

Friday, November 7, 1879

ABSTRACT OF THE PROCEEDINGS

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,

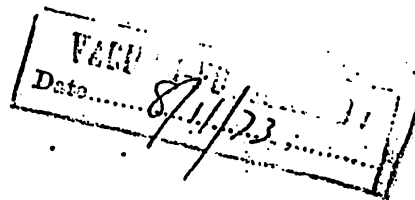
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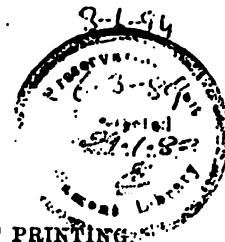
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*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 7th November, 1879.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.M.S.I.,
presiding.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble G. H. M. Batten.

FACTORIES BILL.

The Hon'ble MR. COLVIN introduced the Bill to regulate labour in Factories, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson and Hope and the Mover. He said that he had explained the general object of the Bill to the Council when he asked for permission to introduce it. There was very little to add to what he had said on that occasion, except that there were two or three points in the Bill as now introduced which must be regarded rather as experiments in solving some of the difficulties connected with it than as final settlements of them. For instance, the present definition of the word "factory" would probably require some amendment. It was now defined to mean a trade establishment in which fifty or more persons were employed in any manual labour exercised by way of trade. He should have been glad to have made the employment of steam, water or other mechanical power a part of the definition. Objections had been made to this addition: he was not sure that those objections were insuperable; but in any case the matter was one which had better not be finally settled until further information had been obtained from the Local Governments. Again, the determination of the age below which persons should

be defined to be children and young persons and the age under which the employment of children should be prohibited were questions on which it would be desirable to obtain similar information. The ages entered in the proposed Act must, therefore, be regarded as tentative until further enquiry had been made.

There were other points in the Bill besides those mentioned which he had no doubt would require amendment by the Committee; but he did not think that there was anything else which he need at present bring to the notice of the Council.

The Hon'ble MR. BATTEN said that, before the motion that the Bill be referred to a Select Committee was put to the vote, he begged, as he would not be a member of that Committee, to offer a few observations which had occurred to him in the perusal of the Bill. The Bill, if enacted in its present form, would be a purely permissive Bill. Unless the Local Government took action upon it, the sole matter which would be positively enacted—and this was also permissive—would be that it might be called “The Factories Act, 1880.”

That, he thought, was a very innocuous provision, to which probably nobody would object. But a power seemed to be given—he said “seemed to be given” because it was not given directly, but only by implication—to Local Governments to extend, with the previous sanction of the Governor General in Council, the other sections of the Act to their respective provinces. The words were: “* * the other sections of this Act apply only to those parts of British India to which they may, from time to time, be extended by the Local Government, with the previous sanction of the Governor General in Council, by a notification in the official Gazette.”

The power to extend was, however, not given in direct terms. When the Local Governments extended the sections, they were to apply. He presumed, however, that the section as it stood was rightly drafted; but it certainly did not seem quite clear. He had not seen the papers previous to the preparation of the Bill, except casually; but he understood that there had been not only a wonderful unanimity of opinion among most of the different Local Governments that the provisions of the Bill were required in the abstract, but also an extraordinary unanimity in their opinion that, in the concrete, they were not required for their particular provinces. If the Local Governments remained of that opinion, the Bill, if passed into law, would stand on record *in terrorem*; and probably it would be so far useful, and in any case everybody would have full legal authority to call it “the Factories Act, 1880”; but beyond that it would have no application. He hoped that he was right in supposing that the wording of the first section, if enacted, would permit the Local Governments to apply any particular section or provision of the Act without extending the whole of

the sections *en bloc*. He did not know whether that was the case or not ; but he thought it extremely desirable : for he could well imagine that a Local Government might at first wish to restrict the operation of the Act to certain sections—for instance, to the appointment of Inspectors and the compelling of notice being given of injuries occurring to persons in factories. If such were the case, then it would be merely necessary to apply sections 3 and 8 and such portions of sections 9, 10 and 11 as might be required to enforce sections 3 and 8. As he said before, however, he was not aware whether the wording admitted of this partial application of the Bill or not. If the mere existence of the Act in its potential but inactive form would not in itself be sufficient to keep the occupiers of factories on their best behaviour, possibly the appointment of Inspectors and the compelling of information as to injuries in factories might be sufficient for that purpose. At any rate, they would give the Local Government power to ascertain what was going wrong, and, if necessary, to apply the more stringent provisions of the Act.

