

*Friday,
30th July, 1909*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVIII

April 1909 - March 1910

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OF
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ASSEMBLED FOR THE PURPOSE OF MAKING

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The Council met at the Viceregal Lodge, Simla, on Friday, the 30th July 1909.

PRESENT:

His Excellency the Earl of Minto, P.C., G.C.M.G., 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., G.C.S.I., G.C.I.E., Commander-in-Chief in India.

The Hon'ble Sir Harvey Adamson, Kt., C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble Mr. W. L. Harvey, C.I.E.

The Hon'ble Sir G. F. Wilson, K.C.B., K.C.M.G.

The Hon'ble Mr. S. P. Sinha.

The Hon'ble Mr. W. R. H. Merk, C.S.I.

INDIAN FACTORIES BILL.

The Hon'ble MR. HARVEY: "I beg to move that leave be given to withdraw the Bill which was introduced in Council on the 29th September 1905 to amend the Indian Factories Act of 1881, and also to introduce a new Bill to amend and consolidate the Factory Law in India. Were the provisions of this measure confined to the improvement of the law in minor matters where the experience of the last eighteen years has shown changes to be desirable, it would not be necessary for me to say much, for the amendments of this kind which are proposed are fully explained in the Statement of Objects and Reasons and the Notes on Clauses. But the legislation to which the sanction of this Council will be asked includes changes in the law which are far-reaching in their character; they have already aroused a great deal of public interest and we must expect that they will again be widely canvassed. I may say at once that we propose to regulate by law the hours of work of all operatives in the largest and most important class of factories, and I think that the public are entitled to expect a full statement of the reasons which have led to this new departure in Indian Factory legislation. I must therefore ask the indulgence of the Council if I treat this part of our proposal at some length.

“ It is necessary in the first place to touch briefly on the various enactments which have been passed in respect of factories. It was not until 1881 that the legislature attempted in any way to regulate the conditions of factory labour in India and the measure passed in that year provided only for a minimum amount of interference. It contained clauses providing for the fencing of machinery, the reporting of accidents, and the inspection of factories by Government inspectors. It also contained, as originally introduced, provisions which prohibited the employment of persons of less than seven years of age, and limited the hours of work of children (*i.e.*, persons under twelve years of age) to six in the day, and of young persons (*i.e.*, persons between the ages of twelve and sixteen) to eight in the day. In the Act as finally passed, however, no reference was made to young persons, and the working hours of children were fixed at nine hours. No attempt was made to restrict the employment of adults, whether male or female, in any respect whatever. The existing factory law was brought into its present shape in 1891 when the Act of 1881 was amended in accordance with the recommendations of a Commission which sat in 1890 under the presidency of Sir A. Lethbridge. The maximum age of children was raised from twelve years to fourteen, the working day of women was limited to eleven hours, and of children to seven hours, and a compulsory midday stoppage and a weekly holiday on Sundays were prescribed for all operatives; but except in the two matters last mentioned no restriction was placed on the hours of work of adult male operatives. The Commission had been specially asked to report whether the male operatives desired that a general working day should be fixed by law, and if so, of what length it should be, and whether, if the change were not desired by the operatives themselves, the conditions under which they worked demanded that it should be enforced. To this question they replied that all factories worked daylight hours, the average day being 12 hours, but longer in the hot weather than in the cold weather. They were of opinion that the operatives as a whole desired that this state of things should be continued, and that there was nothing in the conditions under which they worked which called for any legislative restriction of their hours of labour. Their opinion was accepted by Government and the Act of 1891 was framed accordingly.

“ This Act was generally accepted at the time as a satisfactory solution of the questions which had been raised. In addressing this Council on the day the Bill was passed the President (Lord Lansdowne) said: ‘ We believe that the effect of our measure will be to place factory-labour in India on a proper footing, and that our Bill will be accepted here and at home, not, as the Hon’ble Mr. Nugent would have us believe, as a mere prelude to still further restrictions, but as a settlement as final as any settlement of such a question can be.’ After

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such a statement from the head of the Government which was responsible for the Act of 1891, any critic of our measure is entitled to ask why the whole subject is now to be reopened, and why the mill industry of India is to be called on to submit to new restrictions. That is a perfectly fair question, though I doubt whether it would be asked by any person who had followed closely the course of events during the last four or five years. In any case the answer is a simple one. The conditions which prevailed in 1891 have been radically altered. Had all factories continued to work daylight hours, it is improbable—I give my own opinion for what it is worth—that Government would have been called on to interfere afresh. But under the changed conditions it has been proved beyond possibility of doubt that abuses may arise which cannot be allowed to go unchecked.

