

Thursday, July 15, 1875

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 14

Jan to Dec

1875

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

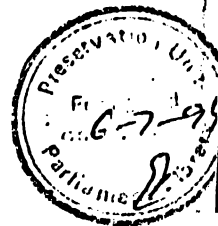
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1875.

WITH INDEX.

VOL. XIV.



Published by the Authority of the Governor General.

Gazettes & Statutes Section
Parliament Library Building
Room No. FB-025
Block V

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1876.

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

The Council met at Simla on Thursday, the 15th July 1875.

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.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

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

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

The Hon'ble T. O. Hope.

NEW MEMBER.

The Hon'ble MR. HOPE took his seat as an Additional Member.

PANJĀB LAWS AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the better administration of law in the Panjāb be taken into consideration. He said that the Council were aware that although this Bill had rather a grandiloquent title, its object was merely to give the Government of the Panjāb greater power for making regulations for village-watchmen and police. The subject was one which was not thought of sufficient importance to handle when the Panjāb Laws Act was passed. He had explained to the Council, once or twice, how the Panjāb stood in respect to legislative matters, and how it was necessary, since the passing of the Indian Councils' Act, for the Panjāb Government to come to this Council for any additional legislative powers that it might require. The present Bill, since its introduction, had been

published for several months. The remarks that had been made upon it had not induced the Select Committee to make any but verbal alterations; in fact, hardly any substantial alterations had been suggested, so that the Bill as amended by the Select Committee stood almost exactly in the same position as it stood when it was introduced.

The Hon'ble Mr. HOPE said that perhaps Mr. Hobhouse would be so good as to inform him for what reasons two suggestions made by the Panjáb Government with regard to the Bill had not been adopted by the Select Committee. One of those suggestions was with reference to the second proviso to section 39A; the other with regard to section 39C. He had no doubt that the Select Committee had good reasons for rejecting those suggestions. The suggestions of the Panjáb Government were to be found in paragraph 6 of the letter No. 892 of the 3rd March 1875, from the Secretary to the Panjáb Government, which was amongst the papers considered in Committee.

The Hon'ble Mr. HOBBHOUSE said that according to his recollection the suggestion had been discussed, and that a slight alteration had been made. He had not the original Bill in his hands and could not recollect its precise terms.

The Hon'ble Mr. HOPE said that his hon'ble friend Mr. Eden had now kindly explained the matter to him, with the facts of which he had not been previously aware. The second suggestion was with regard to retaining the power of the Governor General in Council in the matter referred to under section 39C.

The Hon'ble Mr. HOBBHOUSE explained that the reason for retaining that power was that the particular class of tax referred to was a new tax. In everything else he believed that the Bill followed the exact practice that had been observed in the Panjáb for a great number of years, but with respect to *kasbahs*, they proposed to have a more elaborate system of police, and they might therefore be obliged to put on a new tax. Now in such cases it was considered by the Government of India best to place some degree of check upon the Local Government, and to oblige them to refer to the Supreme Government whenever they desired to levy a new tax. It would be observed that the words "with the previous sanction of the Governor General in Council" had been transposed. The clause formerly ran so as to make the previous sanction necessary to the exercise of the discretion of the Local Government whether or no to apply Act V of 1861 at all. Now it was not

proposed that the sanction of the Governor General in Council should be required for that exercise of discretion, but when they wanted to put on a new tax for the purpose of paying for that more elaborate system of police, then it was proposed that the sanction of the Supreme Government should come in.

His Excellency THE PRESIDENT observed that that view was in accordance with the policy of the Government of India in the case of all new taxes, whether provincial or local. Whether the tax was called a local or a provincial tax was of no consequence to the person who paid it, and the same dissatisfaction which might be created by the injudicious imposing of new Imperial taxes was also likely to follow the imposition of new provincial or local taxes. It appeared to the Government of India to be essential that a distinct and complete power of control, apart from the more general executive authority of the Government of India over the Local Governments, should be provided for in all Bills relating to local or provincial taxation.

The Hon'ble SIR A. ARBUTHNOT remarked that it seemed necessary that the Government should have the power to determine whether or not a tax was expedient. In the case of most of the other Provinces, where legislation was resorted to, involving taxation, it was the practice to make in such legislation definite and specific provision as to the nature and description of the taxation which was to be levied; and it appeared to him a little doubtful whether in principle it was desirable that the nature and description of a tax, where taxation was sanctioned, should not be specifically provided for.