The only other observation he had to make—and in this he had to some degree been anticipated by the Hon'ble the Mover—was as to the definition of the word “factory.” It appeared to him at present to be much too wide. He did not think in the discussions that had taken place in India and in England on the subject, and which had resulted in the present Bill being prepared, that there had been any idea of applying the proposed Factory Act to factories in which nothing but merely simple individual manual labour was used as the motive-power ; and, if that was the case, he did not see why we should extend it to anything more. For instance, supposing that Ranken and Company on the occasion of a fancy ball were obliged to employ fifty darzís, each working with his own needle or sewing machine,—under the definition given in the Bill that would be a factory. And so, in the same way, fifty weavers, each using the hand-loom, would become a factory. It appeared to him that that was hardly contemplated in the discussions which had led to the Bill ; and he hoped the Select Committee, for whose consideration he was induced to make these suggestions, would see their way to restricting the definition of the word “factory” as it now stood in the Bill.

The Hon'ble MR. HOPE said that he could not feel that the Hon'ble Mover had, on the occasion when he asked for leave to introduce the Bill, made out any very strong case for legislation. At the same time, as the object of the Bill was limited to protecting those who were not in a position to protect themselves, it appeared to him a humane one, and, as such, one to which we could not refuse our sympathy, and to which no reasonable person could offer any objection. The three points chosen appeared to come well within that object, that was to say, the question of age, of hours, and of fencing machinery.

That of inspection was merely ancillary; we could not see what was done under those heads unless they were brought under inspection. But it would be readily admitted, he thought, that it was indispensable that our legislation upon those points should be entirely in harmony with the circumstances and peculiarities of India. Probably very little of the experience derived in English factories would be of much use in India; and he fully agreed with the Hon'ble Member in his remarks on a former occasion that "the differences between England and India of climate, character and habits of life of the people were so great that much which was needed there would not only be inapplicable, but perhaps actually injurious here."

It did not, however, seem to him that the Bill which had been introduced at all corresponded with the principle which the Hon'ble Mover had laid down, and therefore he had heard with very great relief to-day that to a very great extent—in fact in almost every particular—the Bill was to be considered merely as a sort of carcass put forward for the Select Committee to work on. Consequently we could not be considered to be pledged in principle, much less in detail of course, to the sanction which he doubted not would be given to the introduction of the Bill to-day.

As to the details of the measure, as he observed that the Hon'ble the Mover had proposed that he (MR. HOPE) should serve on the Select Committee, he need not trouble the Council at any great length, or further than to say that in almost every particular the details of the Bill as now before them appeared to be open to objection. The age put down would have the effect of treating as "young persons who had not attained to an age at which they would be considered free agents" some who had actually got wives and families and were in the position of grown-up men and women. As to hours of employment, one of the most obvious results of fixing a daily instead of a weekly maximum would be to enforce working on Sundays all over India, which, he ventured to think, was not one of the objects which Earl Shaftesbury, at least, had in view in bringing the matter before Parliament. As to the fencing of dangerous machinery, he thought that a great deal too much power would be put into hands which were not skilled for exercising it; and perhaps it might be sufficient to empower the Inspector to apply to the Magistrate for an order, which could be obtained now under the regular criminal law, in any case in which he thought the fencing insufficient. As to inspection itself, he thought that some mode of appealing and of obtaining competent sanction before prosecuting should be provided. Likewise, with regard to the age, we were all well acquainted with the immense difficulty of ascertaining the ages of children in this country, and the Bill might very well lead to great oppression unless this could be got over.