“ In 1891 there was not, I believe, a single electric light installation in any factory in India, but in 1893 electric installations were set up in one or two factories in Bombay, and it is a matter of common knowledge that the number of these installations has steadily increased until in Bombay at any rate the factory which is without one is an exception to the general rule. The result of this change is that the security which Government formerly had, that the operatives would not be employed for more than twelve hours a day on the average throughout the year, has completely disappeared, and both the employers of labour and the operatives themselves are now exposed to the temptation, which may at any time become irresistible, of extending the working day to an inordinate length. The period of prosperity which the cotton industry began to enjoy in the cold weather of 1904-05 resulted in a state of affairs which approached a public scandal. The mills were naturally anxious to make the most of favourable markets, and in many cases the men were regularly worked for fifteen hours a day or more. Public attention, both in India and in England, was called to the facts by the publication of certain articles in the *Times of India*. It was alleged at the time that the statements made in these articles were exaggerated and that they were in some cases without foundation. But, however that may be, the inquiries which were instituted by Government placed it beyond dispute that a large number of operatives were being regularly worked for fifteen hours a day or even longer, and that serious abuses existed in connection with the employment of children. Even when these facts were brought before them, Government were still reluctant to interfere. They would greatly have preferred to leave the question of the length of the working day to be settled between the operatives and their employers. But a state of affairs had been disclosed which made a full investigation an imperative duty, and no Government could have refused to undertake it. Preliminary inquiries were in the first instance addressed to Local Governments.

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"In the autumn of 1906 a Committee presided over by Sir Hamilton Freer-Smith was appointed to examine the actual conditions on the spot. It was announced at the time of their appointment that should their investigations establish the existence of abuses which required to be remedied, a representative Commission would be appointed to consider the whole subject comprehensively before any radical changes in the factory law were made. The reference to the Committee included both the direct regulation of the hours of adult labour and the formation of a class of young persons. Their report was unanimously in favour of direct Government intervention to limit the hours of work of all operatives. They were satisfied that without legislative interference it would be impossible to ensure that excessive hours would not be worked, and they accordingly recommended the imposition by law of a twelve hours day. They were not in favour of the creation of a class of young persons which would, in their opinion, create serious administrative difficulties. It was obvious that in the face of this report the matter could not be allowed to rest. Accordingly, in pursuance of the promise previously given, a representative Commission was appointed which carried on its labours during the cold weather of the year 1907-08. Their report was at once published for criticism and was sent to Local Governments for opinion. When all replies had been received it then became the duty of the Government of India to submit to His Majesty's Secretary of State recommendations as to the course to be followed. I am glad to say that Lord Morley has accepted all our proposals and the result of our deliberations is the Bill which is about to be introduced.

"The report of the Commission was not less clear and decisive as to the necessity of legislation than that of the Committee had been. On the question whether the present conditions of employment had produced deterioration in the physique of the workers, the verdict of the Commission was practically one of 'not proven.' In spite of the constant and careful attention they had paid to the matter during the whole course of their investigation, they had not found any indications of physical deterioration amongst the adult male operatives. As regards non-textile factories, they considered this want of evidence to be conclusive in the absence of any conditions tending to physical deterioration; but in the case of textile factories, they were of opinion that the past and present conditions of work in many places were undoubtedly calculated to cause physical deterioration, and they had been struck by the marked absence of elderly men in these factories in spite of the fact that the demand for labour was largely in excess of the supply. They considered that this fact pointed to the conclusion that the operative became unable to stand the