The Hon'ble SIR WILLIAM MUIR said that the same doubt had occurred to him in reference to clause (j) (under section 39A), namely, whether it was in accordance with legislative usage to confer the absolute authority on a Local Government of imposing a tax without any limitation as to the amount of its incidence, nor any condition as to the mode of its assessment. But on making inquiry into the subject, he learned that in this present case, the power in question had long been exercised by the Panjáb Government; and as the Bill simply legalized the existing practice, he had withdrawn the objection.

The Hon'ble MR. POWHOUSE remarked that it had been the practice which, he believed, had prevailed since the acquisition of the Panjáb, and that it was in accordance with the law. When we acquired the Panjáb, the orders of the Government were the law, and they had since been expressly legalized by the

operation of the Councils' Act. This state of things therefore was quite legal, and the Bill only proposed to continue it. But in point of fact there was a practical limitation of this tax, and a very substantial one, namely, the extreme smallness of the object for which alone it could be levied. It could only be levied for village-watchmen and the things connected with them. That was a minute matter and might well be left where it stood, in the hands of the Local Government.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA LABOUR CONTRACT BILL.

The Hon'ble Mr. HOBHOUSE presented a preliminary Report of the Select Committee on the Bill to regulate the transport of Native labourers to British Burma, and their employment therein. He said that there was no motion before the Council with respect to this Report, and they did not propose to proceed with the Bill until there had been ample time for the Local Governments, and that portion of the public which was interested in the matter, to consider it; in fact, in all probability, it would not be desirable to proceed with the Bill until the Council got to Calcutta. But the Select Committee had introduced some very large alterations into the Bill, and those alterations again depended upon a most essential change in the administrative and financial system which underlay the whole of the legislation on this subject, and therefore it would be convenient if he now gave to the Council a short explanation of the nature of those changes.

It was now very nearly two years ago since he introduced this Bill into the Council. At that time there was no system whatever of assisted emigration to British Burma, but it was conceived that the owners of property in British Burma who stood in need of labour were prepared to advance funds for the purpose of importing labourers from peninsular India into British Burma, looking, of course, to be repaid by the value of the labour. In particular there was one large owner of property—the British Burma Company—who expressed a strong desire to have a law which would secure to them the fruits of the expenditure that they were prepared to make upon the importation of labourers into British Burma. Upon that footing a Bill was prepared, following in most of the essential respects the other enactments that we had upon the

subject of emigration, that was to say, securing certain safeguards for the proper conduct of the emigrants down to the sea-shore, for their carriage across the sea, and for their protection against ill-treatment when they arrived at the place of labour; and, on the other hand, securing to the person that bore the expenses the services of the labourers, putting summary remedies into his hands, and placing penalties upon the labourers in case they violated the terms of their contracts.

Well, the Bill was introduced and it was published, and it was intended to proceed with it after the Council got to Calcutta, because it was a matter that affected the Local Governments both of Bengal and Madras. But before any further step was taken there came the Bengal famine, and with the famine came a new plan of importation of labourers from Bengal into British Burma at the expence and under the direction of the Local Government. When that undertaking was commenced the Local Government of British Burma, over which his hon'ble friend Mr. Eden then presided, applied to the Council to stay their hands. Accordingly the progress of the measure was suspended for a considerable time. During that time the new plan came well into work, and the working of it had been considered quite satisfactory by the Government.

Now the Council of course were aware that there were different systems of emigration prevailing in different places. In most of those countries which, as regards the Government of India, were foreign countries, the system was to make the emigrant contract with the Government and for the Government to assign the emigrant to some particular private employer for the full term of his contract. In Assam, which was both near at hand to us and also was under our dominion, the practice was for the emigrant to enter into a direct contract with some private employer, and the Government had nothing whatever to do with the disposal of his labour. In the Straits Settlements, which were also near at hand to us, and which used, until quite lately, to be part of our dominions, the same practice prevailed as in Assam.

With respect to British Burma, as the two circumstances that he had mentioned of proximity and uniformity of dominion were the same as they were in Assam and as they used to be in the Straits Settlements, the circumstances seemed, in the first instance, to point to the adoption of the same system that prevailed in Assam, and accordingly the original Bill was framed upon that footing. But there were two reasons why in the case of British Burma we should rather adopt the system of contract with the Government. One reason—a

very important one and probably of itself conclusive—was that the system had been started,—it existed,—it was working on a considerable scale and in a satisfactory way. The other reason was that the conditions of labour in British Burma were not the same as those that existed in other countries. In Assam, and also in our Colonies, the labourer directly he got into his new country was set to work for the whole term of his contract upon some plantation of tea, cotton, coffee, sugar, or some other product ; but in British Burma the Government itself was the principal employer of the labourers who went there, and of those who were not employed by the Government, the majority were set to work in the towns or at some labour other than field labour. Well, then, he would state the system proposed for British Burma, and perhaps his hon'ble friend Mr. Eden, who knew more about the country than he did, would be good enough to correct him if he made any mis-statement or any material omission.