He merely made these remarks because he thought that the Bill, if it went out as it was, might cause a great deal of apprehension in the country which, he hoped, would prove to be unnecessary.

As to the general application of the Bill, his remarks had rather a wider scope; and he fully agreed with the Hon'ble Member who had just spoken that the definition of "factory" as it now appeared was one which was far too wide. In fact, if it were allowed to stand in anything approaching to its present form, he should anticipate the worst results from the Bill. It covered industries where there was no machinery used and no close rooms; it likewise covered industries of a purely temporary character which were carried on for perhaps only a couple of months in the year; and even, as his hon'ble friend Mr. Batten had pointed out, it covered work which was carried on only for a day. On the other hand, there were certain industries which he was not sure whether the definition properly covered or not—possibly it did—such, for instance, as Government mines and factories. It might perhaps be more simple if a schedule of the particular industries with regard to which legislation was thought necessary could be appended to the Bill, and then the Local Government were empowered to extend the provisions of the Bill to them when necessary.

Having made these remarks with the object which he had just explained, of removing a misapprehension which might otherwise not unreasonably arise, he would only say that, as the Hon'ble Member was so liberally disposed as to the details of the Bill, he might rely upon his thorough co-operation in putting it into practical shape within the lines which he had endeavoured faintly to draw.

The Hon'ble MR. COLVIN wished to say a few words in reply to the observations made by his hon'ble friends who had just spoken. He was not sure whether the criticism made by his hon'ble friend Mr. Batten of the wording of the first section was justified by the drafting or not; but if it should prove to be so and if an amendment in the sense suggested should be necessary, he had little doubt that the Select Committee would agree to make it. Nor did he anticipate any objection to the Bill being modified, if necessary, so as to allow of Local Governments applying a part only of the Act, and not the whole of it, when they thought such a course desirable. It was unnecessary to follow his hon'ble friends Mr. Batten and Mr. Hope in their criticisms of the definition of the word "factory," because it had been fully recognized that the present definition was merely provisional.

As regards the Hon'ble Mr. Hope's remarks, he was glad to hear that he considered that the general object of the Bill was good and that it would have his support so far. He was not prepared, however, altogether to accept

Mr. Hope's view of the Bill when he spoke of it as merely a skeleton, which (if he had understood him correctly) might be altered by the Committee at pleasure; because the two main objects which the Bill was intended to effect—namely, that of affording security to life and limb from accident and of protecting children and young persons who had not attained to an age at which they would be considered free agents from being overworked—were essential to the Bill. On these points he should not wish it to be understood that he would consent to any material alteration. He would not follow his hon'ble friend in all the objections—of which he said that he had so many—to the details of the Bill, because, as it was proposed to make him a member of the Select Committee, he would probably have ample opportunity hereafter of bringing them to notice; and the Committee would, no doubt, be glad to receive any criticisms which were likely to be of use in framing the measure.

The Hon'ble SIR EDWIN JOHNSON said that he did not know whether this was the proper time and stage of the Bill at which to offer suggestions. He observed that the proposed Bill was, with the sanction of the Supreme Government, to be applied by Local Governments at their discretion. The whole of the clauses of the Bill, in fact, could be applied by any Local Government within its jurisdiction, under the general sanction of the Supreme Government; but he would ask the Select Committee to take into consideration that several of the factories with which they proposed to deal and for which they proposed to legislate were factories under the Government of India; and, if there was no objection on the part of the Select Committee, he would propose that in any measure having reference to factories generally, its special application to our military manufacturing establishments should only be sanctioned under the authority of the Supreme Government.

His Excellency THE PRESIDENT remarked that he understood the intention of the terms expressed in the first section to be that the application of the provisions under the Bill would be made by the Local Government only with the previous sanction of the Governor General in Council. That would involve a previous reference to the Supreme Government.