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strain of work at a comparatively early age. It is right to mention that Dr. Nair differed from his colleagues, and was of opinion that there could be no doubt that the conditions of employment had led to physical deterioration. If I may be permitted to sum up the conclusions of the Commission in my own words, I would say that all the members recognised that it was the duty of Government to render impossible the recurrence of the conditions which had been allowed to grow up in Bombay in 1905, and all were agreed that the object which Government must seek to attain was the limitation of the working day for adults to an average of twelve hours. But when it came to the question as to what form legislation should take, only one member, Dr. Nair, was prepared to follow the lead of Sir Hamilton Freer-Smith's Committee. The other members were anxious that legislative interference should be confined to the narrowest limits consistent with the attainment of the objects in view and submitted proposals which I shall notice presently.

"The replies which we received from Local Governments were no less clearly, in favour of legislative interference. With the exception of the Government of Burma, a province in which industrial enterprise has followed a somewhat different course from that which is usual in India and where textile factories are non-existent, the Local Governments and Administrations were unanimously of opinion that the case for imposing new restrictions was complete. Several commercial bodies took the same view, and the only important exceptions were one or two of the Chambers of Commerce and certain associations which represented the factory proprietors as a class. These bodies considered that no valid reasons had been established for amending the existing law. Their views are entitled to much respect, but they cannot be held to outweigh the immense mass of opinions on the other side. The case for legislation as it came before us was overwhelmingly strong. No responsible Government could possibly refuse to take action in the face of reports from a Committee under expert guidance, and from a Commission of which three mill-owners were members, supported as these were by official opinion throughout India and by a considerable section of the commercial community. The necessity for legislation had been established, the result to be attained had been clearly defined, there remained only the question whether legislation was to take the form of direct restriction or whether reliance was to be placed on indirect methods. I will now try to explain the reasons which induced the Government of India to decide in favour of the former alternative.

"In their report the majority of the Commission first of all stated the objections which in their opinion rendered it inadvisable to limit directly the working hours of adults. They then went on to explain the indirect methods which

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they believed would have the desired effect. I shall follow the same order, but first of all I wish to quote from the report an extremely significant passage which clearly defines the issue which Government had to decide:—

'We are strongly opposed to any direct limitation of adult working hours, because we consider that there is no necessity for the adoption of this drastic course, because we are convinced that it would cause the greatest inconvenience to existing industries, most of which have never worked long hours, and because we think such a measure would seriously hamper the growth of industrial enterprise. We believe that the working of adults for excessive hours in textile factories will be effectively prevented, incidentally, by the measures we propose for restricting the hours of "young persons", women and children. Had this effective alternative not been available, we are of opinion that direct limitation of the working hours of adults would then have been not only justifiable, but necessary, in order to prevent abuses which the Government could not, upon economic and humanitarian grounds, permit to continue or recur.'

"Government had therefore to answer three questions:

- (1) Are the objections to direct restriction so serious as the Commission believed them to be?
- (2) Are the indirect methods proposed by the Commission free from objection? and
- (3) Will these methods be successful in securing the desired result?

"The objections to the imposition of direct restrictions were entitled to and received the most careful examination by Government. In the first place, it was alleged that the direct methods involved the application of a principle of very doubtful validity. Here I must join issue at once. I cannot admit that, as between direct and indirect interference, any question of principle arises. If it is once conceded, as it is by the Commission, that Government is bound to pass such legislative measures as will prevent the working of any operative for excessive hours, then the question whether the desired result is obtained by direct or indirect methods is not a question of principle at all, but a question of expediency and administrative convenience. Next we were told that direct limitation has found acceptance in very few countries. To this argument my reply is that we cannot rely for guidance to any great extent on the experience of other countries. It is quite true that in England it has not been found necessary to impose any direct restriction on the hours of adult male labour, but does any one allege that the conditions prevailing in England are comparable with those which exist in India? If there were nothing else, the fact that in England labour is highly organised, and workmen have long been accustomed to band themselves together for their own protection, would of itself suffice to make it dangerous to allow too much weight

