

Friday, March 18, 1870

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 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 18th March 1870.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I.,
presiding.

His Honour the Lieutenant Governor of Bengal.

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

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

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. STEPHEN introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, when the Bill was last before the Council, he explained the object with which it had been introduced, which was to relieve the Statute-book of a considerable number of obsolete enactments as a step towards the consolidation and reproduction, in a better form, of the Regulations and Acts in force. The Bill itself consisted of only one section, which had been worded with great care. The wording had been taken from a Statute prepared in England by the most experienced Parliamentary Draftsmen, and he might shortly describe its effect. It was to repeal or sweep away a quantity of Acts which had become useless, but not to invalidate any institution dependent on them or any Act passed under their authority. There was no clause providing that the repeal of repealing Acts should not revive Acts repealed by them. But it was not necessary to have a provision to that effect in the present Bill, because, by the General Clauses' Act, I of 1868, it was provided that, in order to effect the revival of a repealed Act, it should be necessary expressly to state such purpose; it would therefore now be sufficient simply to repeal the repealing Act. The schedule to the Bill

was of great length, but the length was more apparent than real. A very large portion of it consisted of the repeal of repealing sections of Acts, the object being to render the Statute-book as compact as possible. He proposed to repeal every repealing section yet passed, down to the repealing section of the Court Fees' Act, VII of 1870. He hoped that some other less cumbrous way might be devised of carrying out repeals in future. That accounted for a considerable number of the sections repealed by the present Bill. Some persons might think that it was hardly worth while to effect such a small reform; but the Council would see the extent to which the mere titles of the sections amounted, and it was obvious that the sections themselves must amount to much more. A good many repealed Acts were needless because they had done their work. For instance, Acts like 37 Geo. III, c. 142, s. 17, which provided for the transfer of records from one court to another: those transfers having been effected long since, there was no use in keeping the Acts providing for the transfer on the Statute-book. So, a statute like 11 Geo. IV & 1 William IV, c. 75, for the relief of sufferers by the insolvency of a Government officer in Madras many years ago, was no longer necessary. Other Acts had been superseded without repeal; as, for instance, Act XI of 1844, as to the administration of justice and despatch of business in the Supreme Court at Fort William, had been since superseded by the Charter and the Code of Civil Procedure. So, several enactments with regard to salaries and pensions had been superseded by later enactments. Besides those enactments which had become superfluous, and besides the repeal of superfluous sections, there were a certain number of Acts of Parliament which the Council had a right to repeal under the Indian Councils' Act, and which, although in force, had absolutely ceased to have effect by lapse of time. There were some extraordinary provisions in two statutes of George the Third (21 Geo. III, c. 70, secs. 11 and 15, and 37 Geo. III, c. 142, s. 15) about the registration of Natives of India who held office, who were incapacitated from receiving salaries unless registered. These enactments, if acted upon, would produce most disastrous results. There was also a statute (33 Geo. III, c. 52, s. 137) which incapacitated all Her Majesty's subjects from various branches of trade, which rendered it penal in them, for instance, to trade in rice, tobacco or betelnut, and which would enable evil-disposed persons to bring actions for the purpose of harassing others. There were not very many Acts of this nature, but there were a certain number, and he hoped they would be able to sweep away the whole of them, and to take away a great number of provisions which were unsuited to the present times. There were also some obsolete provisions which empowered the Governor General in Council to hold Quarter Sessions four times a year. He did not know whether the Governor General in Council ever had done so; but the provision (which was to be

found in 13 Geo. III, c. 63, s. 38) was certainly useless now. There were also other Acts conferring powers on the Governor General in Council, which were also clearly inapplicable to the present times: they applied to the time when the Governor General in Council was an appellate Court of record. It was just as well that these provisions should be put an end to, even if only to shorten the Statute-book. All these matters would be carefully considered in Committee, so that nothing should be repealed which was of use and ought to remain in force. He had every hope that the result would be to diminish the Statute-book to a considerable extent, and thus be a step towards the consolidation of the law and the preparation of a new edition of the Statute-book in a better form.

The Motion was put and agreed to.

FEMALE INFANTICIDE BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill for the prevention of female infanticide be taken into consideration. He said that the Select Committee had made very few alterations, for the most part of no great importance, in the Bill as introduced. The principal alterations were these:—It was originally provided that rules should be made for prescribing the manner in which information should be given to the proper officer of births, marriages and deaths. Doubt was expressed whether, as the section was originally worded, it would be open to the Local Government to prescribe by whom information should be given. To remove that doubt, an alteration had been made. The Committee also recommended that the rules should provide that information should be given when births, marriages and deaths were about to occur. A clause had also been added to section 6, providing that, in the case of neglected children, the Magistrate of the District might compel the person responsible to make a monthly allowance for their support, not exceeding fifty rupees. Some other verbal alterations had been made; among them one, which was an obvious improvement, in the title of the Bill.

