ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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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 Tuesday, the 2nd February, 1875.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble B. H. Ellis.

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

The Hon'ble Arthur Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

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

The Hon'ble John Inglis, C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Sir Douglas Forsyth, K.C S.I.

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

NEW MEMBER.

The Hon'ble Mr. Eden took his seat as an Additional Member.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Commitee on the Bill for the further amendment of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) and for other purposes, be taken into consideration.

When he had introduced the Bill he stated that it had three objects. It was then entirely confined to the one subject of tribunals for enquiry into marine casualties, and into the misconduct of masters and officers of ships; and the objects of the Bill were, first, to improve these tribunals in their composition; secondly, to arm them with larger powers for obtaining evidence; and thirdly, to explain some ambiguous passages in Act XV of 1863 which related to the same subject of enquiry as to shipwreck or other casualties at sea. The Bill was still mainly occupied with the same

three objects, but has assumed a somewhat different shape, and also embraced one or two other matters owing to the circumstance that it was found desirable wholly to repeal Act XV of 1863, and that it therefore became necessary to re-enact one or two sections of that Act which related to different matters.

The Council were aware that Act I of 1859 was the Act which contained the body of the Indian Merchant Shipping Law, and that there had been pending for some time a Bill for the consolidation and amendment of the whole of that law. He thought that Bill was some eight or ten years old, but it had not come before the Council for a long time for this reason, that the Indian law of merchant shipping was so interlaced with the English law, that it was desirable to have them as much in accord with one another as was possible, even with regard to the very expressions used. And it so happened that about the time we proposed to consolidate our law, the authorities in England proposed to consolidate the English law on the subject: a great Bill was prepared for the consideration of Parliament, and the Secretary of State for India thought it wiser that we should postpone the consideration of our Bill until Parliament had passed a consolidated measure. That Bill had been before Parliament for six or seven years, and so the Bill pending in this Council had been put off for some time. The consequence was that we had had no large amendment of the merchant shipping law, but from time to time small amendments had, as occasion required, been made.

Now this interlacing of the English and the Indian law was sometimes rather embarrassing. He would mention a case which occurred a short time ago, which showed the expediency of endeavouring to make the law on the subject clear. He spoke from memory, but the case to which he was about to refer was well known to the Hon'ble Mr. Eden, who would be able to correct him if he stated it incorrectly. There was a certain person named Horatio Walters, who was the master of a British ship which put into Rangoon. When at Rangoon, a charge was brought against him of cruelty to the crew. The charge was enquired into and some evidence was taken; and when the evidence had proceeded a little way, a compromise was effected, as was often done in cases of personal injury, and the matter was settled out of Court. Shortly afterwards some fresh information came before the Magistrate, which convinced him that the case had a much wider range and was very much worse in its bearing than he had at first been led to suppose, and he thought that proceedings ought to be taken to punish the Captain and deprive him of his certificate. Accordingly the Magistrate took such proceedings as he thought the law prescribed, but here he got entangled in the meshes of the law, and the proceedings that were taken proved ineffectual. The result was that the Captain took the

ship back to England with a lascar crew, and was guilty of horrible and shocking brutalities on the voyage, for which he was ried in London and sentenced to penal servitude for life. Mr. HOBHOUSE threw not the slightest blame on the person before whom the Captain was brought up in Rangoon: the failure of justice clearly arose from the complications xisting between the English and Indian Acts. So far from blaming anybody who tripped in this matter, he sympathized with him, for he had been very much puzzled himself. He probably would not have understood the law even now if he had not had before him a very valuable paper sent up by the Madras Government, containing criticisms on the earlier form of our draft, and a paper written by Mr. Norton, the then Advocate General of Madras, in which he worked out with the greatest clearness and ability the state of the law as it existed in the year 1865 when it was in the same state as now. If, therefore, we had been so lucky as to avoid flaws and to make our Bill exactly square with the English Acts, it was very much owing to the assistance received by the Council from the Madras Government.