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to English precedents. What we have to consider is not the experience of other countries but the actual conditions of India today. The difficulties next to be mentioned are the most important. The Commission were of opinion that direct restriction was open to the gravest objections from a practical point of view and would apply a remedy very much more drastic than the circumstances of the case demanded. It would, they said, impose on all factories restrictions which were required only in textile factories, and they pointed out that in all industries overtime was frequently necessary, and that in India it would be impossible to devise a workable system of exceptions, which would give employers the freedom they could legitimately claim, and would at the same time secure the general enforcement of the restriction. I do not of course deny that there are difficulties to be faced, but I think it can be shown that, if the position is closely examined, these objections will be found to be a good deal less formidable than they have been represented to be. If it be the case that excessive hours are worked only in one class of factories, then surely it is a simple matter to legislate for that class only, power being taken at the same time to extend the provisions of the law to other classes, should the necessity to do so unfortunately arise. Then, as regards the possibility of devising a workable system of exceptions, if the limitation of hours of labour is confined to one class of factories, it ought not to be an impossible task to work out such a system. Moreover, the Commission themselves did not escape this difficulty by the resort to indirect methods. They proposed that all factories which undertook to work for not more than twelve hours in each day should be exempted from the necessity of registering their young persons and of having them certified for age. A factory accepting this concession would render itself liable for employing any of its operatives for over twelve hours as if they were young persons. But it is obvious that, if any large number of factories accepted this alternative, the position would at once become precisely the same as if the twelve hours day had been imposed by law, and the task of working out a system of exceptions would still have to be undertaken by Government. In any case the conclusion arrived at was that, while some of the practical objections were of equal force whether the methods of interference adopted were direct or indirect, the others were not by any means of an insuperable character.

“ It is necessary to turn now to the measures which the majority of the Commission believed would automatically restrict the hours of the working day of adult males to twelve hours. They proposed the formation of a class of young persons to include all young adults between the ages of fourteen and seventeen, with working hours limited to twelve in any one day. At the same time the hours of work for women were to be raised to twelve and the hours for children reduced

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to six. Finally the employment of young persons, women and children before 5-30 A. M. or after 7 P. M. was to be prohibited, and in place of the present mid-day interval a compulsory interval after six hours' continuous working was to be imposed. To two of these proposals serious and weighty objections were raised by Local Governments and by others. The increase in the working hours of women was criticised as a retrograde step, and I may say at once that the Government of India were not satisfied that it had been proved that women could work regularly for twelve hours without detriment to their health, or that it was desirable that they should compete with men for the same kind of work to a larger extent than they do at present. The formation of a class of young persons would, it has always been held, involve grave administrative difficulties, and I doubt whether the Commission have been successful in showing that they can be avoided. It has been found sufficiently difficult to enforce the existing law as regards children, and it seems likely that the same difficulties would appear in an aggravated form in the case of 'young persons'. It is true that the administrative difficulties would be removed if the factories voluntarily adopted the twelve hours' day, and accepted the alternative offered them by the Commission. But in that case, as has already been explained, the position would be in nearly every respect the same as if the twelve hours' day had been imposed by an Act of the legislature.

" I will deal now with the third and most important question, *viz.*, would the indirect methods prove successful? *i.e.*, would the working hours of the protected classes automatically fix the working hours of all operatives? So far as Government could ascertain, there were three possible methods of frustrating the object in view—(1) factories might be able to do without the young persons and women altogether and employ only male adult operatives and half timers, (2) they might be unable to do so owing to the limited supply of adult labour, and would then be compelled to make the hours of work of all operatives the same as for the protected classes, (3) they might be able to concentrate the women and young persons in certain departments of the mills, and would then work for twelve hours in these departments and for longer hours in the other departments. In view of the fact that complaints of the difficulty of getting a full supply of labour are frequently heard in almost every part of the country, it seems unlikely that the mills generally would be able to do without the young persons and women, and inasmuch as the temptation to work excessive hours would be strongest when the demand was greatest, the system would tend in this respect to correct itself. On the other hand, Government could not exclude the possibility that some mills at any rate might be able to dispense with the protected classes. If that occurred, the existence side by side of mills which worked unrestricted