The Hon'ble SIR EDWIN JOHNSON observed that, in his opinion, before any principles were applied to the military factories, they should be specially brought to the notice of the Supreme Government for previous sanction. That was a suggestion which he merely offered for the consideration of the Select Committee.

The Hon'ble SIR ANDREW CLARKE said that, with reference to the remarks of his hon'ble friend Sir Edwin Johnson, he should like to say that one of the largest employers of juvenile labour in India were the Railway work-

shops. He thought some provision should be made for exempting them from the operation of the Act, and any other similar establishments. That was a point into which, he thought, the Committee might also enquire. So far as he was aware, the arsenals and dockyards in England were exempted from the operation of the Factories Act.

The Hon'ble MR. COLVIN said that the point raised had perhaps better be dealt with in committee. It was not, of course, intended that the Government of India should prescribe rules for private factories which it would be at liberty to neglect in its own. At the same time, it could hardly part with the control of its own establishments. Perhaps the rules to be framed by the Local Governments might be made subject to the sanction of the Supreme Government, and the necessary control so reserved. He thought that it was a matter which, having been brought to notice, might safely be left to the Select Committee.

The Motion was then put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

GLANDERS AND FARCY BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill for the better prevention of Glanders and Farcy among Horses. He said that the subject of legislation for preventing the spread of infectious diseases generally among animals had been for some time under the consideration of the Government of India. Recently the prevalence of glanders in the upper parts of the Panjáb had directed special attention to that disease. It was at first thought that Magistrates could, under the provisions of the Criminal Procedure Code, section 518, take summary action for the prevention of the evil and order the destruction of such animals as were duly certified to be affected with the disease, and instructions were issued to them to take action accordingly in the districts of Ráwalpindí and Pesháwar near the trunk road between the railway terminus and the armies in Afghanistan. Government had, however, since been advised that such action, so far as regards the destruction of animals the property of private persons, was not authorized by law. A Magistrate might, under section 518, direct the owner of a glandered horse, which was on a high-road or in some other public place and causing danger to other horses, to take certain order with it—to remove it, for example, to a certain distance from the public place. But the Magistrate had no power to order the owner to destroy the horse. Nor could

he interfere with horses in private premises at some distance from the public place. Now it appeared that glanders was more or less rife among the horses and ponies of the Government mail stations, and also in the villages along the road from Ráwalpindí to Pesháwar and Jamrud. Veterinary surgeons had been told off to examine all Government animals along the road; but the preventive measures against the spread of the disease would not be complete unless horses and ponies belonging to private persons were examined and, if necessary, destroyed, both on the road and in the cities and villages adjoining it. In view of the very serious consequences which might result to the forces on the frontier if the disease should appear among the artillery or cavalry horses, or among the baggage-mules or ponies, and of its highly infectious nature, it had been thought advisable to deal at once with the subject of glanders, and the present Bill had accordingly been prepared.

As the matter was one with which the local legislatures were fully competent to deal (in Madras there was already a local Act on the subject, and MR. STOKES understood that similar legislation was contemplated by the Bengal Council for the town and suburbs of Calcutta), the Bill was confined to those provinces of the empire where there was no local legislature; and as, even in these provinces, the necessity for its provisions would only exist at certain times, namely, during an outbreak of the disease, and within certain limited areas, the Local Government was empowered, by notification in the Gazette, to apply the Act to, and again withdraw it from, such local areas within the territories administered by it as it might think fit. This would enable the Local Government to deal, for example, with military cantonments, with camping-grounds, with localities where large horse-fairs were held, and with lines of road frequented by horse-dealers; and thus stamp out disease and prevent the loss of valuable animals. But glanders was not only contagious as regards animals of the equine species: man also became affected with it by contagion or inoculation. Of all contagious animal diseases, it was, therefore, the one over which the strictest supervision should be enforced.