The law relating to these enquiries into accidents and misconduct had its origin in the English Merchant shipping Act of 1854. That Act gave power to the Board of Trade to cancel the certificates issued by it on adverse reports made by various Courts and tribunals, and amongst others, by any Court or tribunal established by a legislature such as ours, for the purpose of enquiring, either into marine casualties, or into cases of misconduct.

The Indian Act I of 1859 followed the English Act of 1854. By that Act the Local Grvernments were empowered to embody a special Court or tribunal for the purpose of enquiring into marine casualties. They had nothing to do with questions of misconduct, but only with cases of damage and loss arising at sea; and their function was to report to the Local Government. They had no power of their own to cancel a certificate granted by the Board of Trade. This legislature could not give them that power: so it was left to the Board of Trade to exercise their power of cancellation on the footing of the report submitted to them by the Local Government.

In 1862 an important amendment was made in the English law. By the Act which was passed in that year, the power or cancelling a certificate was taken away from the Board of trade, and given to the Local Court which had the function cast upon it of making enquiries. And at the same time some particular methods of procedure were prescribed for the local Courts, such as these: they were to state their decision in open Court, and were never to cancel the certificate unless a copy of the statement or case on which the investigation was founded had been furnished to the holder of the certificate

before the commencement of the investigation. That latter provision was extremely embarrassing, and it was that provision which was the cause of the failure of the proceedings at Rangoon. Of course it was obvious that in many cases an investigation might commence without knowledge of any misconduct. All you knew in the first instance might be that some bisaster had happened. It was impossible to tell at the outset of an enquiry to what extent it might go or whom it might affect.

After the English Act of 1862 was passed, we passed our Act XV of 1863 By that Act power was given to all Courts of Admiralty, and where there was no Court of Admiralty, to the principal Court of criminal jurisdiction on the spot, to enquire both into marine casualties and into charges of misconduct in merchant-vessels; and they were also empowered to cancel certificates given by the Board of Trade if their report was confirmed by the Local Government Again by the same Act the Local Government might direct any Board or officer to enquire into cases of misconduct not arising out of any casualty, and to report thereon to the executive, and then the Local Government might cancel any certificate given by it. Where the Board of Trade had given a certificate the enquiry was to be made, either by a special tribunal appointed under Act I of 1859, who had only power, as far as that Act went, to report or by an Admiralty Court or a Court of criminal jurisdiction, which was empowered by Act XV of 1863 both to enquire into the case and to cancel the certificate. If the certificate was an Indian certificate, then the Local Government might appoint a tribunal constituted under Act I of 1859 in case of some disaster having happened, or any Board or officer in case only of a charge of misconduct, and, on a report being made by either of such tribunals that there had been misconduct, might cancel the certificate.

Now this law was rather intricate, and when the Council set about making an alteration in the constitution of the special tribunal, which was desired by two or three of the maritime Local Governments—he thought by all—it was desirable to attempt a simplification of the processes, and some elucidation of the parts where people were likely to go astray. The principal alterations proposed would be found in chapter II of our Bill. Sections 3 and 4 of that part of the Bill dealt with the special tribunals of enquiry. Under Act I of 1859 it was provided that that tribunal was to consist of only two persons, of whom one was to be a Magistrate and the other a person conversant with maritime affairs. That tribunal, however, did not in all cases carry sufficient weight. Besides a person conversant with maritime affairs, a person conversant with mercantile affairs was sometimes wanted. It was desired to have the number larger and the elements of the Court more varied. Now it was proposed that