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hours, and those which had to confine themselves to twelve hours, could not but lead to a sense of unfairness which would inevitably give rise to further trouble. This consideration would not of itself have been decisive, but it soon appeared that there was much reason to apprehend that in many mills arrangements could and would be made to confine the protected classes to certain departments. The Bombay Chamber of Commerce definitely expressed their belief that this was possible, and that there were many ways in which the intentions of Government could be circumvented. Certain mills might by increasing the number of spindles work the spinning and ring departments for twelve hours, while the other departments of the mill worked fourteen and fifteen hours. Dr. Nair pointed out that in the weaving department, where few young persons were employed, the hours of work would not be restricted to twelve, and the fact is not disputed by the majority of the Commission. They point out, however, that the internal arrangements of spinning and weaving mills are based upon the assumption that the spinning and weaving departments will work the same hours, that the machinery in the two departments is in almost all cases run by the same engine, and that it would not be economical, as a rule, to run the one department while the other remained idle. On the other hand, we have to keep in mind two facts. In the first place, with the growth of industrial activity which has been so marked during the last twenty years, weaving may be expected to become more important. More factories will in the natural course of development be established for weaving only, and separate machinery for the weaving sheds could easily be erected in new mills which combined spinning with weaving. In the second place, if large electric supply systems are established at industrial centres, similar to the scheme which is already in contemplation for Bombay, any factory which obtained its power from such a source would have no difficulty in running its weaving and spinning departments separately.

“The conclusion finally reached by Government was that there was the gravest reason to fear that the adoption of the Commission’s proposals would fail to prevent abuses. If these apprehensions were fulfilled, the position would at once become most serious and fresh legislation would be required within a very few years. It has been urged that the direct limitation of the hours of work now will lead to the demand for further restrictions hereafter. That is a question with regard to which I will not hazard any conjecture. But at any rate we may be sure that the most likely way of inviting fresh restrictions is to pass measures which may fail to accomplish their professed object. To experimental legislation with only a doubtful prospect of success we are utterly opposed, when the objects to be attained and the straightforward method of attaining them are plain before us. Indeed, it would be obviously unfair to

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factory owners to adopt such a course. Government can insist on their observing the letter of the law, but cannot expect from them any very hearty co-operation in securing an object which is not plainly expressed in the law itself. If there is a way by which the hours of work of adult male labour can be kept at 14½ hours or even more without infringing the law, the factory owners would pretty certainly find it out and adopt it. In doing so many of them would probably incur a good deal of expenditure, *e.g.*, in adding to the number of spindles, and they would have a perfectly legitimate grievance if the action which might be taken now were postponed to a later date. I have dealt very fully with the arguments used by the majority of the Commission in this matter, because I should not be treating the Council fairly if I did not take them into our confidence with regard to the considerations which have guided us to conclusions of such importance. I hope that in doing so I have not failed to attach to the arguments of such a weighty and influential body as the Commission the value to which they are entitled. I should be sorry indeed to do so, for Government have the fullest sense of the care, the ability, and the completeness with which the Commission conducted their inquiries and framed their proposals.

“ In the Bill which I have asked permission to introduce the provisions dealing with the hours of employment of operatives are divided into two sections—(1) those which apply to non-textile factories, and (2) those which apply to textile factories. The report of the Commission makes it perfectly clear that such abuses as have prevailed have occurred in textile factories only. In these circumstances it would have been unreasonable to impose on non-textile factories restrictions which were not required. The changes in the law as regards the hours of employment in non-textile factories will therefore be concerned solely with the midday stoppage, and the weekly holiday, and are not of a drastic character. At the same time, however, it is proposed to take power to extend by notification to non-textile factories any of the special provisions of the law relating to textile factories should circumstances make this course necessary.

“ In all textile factories, the hours of work of all operatives will be limited to twelve in any one day. This being so, the main reason for creating a class of young persons or for extending the hours of employment of women disappears. The working day of children will be limited to six hours in textile factories, this change being a natural corollary to the imposition of a twelve hours day for adults. The employment of women and children, and also of adult males in factories, where the shift system is not in force, will be prohibited except between 5-30 A.M. and 7 P.M. Special exemptions will, as proposed by the Commission, be granted to cotton-ginning factories and to cotton and jute presses. These are the main proposals which have been put forward.