It was proposed that every emigrant should enter into a contract with the Government to labour for a certain term of years, or, to put it more technically, he was to contract with the Secretary of State in Council who, for all purposes of property and contract, represented the Indian public. The contract would be regulated by section 13 of the Bill, which provided for the term of his engagement, which in no case was to exceed three years ; the quantity of his work, which in no case was to exceed six days a week or nine hours a day ; and the quantity of his wage, which in no case was to fall short of Rs. 7 a month. Then by section 35, which might be termed the corner-stone of this Bill, every emigrant who had entered into such contract, when it had been ratified by the Emigration Agent, was bound to serve according to the terms of his contract in the place and mode in which the Local Government, that was the Chief Commissioner of British Burma, should appoint. The expenses of conveying the people to their place of labour were intended to be borne in the first instance by the Local Government of British Burma, and they would look for repayment to the value of the labour they got, or to some private employer who might desire to have the services of the labourer for a greater or less period of his contract. Every labourer who thrived and succeeded would have to pay in some shape or other the expense of his own transit to his place of labour, and also something more which should represent the general expense of carrying the machinery of the Act into effect, and the expense of the conveyance of those persons who died or who fell sick, or in some way or other failed to produce any profit. In fact, in those operations, as in all operations on a great scale, the successes must pay for the failures.

Now let us suppose that the cost of transit to Rangoon was Rs. 20. He was giving only imaginary figures, but he believed they were tolerably near the mark. Well, Government would want to be repaid this Rs. 20, and also something more which would represent the man's fair share of the general expenses. What that something more should be, would be ascertained by experience, somewhat roughly perhaps, but yet with tolerable accuracy. Let us suppose it to be Rs. 5. Therefore the man would have to pay Rs. 25 before he cleared scores with the Government. Now he might be dealt with in two different ways; either he might be assigned to somebody who wanted his services and would take him for a greater or less time and pay down the Rs. 25, or some portion of the money according to the period of the engagement, or he might be retained in the service of Government and the excess of his earnings according to the market-price of his labour over the contract-price of it would be placed to his credit; that was to say, the Government, might say to him "you have contracted to serve us for Rs. 7 a month, your labour is worth Rs. 10, we will place Rs. 3 to your credit, or we will pay you Rs. 8, and place Rs. 2 to your credit, and whenever it comes to pass that Rs. 25 stand to your credit, then you shall be a free man." But then one might say, if it was the fact that the market-price of labour so much exceeds the contract-price, every good labourer would repay the Government over and over again before he had completed the three years of his contract. No doubt that was so, and if it should happen that a good labourer contracted to serve for three years, which however, be it observed, was the maximum and not the necessary term of his service, and that he worked all that time for Rs. 7, which however was the minimum and not the necessary amount of his wages, in that case the Government would be repaid long before the three years were out. But in order to meet such cases, it was proposed that whenever the amount that was settled as the redemption price was placed to the credit of the labourer, that moment he might redeem his contract and become a free man. In fact, the Government wished for nothing so much as for free men instead of contract labourers, and they proposed to give every species of facility to the early redemption of contracts upon proper terms.

Of course the principle of the Bill could not be changed in the way Mr. HOBHOUSE had described, we could not change the whole motive power of the machinery we created, without great modifications in the Bill itself. The Council would find the Bill very much shortened and simplified, and they would also find one or two questions, which he had mentioned when he introduced it as puzzling questions, entirely got rid of. He would briefly state the main features in which the original and amended Bills remained still the same and those in which alterations had been made by the amended Bill.

With respect to the treatment of emigrants from the time they left their own homes to the time they got on board-ship for British Burma, there was no material difference between the two Bills. The Bill still required a written contract before the emigrant left his home; it still required a local medical examination for the purpose of testing the man's fitness for labour; it still required a local examination by the Magistrate in the presence of the recruiter for the purpose of testing the man's knowledge of the undertaking into which he had entered; it still required a formal registration of the contract, and made that registration the foundation of all ulterior proceedings; and it still required due attention to the wants of the emigrant on the part of the recruiter, the Emigration Agent, and the Medical Inspector. Again, when the man arrived at the place of his labour, there was very little difference between the original and the amended Bills in the requirements they made for the purpose of securing to him due protection against any imposition or ill-treatment. But inasmuch as the Local Government would be entirely responsible for his conveyance from peninsular India to his place of labour, it was proposed to omit a great number of detailed requirements which were in the original Bill respecting the period of transit, because those matters might now be provided for much better either by general rules or by simple executive orders.