the tribunal should be constituted of numbers varying from two to four. One was to be a Magistrate, one was to be a person conversant with maritime affairs, and the other two were to be persons conversant with either maritime or mercantile affairs. Then, section 9 extended to that special tribunal the power of enquiry into cases of misconduct as well as into cases of disaster. So that if either they or the Local Government thought that there was misconduct, they might then extend their enquiry to that. Then, section 5 re-enacted the provisions of Act XV of 1863, which gave power to the Courts of Admiralty Jurisdiction and Courts of ordinary criminal jurisdiction to investigate charges of incompetency or misconduct or disaster. Then sections 6, 7 and 9, dealt with that part of the English Act of 1862 which required a statement of the charge to be made to the holder of the certificate. This Council could not repeal or affect the English Act passed in 1862; therefore, what we had to try to do was to make our Act fit into the English Act, and give directions as clear as we could devise under the circumstances. What the Bill provided was that if, in the commencement of the case, the Local Government had reason to think that a charge of incompetency or misconduct should be made, it should state the grounds of that charge, and a copy of these grounds would be given to the person charged. If it appeared in the course of the investigation that such a charge ought to be made, the Court would prepare a statement of the ground of such charge, and proceed with the enquiry as if it were a new investigation. By that means we hoped to avoid the difficulties which might arise in any case and which had actually arisen in the case which had occurred at Rangoon; the difficulty that occurred when it appeared for the first time in the course of an investigation that an enquiry into the misconduct of the master or officers ought to be made. Then sections 10 to 16 of the Bill dealt with other questions of procedure, and conferred extended powers for the taking of evidence. And section 17 provided that all the provisions of this part should be applicable, not only to proceedings where the certificate was held from the Board of Trade, but also where the certificate was held from the Local Government.

Chapter III dealt entirely with the question of Indian certificates, and was principally a re-enactment of Act XV of 1863. The main difference was this—that whereas now the Local Government might set in action either the special tribunal MR. HOBHOUSE had described under Act I of 1859, or a Court of Admiralty, or a Court of criminal jurisdiction, or any Board or officer, we proposed to leave out the investigation by the Board or officer. The extended range of enquiry given to the special tribunal and their extended power to cancel certificates would answer all purposes. He believed that in point of fact the Board

or officer was not resorted to for the purposes of these investigations, but that the Local Government conducted the enquiry through either the machinery of a Court of Admiralty or a Court of criminal jurisdiction or by the special tribunal under Act I of 1859.

There were some other amendments made by the Bill which it was not necessary to state at length to the Council. Part IV introduced a new subject into the Bill, but it was one that was introduced merely because Act XV of 1863 was repealed, and therefore it was necessary to re-enact what we wished to retain. It related to agreements with seamen and was only a re-enactment with some small amendments. Such was also the case with Part V.

His Honour THE LIEUTENANT-GOVERNOR said there was just one question he would wish to ask the hon'ble and learned member with reference to sections eight and nine of the Bill. Suppose a master or other marine officer was summoned before a Court, either as a defendant or as a witness, and the Court saw *primâ facie* reason for considering him blameworthy, could the Court impound his certificate?

The Hon'ble MR. HOBHOUSE did not think there was any special power to impound a certificate. There was a provision that the certificate could be suspended or cancelled.

His Honour THE LIEUTENANT-GOVERNOR said if that was so, he would venture to observe that it was very important that the Court should have the power of impounding a certificate. A case had occurred recently in Calcutta which shewed the necessity of the Court having such power. It sometimes happened that a man appeared before the Court, and on the next day appointed for his attendance he was not present, but had disappeared and taken his certificate with him. He might proceed to distant ports in other countries and practise his profession under cover of the certificate not with standing that enquiry in India might shew him unfit to hold that certificate in regard to the safety of life and property entrusted to his care. That might prove a serious difficulty. Should not the Court have the power of compelling a man to produce his certificate and of detaining it pending the enquiry? In a case sent up to His HONOUR, difficulty threaten to arise from want of this power, but fortunately the Magistate did ask the man for his certificate and had managed to retain it.

The Hon'ble MR. BAYLEY thought section 8 met the difficulty referred to by His Honour the Lieutenant-Governor. It gave the Court power to enforce the attendance of any person during the enquiry. It gave, in fact, to the

magistrate the same power as to compelling the attendance of accused persons and witnesses and for the regulation of the proceedings as he had in any other case that came before him: while the magistrate possessed this power, the power to impound a certificate seemed little needed.