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“With the remainder of the Bill I will deal as briefly as I can. Considerable difficulties have been found in enforcing the provisions of the existing law as regards the employment of children. It is notorious that flagrant illegalities in this respect are common in some provinces, and it is therefore essential that the law should be strengthened. We have accepted two important measures proposed by the Commission—(i) that certificates of age and physical fitness before employment should be demanded from all children who are actually employed in a factory, and (ii) that when a child over the age of six is found in any factory, he shall be presumed to be actually employed until the contrary is proved. Another proposal that the certificate of age given by the certifying surgeon should be accepted as conclusive evidence of the age of the child has been considered open to objection and has not been accepted, and we have also thought it inadvisable to give effect to the proposal that if a child over thirteen years of age is certified to be physically fit to be worked as an adult, and can produce a certificate shewing that he has passed a certain educational standard, he should be allowed to work for twelve hours.

“The existing Act contains no substantive provisions for the health and safety of operatives except those which concern the fencing of machinery. The Commission proposed the insertion in the law of a number of provisions borrowed from the corresponding provisions of the English Act or based on existing rules of Local Governments on the subject. All these proposals, with the exception of one which it is thought can better be dealt with by rule, have been accepted and a new provision with regard to lighting has been added.

“An important change has been made with regard to the responsibility for infringements of the law. The present Act endeavours, not with much success it is understood, to fix the responsibility upon the occupier. The Commission submitted proposals for making that responsibility effective. That some changes are required does not admit of any doubt, but it has been thought better on the whole to abandon the attempt to make the occupier, who in many cases is a Joint Stock Company, personally responsible, and instead it has been decided to fix the responsibility on the manager of the factory in every case. It is hoped that the provisions of the law have been so drafted that evasion will in future be impossible.

“The proposal that a Chief Inspector of Factories should be appointed for all India met with a considerable amount of opposition from Local Governments and the Government of India have decided that on the whole such an appointment is neither necessary nor desirable. Various amendments have,

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however, been made giving the Inspectors of Factories additional powers which experience has shown to be necessary for the proper discharge of their duties.

“ Before I close, there are two other matters to which I wish to refer. If Hon'ble Members will examine the provisions of the Bill, they will see that certain clauses, particularly clauses 21, 23, 28, 29 and 30, provide that the provisions of the Bill shall not apply to cases exempted from their operation by rule or notification. As the Act could not be worked without these exceptions, it is essential that the rules to be made and the notifications to be issued should come into force simultaneously with the Act itself. It is the intention of Government that this should be done, and arrangements will be made accordingly. A letter is about to be issued to Local Governments on the subject, and the public generally will have a full opportunity of expressing their opinion with regard to the rules before any final decision is arrived at. I understand that some of the mill-owners would have preferred that such exceptions should find a place in the substantive law. That is a matter which can most appropriately be discussed in Select Committee, but I may point out that inasmuch as it would be impossible for Government to frame a comprehensive list of exceptions which would never require amendment or revision, it would be necessary in any case to take power to make such exceptions by rule. It seems better, therefore, on the whole and more convenient that all exceptions should find a place in the rules.

“ The second remark I wish to make is this. I hope that factory owners will give us their assistance in settling finally the provisions of the proposed law. I can hold out no hope that the decisions already arrived at on important questions of principle will be reconsidered. Conclusions which are based on the matured results of an inquiry lasting for four years cannot be hastily reversed. But it is possible that the drafting of the Bill might be improved, and that we have not always succeeded in meeting the legitimate requirements of the factories. We cannot hope to put the law into a thoroughly practical and workable shape unless we have the assistance of those who are familiar with the details of factory working and who will have to comply with the provisions of the law when it is passed. It is not proposed that the Bill should be referred to a Select Committee now. It will, however, be published so that everyone concerned may have ample time to examine it and to suggest amendments, and in due course it will be referred to a Select Committee which will have to deal with the amendments which by that time may have been put forward.”

The motion was put and agreed to.

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The Hon'ble MR. HARVEY introduced the Bill to consolidate and amend the law regulating labour in factories.

The Hon'ble MR. HARVEY moved that the Bill, together with the Statement of Objects and Reasons relating thereto, 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.

