

Friday, July 23, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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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 Simla on Friday, the 23rd July 1869.

P R E S E N T :

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P.,
G.C.S.I., *presiding*.

His Excellency the COMMANDER-IN-CHIEF, G.C.S.I., K.C.B.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

VOLUNTEER ACT AMENDMENT BILL.

His Excellency SIR W. MANSFIELD moved for leave to introduce a Bill to amend the Volunteer Act No. XXIII of 1857. He said that the proposed alteration was merely a formal one, rendered necessary by the dissolution of the old local European Army. Under Act XXIII of 1857, section 1, the members of the Volunteer Corps in British India were subject to the Articles of War for the European officers and soldiers of the East India Company so far as those Articles were applicable to officers and consistent with the provisions of that Act. The object of the Bill, which he now asked leave to introduce, was simply to substitute for those obsolete Articles the Articles of War to which Her Majesty's Army was for the time being subject.

Leave was granted.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY asked the President to suspend the rules for the conduct of business. The Bill was rather urgently required, but it had only been circulated for a week instead of for the fortnight required by the rules.

The PRESIDENT declared the rules suspended.

The Hon'ble MR. STRACHEY then introduced the Bill to shorten the time for landing dutiable goods, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said, that when on the occasion of their last meeting he had asked for leave to introduce the Bill, he had explained the reasons for the proposed legislation. The Bill was brought forward on the strong recommendation of the Government of Bengal, and in accordance with the request of the mercantile community of Calcutta. The merchants had represented the necessity of shortening the time prescribed by the Consolidated Customs' Act, section 52, after which the commanders of vessels might

land goods and deposit them in the Customs' House subject to the lien of freight and other charges to which they might be subject. The matter was one in which the Government of India had, as such, no interest at stake, and the Bill was merely intended to meet the wishes of the merchants of Calcutta. There was no information to show what were the wishes of the merchants at the other leading Indian ports, but the Bill was so framed that if it was found that no change was necessary in those ports the law there would not be altered. If, however, the same reasons for the proposed change existed there as in Calcutta, the Local Government would be empowered to reduce the time, subject to the approval of the Government of India.

BHUTÁN DVÁRS BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bhután Dvárs Bill be taken into consideration. He said that the Bill as amended by the Select Committee had met with the general approval of the Government of Bengal. Three amendments were proposed by the Select Committee. The first of these was contained in the second clause of the first section of the Bill as amended. It provided for the termination of the operation of the Act upon the published order of the Governor General in Council. As some objection had been taken to the form of this provision, and as it appeared on further consideration that its object would in effect be otherwise attainable, MR. COCKERELL would not ask the Council to adopt this amendment. The act of terminating the operation of an enactment virtually constituted the repeal of such enactment: it was a purely legislative function, and in the present case the object of delegating the exercise of such function to the Executive was to secure the restoration of the jurisdiction of the ordinary Civil Courts within the Bhután Dvárs as soon as the purpose of their temporary supersession had been attained and without the necessity of recourse to this Council for fresh legislation. The effect of the Bill, however, would be to place the Bhután Dvárs within the category of what were usually termed "Non-Regulation Provinces;" and as the Governor General in Council would shortly have power to legislate for such Provinces, on the recommendation of the Local Government, without the intervention of this Council, the proposed amendment might not inconveniently be dispensed with.

As to the second of the proposed amendments, MR. COCKERELL had drawn attention, at the time of introducing this Bill, to the provision by which, from the date of its coming into operation, the jurisdiction of the ordinary Civil Courts within the Bhután Dvárs, in regard to the particular subjects of litigation to which the Bill had reference, would absolutely cease, and he had explained the reason for not excepting from this change of jurisdiction suits which might have been commenced, but not decided, previous to the passing of this Act, or which were then pending in appeal, or in which an appeal against the decision of the Court by which the suit had been disposed of was still open to either of the parties. He had added that it would probably be found necessary to make some express provision for the disposal of such cases by the Courts which were to be substituted for the existing Civil Courts. Such a provision was contained

in section 4 of the amended Bill. By it the Lieutenant-Governor of Bengal was invested with the authority of determining by which of the new Courts original and appellate jurisdiction would be respectively exercised in regard to the transferred cases. And in order to avoid as much as possible the incurring of extra expense and trouble by the parties to such cases by reason of their transfer from one Court to another, it was also provided in this section that the transferred suits and appeals should be dealt with by the Courts to which they were removed, exactly as if they had been originally instituted in such Courts; that, in fact, the cases should proceed from the stage at which they had arrived in the Court from which they are removed, instead of being recommenced *de novo*.

The other addition to the original Bill was to be found in the new section 6, by which power was given to the Local Government to frame additional rules of procedure for the guidance of the new Courts, and such rules were declared to have the force of law.

The Schedule annexed to the Bill contained all that was at present thought necessary in this respect; but unforeseen doubts and difficulties might arise, which the Local Government should have the means of meeting and removing as far as might be practicable, without recourse to further legislation. The authority thus vested in the Local Government was limited by the usual proviso that the rules to be made under this section should not be inconsistent with the principle, or go beyond the scope, of the Act.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill be passed with all the proposed amendments except that to which he had first referred.

The Motion was put and agreed to.

The following Select Committee was named on the Bill to shorten the time for landing dutiable goods:—The Hon'ble Messrs. Maino, Ellis, Cockerell, and the Mover.

The Council then adjourned to the 30th July.

SIMLA,
The 23rd July 1869. }

WHITLEY STOKES,
*Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.*