His Honour THE LIEUTENANT-GOVERNOR did not think that that section gave the magistrate power to impound the certificate. He believed there was a paper on the subject sent up by the Bengal Government, with a memorandum which was given by one of the Magistrates of Calcutta.

The Hon'ble MR. HOBHOUSE would suggest that the Council should go on to take the Report of the Select Committee into consideration, but that they should not pass the Bill on that day. He did not think any such paper as that referred to by the Lieutenant-Governor had been received by the Committee; but in the meantime His Honour might consider the question, and prepare an amendment upon it. The matter might prove to be of importance, and was at all events worth considering.

His Excellency THE PRESIDENT observed that it seemed to him very desirable that the point should be considered, and that the Lieutenant-Governor should have an opportunity of having such a letter addressed to the Legislative Department: it appeared at the present moment that such a letter had not been received.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Bill as amended be passed.

Leave was granted.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented a further Report of the Select Committee on the Bill to amend the law relating to Civil Appeals in the Lower Provinces of the Presidency of Fort William.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues.

Leave was granted.

NATIVE SOLDIERS' RIGHTS AND LIABILITIES BILL.

Major-General the Hon'ble SIR H. W. NORMAN presented the Report of the Select Committee on the Bill to remove doubts as to the rights and liabilities of certain Native Soldiers.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS moved for leave to introduce a Bill to secure the re-payment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet. The history of the case was this. In 1858, in recognition of the worth, liberality and loyalty of Sir Jamsetjee Jeejeebhoy, Her Majesty was pleased to confer upon him a Baronetcy, the first hereditary title ever bestowed upon a native of India. Sir Jamsetjee was then very wealthy, but saw the possibility of a reverse of fortune, and to provide against it, and anxious to secure a suitable maintenance for the future Baronets, he desired to settle a sufficient sum on the Baronetcy, a wish which was readily responded to by the Government. He accordingly entered into an engagement, but died before legal effect could be given to his wishes. Subsequently, Act XX of 1860 was passed to carry out the arrangement. The purport of this Act was to create a trust, and to vest in the trustees a certain property known as Mazagon Castle, and also an amount of Government promissory notes calculated to produce an interest of £10,000 a year. This sum was vested in the trustees, and was made inalienable by the possessors of the property and title. The wisdom and foresight of these arrangements too soon became apparent. In 1863-64 Sir Jamsetjee Jeejeebhoy's family became mixed up in those speculative transactions which ruined so many of the leading families of Bombay. The share of the present Baronet in these transactions was comparatively small, but he was called upon to meet heavy demands on account of other members of the family, and this led to pecuniary embarrassments. He had cleared off much of the debt then incurred, but there remained some four-and-a-half lákhs which he was unable to meet. Anxious to bear the burden himself and free his successors from the liability, he applied to the Government for a loan, offering to give up a large portion of his income for a certain term of years to pay off that loan if advanced by the Government. This application was strongly supported by the Government of Bombay, and similar considerations to those which induced the original grant to the Baronetcy induced the Government to agree to afford this relief to a much respected and highly influential family. But there was one condition which it was essential to observe, and that was, that in granting the relief applied for, there should be no risk whatever of any loss to the public. The loan could, of course, be granted by the Executive Government without any application to this Council, but it was in order to secure the public

against loss that legislation became necessary. As MR. ELLIS stated above the property was inalienable under Act XX of 1860, and in order to furnish adequate security for the repayment of the sum which the Government were asked to advance, it became necessary to resort to legislation in order to make alienable the funds which had been vested in the trustees. The sum required was a loan of four-and-a-half lákhs of rupees. To provide this it was proposed to set aside 40,000 rupees annually for a period of seventeen years, which would pay off the whole of the principal with interest at five per cent. There would thus be no loss to the public, and ample security would be afforded by the Bill which he was now asking leave to introduce, inasmuch as the Bill would give the Government legal power to deduct annually from the sum vested in the trustees the 40,000 rupees required to pay off the interest and principal.