There was nothing else which it was necessary for him to refer to, the object of the Bill having been so fully explained on former occasions. The Bill had been so universally approved in all quarters, that it seemed unnecessary to take up the time of the Council in referring to the matter further. If the Bill should today receive the sanction of the Council, it would immediately be the duty of the Local Governments and Administrations to whom the Bill referred to proceed to make rules under the Act. It would be obvious that the success or failure of the measure would depend on the manner in which the rules were made. The Government would have the great advantage, as had already been stated

when the time came for drawing up the rules, of the advice and co-operation of His Highness the Mahārājā of Jaypūr, which MR. STRACHEY was sure would be of high value and importance. He would only add that he thought they might confidently hope that the result of this measure would be to enable the Government to repress this abominable practice, which had too long been suffered to remain as a reproach to our administration.

The Motion was put and agreed to.

The Hon'ble Mr. Strachey then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to make further provision for the regulation of Native Passenger Ships, and moved that it be referred to a Select Committee with instructions to report in a week. He said that the chief object of this Bill was to prevent the overcrowding of Native Passenger Ships proceeding to ports in the Red Sea with pilgrims *en route* to Mecca. When he obtained leave to introduce it, he instanced to the Council some of the cases of overcrowding that had recently been brought to notice, and which had induced the Government to take action in this matter. He thought it would be impossible to exaggerate the sufferings the passengers must have been subjected to on those occasions—sufferings which must have equalled any which slaves in former days endured when making the middle passage. There was, however, this material difference between the two cases. Here, the sufferings were voluntarily incurred, and they had to protect the people against themselves. The Muhammadans set so high a value on a pilgrimage to Mecca that they were willing to undergo any amount of distress and privation to accomplish it; and the poor, who were only able to undertake the journey on the cheapest terms procurable, were not, under the circumstances, likely to complain of the treatment they were subjected to. He thought the fact of these sufferings being to a great extent wilful ought not to prevent them from endeavouring to lessen them as much as possible. A very intelligent and influential Muhammadan gentleman had recently told him (MR. CHAPMAN) that his co-religionists would be most thankful for any measure that would have the effect of mitigating the hardships they now had to encounter in making these pilgrimages. Another reason for legislating in this matter was this:—The Ottoman Government had of late years subjected all vessels arriving from India to very strict quarantine; and the belief was general that cholera and other diseases were introduced into Europe through Indian pilgrims arriving at Mecca. Whether this belief was well founded or not,

he thought it behoved the Government to take care that proper sanitary arrangements were enforced on these vessels, and he need hardly remark that sufficient space and ventilation were not the least important points to be attended to. These were the principal reasons for taking action in this matter. He would now endeavour briefly to explain the state of the existing law, and the alterations they proposed to make in it. The application of the present Act (XXI of 1858) was limited to the cases of vessels proceeding from ports under the jurisdiction of the British Government. The consequence was, that its provisions were evaded by owners of ships, after clearing out from these ports, putting into others belonging to Foreign States, and, regardless of all restrictions, stowing away any number of passengers they could procure. They proposed to remedy this defect by extending the operation of this Bill to all ports within the dominions of Princes and States in India in alliance with Her Majesty, and to all ships commanded or owned by subjects of Her Majesty conveying passengers between all ports and places situated east of the Cape of Good Hope and ports and places in the Red Sea and Persian Gulf. They proposed, also, to render masters violating the provisions of the Bill liable to imprisonment as well as fine; and, in order to facilitate prosecutions, they proposed that depositions taken before Consuls, and authenticated by their signatures, should be admissible as evidence. These were some of the chief points in the Bill. But the main safeguard against overcrowding would, he (MR. CHAPMAN) thought, be found in the provision obliging masters going to the Red Sea to obtain a clean bill of health at Aden, which bill was to be withheld, if the ship had a greater than the prescribed number of passengers. He trusted the Bill would be effectual in suppressing the horrible sufferings which they knew were now entailed on the poor people making these voyages. It seemed to him the Government had a perfect right to insist on passengers on board ships sailing under British colours being treated with common humanity. And this was all the present Bill aimed at.

The Motion was put and agreed to.

REGULATIONS AND ACTS LOCAL EXTENT BILL.

The Hon'ble MR. COCKERELL, asked leave to postpone his Motion to introduce the Bill to consolidate and amend the law relating to the local extent of the general Regulations and Acts, and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities.

Leave was granted.

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The following Select Committees were named :—

On the Bill for the repeal of certain obsolete enactments—The Hon'ble Messrs. Gordon Forbes, Chapman and Cockerell and the Mover.

On the Bill to make further provision for the regulation of Native Passenger Ships—The Hon'ble Messrs. Stephen, Gordon Forbes and Cockerell and the Mover.

The Council adjourned to Friday, the 25th March 1870.

WHITLEY STOKES,

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

CALCUTTA,

The 18th March 1870. }