The provisions of the Bill briefly were that certain officers, to be called Inspectors, were to be appointed, who were to be empowered to search for, seize and, on the certificate of a duly appointed veterinary surgeon, destroy any horse which was affected with glanders or farcy (the latter disease was also prevalent and was highly infectious); that the owners or all persons in charge of diseased horses were to give immediate notice of the disease to an Inspector or a police-officer; that the buildings or other places in which diseased horses might have been were to be disinfected and their internal fittings destroyed; and that no horse which had been in contact with a diseased horse was to be removed, except in good faith for the purpose of preventing infection, without a license. General

powers to make rules in all matters for carrying out the purposes of the Act were conferred on the Local Governments. Finally, for the protection of Government and Government officers, all diseased horses which had been destroyed in the Panjáb under the recent orders of the Local Government or the Governor General in Council were declared to have been destroyed in accordance with law. In preparing the Bill, the provisions of the English Contagious Diseases of Cattle Act (41 & 42 Vic., c. 74), as well as those of the Madras Act (II of 1866), to which he had referred, had been duly borne in mind.

The Hon'ble SIR EDWIN JOHNSON said that the necessity for introducing a Bill of the character of the contemplated measure had been very prominently brought to the notice not only of the military authorities but of the Government on financial grounds, and he looked to very great and good results from the Bill which the Hon'ble Member proposed to introduce. His Excellency the Commander-in-Chief, if he made any remarks on the subject, would be able to speak as to the anxiety which His Excellency, in common with the Government of India, felt when he heard that, at the very crisis of our operations in the recent campaign in Afghanistan, those dangerous diseases were rampant. But, leaving the military consideration apart,—though its importance could not be overrated—he would remind His Lordship and the Council that every endeavour was at present being made to improve the breed of horses throughout the country generally. With that object we were spending certainly not very large sums, but sufficiently important to justify their being considered in connection with any Bill of this sort. Now, if we were making that expenditure with a view to improving the breed of horses for all purposes—agricultural and others as well as military—it was surely worth our while to take care that those horses were properly cared for, and that we should do our best to prevent their destruction by contagious diseases. His (the Military) Department had already obtained the concurrence of the Financial Department to establish a Veterinary College. He was not certain whether His Excellency the President had yet had the papers before him; but the matter was now one of detail between the two departments, which were at present dealing with the question as to the locality of the College. The necessity for such a College had been accepted long ago; the question, however, had been rather banded backwards and forwards with reference to its situation; and the Lieutenant-Governor of the Panjáb was extremely anxious to see it established. He mentioned all this to show that the measure proposed to be introduced by the Hon'ble Member had a general application and was not a mere question of one service—the military; and, therefore, when the Select Committee came to consider it, they would, he trusted, bear that in mind. But there was another point which he had to ask his hon'ble friend Mr. Stokes to consider. The proposed measure was limited to the better prevention of glanders

and farcy among horses. There was however, another disease which was almost as bad as either of those, and from which we suffered very considerably in the army. He referred to the Ludhiána disease, which had almost put a regiment out of service owing to the danger of allowing it to mix with other troops—a regiment now on the frontier and actually in the field. Therefore, when his hon'ble friend Mr. Stokes was drafting the Bill, he hoped he would recollect the existence of the Ludhiána disease as one almost as dangerous as farcy and glanders.

His Excellency THE COMMANDER-IN-CHIEF said that he could recognize no necessity for any strong advocacy of the Bill. It appeared to him that the necessity for it was every day self-evident. As his hon'ble friend Sir Edwin Johnson had remarked, it was not only a very important military measure, but it was important to all owners of horses in every shape and form. The owner of a tattoo was relatively interested in the health of that animal and of course in the preservation of its life. The Bill would have this beneficial effect that it would enable us to visit out-of-the-way places, apart from those in which the disease might be generated and introduced among the valuable property of the Government.