INDIAN COMPANIES (AMENDMENT) BILL.

The Hon'ble MR. HARVEY moved for leave to introduce a Bill further to amend the Indian Companies Act, 1882. He said:—"I need not detain Council with any lengthy explanation of the amendments to the Companies Act which I am now proposing. The Indian Companies Act is an obsolete Act; we have for some time past recognised that it stands in need of considerable amendment and revision and have only deferred taking the necessary action because a similar measure regarding the consolidation of the corresponding English Act was still under consideration. As a result of the passing of the English Companies Act of 1908, we are now in communication with Local Governments and commercial bodies as to the amendments which should be made in our Indian Act, but we cannot hope to introduce the amending measure for some little time, and in the meanwhile our attention has been drawn to two points of importance in which the present Companies Act is defective and in respect of which early action is desirable. The English Act contains a provision permitting the payment of dividends out of capital during the period of construction. In India there are enactments enabling such payments to be made in the case of railways and tramways. Hitherto the need of extending this provision to industrial undertakings has not been felt in India, but recently we were approached by an Indian firm, who are undertaking two important industrial enterprises in India, with a request that they might be permitted to pay interest out of capital during the period of the construction of the works and buildings connected with their ventures. This request is a reasonable one and we have accordingly taken steps to amend our Act on the lines of section 91 of the English Companies (Consolidation) Act, 1908.

"The second amendment provides for the re-issue of redeemed debentures in certain cases.

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"This measure is necessary to protect purchasers of debentures issued by Joint Stock Companies in India from any risks arising out of questions concerning the validity of debentures at the time of their purchase. It has been pressed upon us by the Madras and Bombay Chambers of Commerce and will place our law in respect of this particular matter on the same footing as the English Statute."

The motion was put and agreed to.

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The motion was put and agreed to.

INDIAN ELECTRICITY BILL.

The Hon'ble MR. MILLER moved for leave to introduce a Bill to amend the law relating to the supply and use of electrical energy. He said:—
"In making the motion which stands in my name, I wish to avoid, as far as possible, all purely technical matters, but some explanation is necessary as to why it has been thought right to supersede a measure passed into law only six years ago.

"Electrical enterprise is still in its infancy in this country, and the Act of 1903 was the first attempt made to deal with the subject on broad and general lines applicable to the country as a whole. The necessity for such an Act was impressed on the Government by the commercial community, but in the state of our knowledge of the conditions as they existed then, great difficulty was experienced in framing a suitable measure, which, on the one hand, should place no unnecessary obstacles in the way of the development of a great industry and, on the other hand, should allow of a suitable measure of control in the interests of the public. The difficulties of detail proved indeed to be so great that it became a question whether the Bill should not be postponed until further experience had been gained, but it was thought better to proceed with the measure even if it should be found to be imperfect, than to leave matters in a state of doubt. Of the wisdom of this decision there can, I think, be no doubt, and the measure that was passed has given electrical enterprise definite legal recognition, and has, though there have been complaints of delay and obstruction, on the whole, worked

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well. From time to time, however, points of doubt and difficulty arose, and in 1907 a Committee was appointed to consider how they could best be met. The most important of these had reference to a matter of great consequence to the industry of the country, namely, the application of the Act to the supply of electricity in bulk. The existing Act made no clear provision for this, and the Council are, no doubt, aware how necessary it is to remove this defect, to allow of the development of the schemes for supplying energy in bulk which are being promoted in various parts of the country, and which are almost certain to become more numerous in future. Several minor points were also referred to the Committee; others have come to light during the discussion on their proposals, and others will, no doubt, be brought up in the examination of the Bill which I propose to now introduce. The Committee was a strong one and represented both Government and commercial interests. It met under the presidency of the Hon'ble Mr. Carnduff, whose great assistance in shaping this rather intricate piece of legislation I am glad to have this opportunity of recognising. It examined the references made by the Government with great care and submitted a report dealing very clearly and thoroughly with the intricacies of the subject. The Committee thought it right to make one very important recommendation on a matter outside the precise reference made to it, namely, the general system to be pursued in administering the Act. Under the Act of 1903, the administration was in most respects left in the hands of Local Governments, but in various important matters the authority or previous sanction of the Government of India had to be invoked. In municipal areas the Local Government granted licenses, while for a similar license in the neighbouring cantonment, reference had to be made to the Government of India. The difficulties and delays resulting from this dual system were pointed out by the Committee, and as a solution it was proposed that the administration of the Act should be undertaken by the Government of India. This proposal, when placed before Local Governments and Chambers of Commerce, met with considerable support in some quarters, and very strong opposition in others. It is proposed in the Bill to avoid the difficulties pointed out in a different way, namely, by further decentralising the administration rather than by centralising it. The main practical difficulty has arisen in the case of cantonments, and the Bill avoids a dual administration in such cases as far as is possible by allowing the Local Governments to issue licenses there, but only after reference to the military authorities whose powers in such places must be maintained unimpaired. The Bill therefore follows the Act in leaving the administrative authority in most matters in the hands of Local Governments, and it frees