Of the questions of which he said we had got rid, perhaps the most puzzling was the question of labour-rate. The original Bill provided that the Local Government might levy a rate upon all employers of emigrants not to exceed Rs. 5 per emigrant, and the rate might be levied yearly. There were considerable difficulties in fixing the maximum amount of that rate, and perhaps greater difficulties in fixing its exact incidence. It was necessary because we were proceeding on the footing of a direct contract between the emigrant and the employer, and the employer would only pay the expense of the actual transit of each person; whereas there was also the expense of the general machinery to be provided for, and the Government which provided that machinery ought to be reimbursed in some way. But now, seeing that every contract was to be made with the Government, and that the private employer would get no labour except by an assignment from the Government to himself, it seemed more proper and certainly would be much easier to make him pay in one lump sum the expense of the transit of the labourer he took, and the percentage on it to cover the expenses of the failures and of the machinery. That would be provided for in the first instance in the assignments, which of course would differ in the charges they imposed upon the employer according to the length of time for which he took the labourer. After a time it would probably be possible

for the Local Government to fix upon some general rules to regulate those payments, and the Bill gave them power to do so.

Another matter of considerable difficulty was the terms upon which contracts should be redeemed. The original Bill gave a scale or tariff on which every emigrant should be entitled to redeem his bargain with his employer, so many rupees for the first year, so many for the second, so many for the third. It was a very rough way of ascertaining the price of redemption, and it met with a good deal of remonstrance from our friends the British Burma Company as representing the employers of labour. But now he had explained to the Council the very simple mode in which it was proposed that, as between the labourer and the Government, the contract should be redeemed. Of course, if the labourer was assigned, he must redeem the assignment as well as the contract, and in the case of very short assignments probably the simplest plan would be that they should be worked out. In the case of long assignments it would be better to give the man some power of redeeming them, and we proposed that the Inspector of Immigrants in British Burma should decide whether the assignment should be redeemed or not. If not, the emigrant must work out his assignment. If it was to be redeemed, then it would be redeemed on the terms which would form part of the original bargain between the employer of the labourer and the Government, and which might perhaps after some accumulation of experience be reduced to rule.

Another difficult matter related to the return-passage of the emigrant. It had been our general policy to insist that the emigrant's contract should always contain a provision entitling him to a free return-passage, that is to say, one at the expense of his employer, whenever the term of his contract was worked out. However suitable that might be to other places, it was certainly not suitable to the system of short contracts and very easy redemptions which we proposed for British Burma. In point of fact the existing contracts under which labourers at this moment were going from India to British Burma did not provide for any such thing. On the contrary, it had been the policy of the Government of British Burma to offer the labourers grants of land for the purpose of inducing them to stay in their new country, instead of a money bonus for the purpose of inducing them to return to their old homes.

There were minor alterations in the Bill, some depending upon the essential alteration of principle he had mentioned, and others made because the provisions

of the Bill were found not to be suitable to the circumstances of British Burma. But the Council was not now considering the Report, and he need not go into those matters in more minute detail. He thought he had stated enough to enable the Council, and those outside who might take an interest in the matter, to grasp with facility the differences which existed between the original and amended Bills and the reasons upon which those differences rested.

The Hon'ble SIR WILLIAM MUIR said that there was one question he would like to ask his hon'ble friend Mr. Hobhouse. For sufficient reasons, the section providing for the return of the labourer to India had been properly removed from the new Bill as it now stood. But there was one exception, and that was with regard to disabled labourers. The Local Government, as he understood from section 60, should either provide for the employment and support of the disabled labourer and his dependants, or return them to the place at which they were registered. When the labourer was disabled permanently, and there was no means for his support or employment, he (SIR WILLIAM MUIR) would ask whether it would not be more suitable that the labourer should be provided with the means of returning to his home, rather than to the place of registration.

The Hon'ble MR. HOBHOUSE said that the expression suggested by Sir William Muir was the more correct expression. But as it was only a matter of a few words, it was hardly worth while altering the Bill, and it would be sufficient if the Secretary made a note of it for the Select Committee, to whom the Bill would come back again.

His Excellency THE COMMANDER-IN-CHIEF enquired why no provision was made for returning emigrants.