On lines of dák there were frequent cases of glanders amongst the animals engaged in traffic, and it was of the utmost importance that Government and Government officials, on being made aware of the existence of such a disease, should be able to swoop down upon it and stamp it out at once. The meaner animals, he believed, were greatly the cause of the spread of this disease among the troops in quarters. Grass-cutters' tattoos, for instance, which were sometimes out for days together in a district, rubbing against country animals and browsing over defiled and tainted pasture, picked up and disseminated the disease, which, as was well known, often assumed a very virulent form. He believed, therefore, that the proposed measure would be of the utmost value not only to the military service, but to the Government and the country generally.

As regards the Ludhiána disease, he was not quite sure whether it was contagious. It was a disease about which very little was known, and in fact up to the present it had remained one of the mysteries, like cholera. He thought, however, that his hon'ble friend Sir Edwin Johnson was perfectly right in suggesting that this disease should be brought within the scope of the proposed Bill. He had no doubt that the loss by Ludhiána disease in horses affected by it amounted to something like 70 per cent., so that the destruction of the animal was really no great hardship on the owner affected by it. He would, however, suggest that the highest veterinary authority on the subject should be called upon to forward to the Select Committee appointed to deal

with the Bill a list of the contagious diseases which might be brought under its provisions.

The Hon'ble MR. STOKES remarked that there could not be any Select Committee if the Bill was to be passed at the next meeting of the Council.

His Excellency THE COMMANDER-IN-CHIEF suggested that in that case it might be advisable to consult Mr. Evans, Inspecting Veterinary Surgeon, who was at present in Simla. It was of great practical importance that information on this point should be derived from trustworthy veterinary authority; and perhaps his hon'ble friend Sir Edwin Johnson could communicate with Mr. Evans on the subject.

The Hon'ble SIR EDWIN JOHNSON remarked that he was quite prepared to do so; but, as His Excellency had observed, the disease was an extremely difficult one to deal with, and we had no very accurate knowledge regarding it, or whether it was contagious or not. He was not sure, therefore, whether before the next meeting of the Council Mr. Evans would be able off-hand to give such an opinion as would be of much value in framing the Bill. Still he would take care that Mr. Evans was consulted, and his opinion forwarded to the Legislative Department, who could work upon it in communication with the Military Department.

The Hon'ble MR. STOKES said that he should be sorry to commit himself to any undertaking to bring the Ludhiána disease within the scope of the Bill. In the first place, he did not know exactly what that disease was. He was told that it was a kind of anthrax, and that it might be communicated by inoculation—as, for example, by means of flies. But there did not seem to be a particle of evidence that it was infectious or contagious in the common acceptation of those terms. In the second place, he considered himself in a merely executive matter like this little but the instrument of the Executive Departments concerned; and he had received no instructions from the Home Department or from the Military Department regarding the matter. He would suggest that the Bill, which was one of great urgency, should now be passed in its present form; and then, as soon as they had found by inquiry from Mr. Evans and all the other authorities competent to give an opinion on the subject what the Ludhiána disease really was, and whether it was communicable by proximity or contact, an amending Bill might, if necessary, be brought in and passed.

The Hon'ble SIR EDWIN JOHNSON observed that it just depended whether the Legislative Department was prepared to consider this disease in their present Bill or not. If they were unable to do so, he agreed with his hon'ble friend Mr. Stokes that it would be preferable to go on with the original question of dealing with farcy and glanders rather than let the proposed Bill await

a discussion which might take weeks and weeks. He was very much inclined to favour the view of the case taken by Mr. Stokes that it would be advisable—indeed very necessary—to refer to many other authorities besides Mr. Evans in regard to legislating for the Ludhiána disease. He would rather see the Bill passed as it was and amended afterwards, if necessary.

The Motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend the Foreign Jurisdiction and Extradition Act, 1872.

TOWN-DUTIES AND TOLLS BILL.

The Hon'ble SIR JOHN STRACHEY asked leave to postpone the motion for leave to introduce a Bill to regulate the levy of town-duties and tolls in Municipalities.

Leave was granted.

The Council adjourned to Friday, the 14th November, 1879.

SIMLA;
The 7th November, 1879. }

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