General in Council, to extend it by notification to the Border Militia or to any persons for the time being enrolled for similar service on the external frontier of British India."

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES introduced the Bill.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English.

The motion was put and agreed to.

The Council adjourned to Friday, the 19th February, 1904.

<p>CALCUTTA; The 6th February, 1904.</p>	}	<p>J. M. MACPHERSON, <i>Secretary to the Government of India, Legislative Department.</i></p>
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