The Hon'ble MR. HOBHOUSE said that it was because the Bill contemplated a system of very short contracts. We contemplated a contract which should never be for more than a term of three years, and which in many cases would be less. Moreover a good labourer might redeem that contract within a year. The policy of the Government was to take a population into this very thinly-peopled country, and the Government of British Burma at this moment were offering grants of land to the emigrants in order to induce them to settle in British Burma. Now it would be an absurd thing if with one hand we offered inducements to the emigrants to stay in the country, while with the other we held out a money bonus to them to return home. Such a course would be both inconsistent and against our policy.

His Excellency THE COMMANDER-IN-CHIEF observed that it seemed to him that the emigrants might possibly not have intentions of settling in British Burma, and that if the rate of wages was only Rs. 7 a month, it would be a perpetual exile to a man, because he could never save a sufficient sum out of Rs. 7 a month in a foreign country to repay the Government and to defray the expense of his return home.

The Hon'ble MR. HOBHOUSE said that it was the difference between the contract-price and the market-price which would repay the Government.

His Excellency THE COMMANDER-IN-CHIEF remarked that the Bill as now framed seemed to indicate the possibility of a considerable population being thrown into British Burma who did not contemplate being for ever exiled from their own country and settled in British Burma, and of being left there without the means of returning.

The Hon'ble MR. EDEN explained that although the cost to emigrants of returning from the Colonies was Rs. 40 or Rs. 50, steamers left British Burma sometimes two or three times a week, which would bring back emigrants occasionally as cheap as Rs. 2 or Rs. 3 a head. The instances, he thought, would be very exceptional in which the emigrant could not afford to pay this sum, having regard to the fact that every labourer who chose could with ease earn eight annas a day. The case with regard to Colonial labourers was very different, as they had to be sent on emigrant ships a long voyage under special arrangements at a considerable cost per head.

His Excellency THE COMMANDER-IN-CHIEF said that the only other remark he wished to make was that the fixing of nine hours a day by law was rather a long period for labour. Eight hours was considered the usual working day.

The Hon'ble MR. HOBHOUSE said that was the time which was settled in the Department which attended to those matters, and that particular part of the Bill was framed by a gentleman—Mr Geoghegan—who had great knowledge of the subject, and who was very vigilant with regard to the protection of emigrants. The point was not one on which Mr. Hobhouse himself possessed personal knowledge.

INDIAN TELEGRAPH BILL.

The Hon'ble Mr. HOBHOUSE then introduced the Bill to amend the law relating to Telegraphs in India, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this was a Bill which he obtained leave to introduce at the last meeting of the Council, and he then explained the necessity for the measure. It was to remove all doubt with respect to the power of Government to make rules for the conduct of Telegraphs licensed under the Act of 1854. That object was provided for by section 2 of the present Bill. The rest of the Bill, as he had already mentioned, so far as it altered the present law, consisted merely of penal clauses. The present Act was passed shortly before the Penal Code, with which it was not quite in accordance. It was now to be brought more into accordance with it, and several sections we found might be omitted altogether on account of the passing of the Criminal Procedure Code. He thought that the only section to which he need draw attention as embodying any important principle was section 15. That section provided for the increase of the police force if an act causing wrongful damage to any Telegraph was repeatedly committed in any place, and that the cost of such additional force should be charged upon the inhabitants of such place. Whether, under the present law, it would be competent to do that or not, MR. HOBHOUSE was not quite certain. It seemed to him that it would. The principle was contained in the Police Act V of 1861, one section of which gave the Local Government power to employ additional police in any part of the general police district in which, from the conduct of the inhabitants, they might deem it expedient to increase the number of the force. That was exactly the same principle which we proposed to apply to the Telegraphs. We only proposed to make it clear that it was capable of that particular application, and he did not suppose that any one would dispute that the instance in question would be a very beneficial application of the general principle.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE moved that the Bill be published in the official *Gazettes* in such languages as the Local Governments might think fit.

The Motion was put and agreed to.

SUNDAY BILLS.

The Hon'ble Mr. HOBHOUSE moved that the Hon'ble Mr. Hope be added to the Select Committees on the following Bills:—

To consolidate and define the law relating to the settlement and collection of land-revenue in Oudh.

For declaring what laws are in force in Oudh.

To consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

To limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble Mr. HOBHOUSE also moved that the Hon'ble Mr. Eden be added to the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the law relating to Telegraphs in India,—the Hon'ble Sir Andrew Clarke, Sir Douglas Forsyth and Mr. Hope and the mover.

The Council then adjourned to Thursday, the 29th July 1875.

SIMLA,
The 15th July 1875. }

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.