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them in some cases from existing restrictions; while at the same time, to secure that uniformity which is so necessary for the encouragement of enterprise, it reserves to the Supreme Government the power of making rules, along with certain general powers of control.

"The changes in the law which it is proposed by the Bill to make are dealt with very fully in the Statement of Objects and Reasons, and I will not detain the Council except to call attention to one or two changes of special importance.

"Clause 3 of the Bill differs in an important point from sections 3 and 4 of the Act, of which it takes the place. The enabling powers formerly granted by section 4 of the existing Act were interpreted in the light of the prohibition in section 3, and were held therefore not to extend to the grant of licenses for supply of energy in bulk. To make it clear that no such limitation of the enabling powers of the Government was intended, it was at first proposed to widen the scope of the prohibition in section 3, and this was the course which the Committee recommended. It is not advisable, however, to impose prohibitions and penalties except where prohibition is inevitable; and it has been thought better to remove the general prohibition against supplying energy without a license and to substitute a new clause, which appears as clause 29, prohibiting certain action by persons who are not licensees. For a breach of this clause a substantial penalty is provided in clause 41. At the same time the provisions of the protective clauses in Part IV of the Bill have been extended so as to apply to non-licensees as well as to licensees. It is thought that these changes will, while removing certain restrictions that the existing Act places on the supply of energy, adequately guard the safety of the public and the interests of consumers; but the point will, no doubt, be fully considered in the criticisms we receive on the measure.

"The question of bulk supply is specifically dealt with in article IX of the Schedule.

"There are other changes in matters of detail in the Bill, which are sufficiently numerous to make it advisable for the convenience of all concerned that it should take the form of an entirely new measure rather than of an amending one. They are not, however, of sufficient importance to call for special notice at this stage, and they deal with technical matters which I do not think it is necessary to explain at length."

The motion was put and agreed to.

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The Hon'ble MR. MILLER introduced the Bill. He said:—"The object of introducing this measure at Simla is that it may be published, and receive the benefit of public criticisms before the Council meets in Calcutta; so that it may, after such amendment as the criticisms received may suggest, be referred to a Select Committee and, if approved, be passed without unnecessary delay. Steps will be taken at once to circulate it for opinion."

The Hon'ble MR. MILLER moved that the Bill, together with the Statement of Objects and Reasons relating thereto, 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.

INDIAN VOLUNTEERS (AMENDMENT) BILL.

His Excellency THE COMMANDER-IN-CHIEF moved for leave to introduce a Bill further to amend the Indian Volunteers Act, 1869. He said that the amendment of the Act was of a purely formal nature as explained in the Statement of Objects and Reasons. It ensured that any member of the Territorial Forces who might be attached to a volunteer corps in India should be subject to the provisions of the Indian Volunteers Act during the period he was attached to such corps.

The motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF introduced the Bill.

His Excellency THE COMMANDER-IN-CHIEF moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the Gazette of India and the local official Gazettes.

The motion was put and agreed to.

The Council adjourned to Friday, the 27th August 1909.

J. M. MACPHERSON,

*Secretary to the Government of India,
Legislative Department.*

SIMLA ;
The 30th July 1909. }