There was another matter which had to be attended to. Sir Jamsetjee Jeejeebhoy might have been willing to consent to this alienation for his own life, but in case of his death, there would have been legal difficulty if his heirs had not previously consented. To secure this the Government had obtained the assent of the three next heirs, two of whom had signified their assent by their own hands, they being of legal age, and the third, a minor, was represented by a guardian appointed formally by the High Court. There was thus no difficulty likely to occur in the realization of the loan which Government had decided to give.

The Motion was put and agreed to.

MADRAS SALT LAW AMENDMENT BILL.

The Hon'ble MR. ELLIS also moved for leave to introduce a Bill to amend the law relating to Salt in the Presidency of Fort Saint George. In doing so, he would explain briefly the circumstances which had given rise to the proposed legislation. In all India, excepting Madras, the salt-revenue was raised by an excise or customs-duty. In Madras, however, in lieu of the excise, there was a different system. The Government had a monopoly, and sold the salt at a price fixed by law. This price was at present two rupees per maund, and the theory upon which this particular price had been based was that Re. 1-13-0 would represent the duty which in Madras, as in Bombay, was leviable on each maund of salt, and the balance, three annas, would represent the charges incurred by the Government in producing that salt and bringing it for sale. This theory corresponded with the actual practice in the Eastern Districts, for there the salt could be manufactured and brought for sale at a cost which averaged three annas per maund. The duty levied, therefore, in the Eastern Districts was, as it ought to be, Re. 1-13-0 out of Rs. 2, the selling price. On the

Western Coast, however, the case was different. On that coast of the Madras Presidency but a small portion of the salt could be produced by manufacture on the spot, and that salt was of a very inferior quality; consequently the Madras Government resorted to a system of importation by means of contractors, and the salt was brought from Goa, Bombay, and other places in order to be sold by Government to the people. In carrying out these transaction the cost to the Government, independently of the duty, was not three annas as on the Eastern Coast, but a sum estimated at from seven annas ten pies to seven annas eleven pies per maund. The result, therefore, was that when salt was sold at two rupees per maund, the full duty of Re. 1-13-0 was not realized, and so Government lost on each maund of salt the sum of four annas and ten or eleven pies as the case might be. Thus the people in those districts not only shared in the lighter salt-taxation which was sanctioned by law for western and southern India, but enjoyed an exceptionally light rate of duty as compared with their brethren in the same Presidency. For this favourable rate there was no ground whatever on the score of the people being unable to pay, for the fact was that they were exceedingly well off, and very much better off than the people in most other parts of India. It was hardly fair, therefore, to the rest of the community, that these people should enjoy an exceptionally light taxation in the matter of the salt-duties. Another reason why a change in the present system was expedient was, that so long as it continued, all private trade, all private enterprise, was absolutely impossible. The question with which we had now to deal had been mixed up with a discussion on the merits of the system of monopoly as compared with the system of excise in Malabar and South Canara, but on this discussion it was not necessary for him to enter, because the present measure would in no way affect it. It was true that so long as the present law existed it was not possible to have a system of excise, but the carrying out of the change that was now proposed would in no way commit the Government to adopt the system of excise. The present law prevented any importation by private parties from Bombay, Cheshire or other parts, and restricted the sale of salt to the Government monopoly. Thus while under the present system private trade was impossible, under the other system of a fixed excise-duty, which this Bill would empower the Government to carry out, it would be open to the Government either to adopt the system of excise or to maintain the present system of monopoly, just as might seem best.

He had only one other point to mention at this stage of the proceedings. The proposed change had been for a long time contemplated, and it was for some years strongly advocated by the Madras authorities. The Government of Madras indeed applied for the change, and in June 1873, a draft

Bill was forwarded to them for their concurrence. In the reply of the Madras Government, however, it was stated that the Government had changed their opinion, and that a majority at least of that Government had decided that it was in expedient to make any change in the present state of things. Still, for the reasons which had been previously given by the Madras Government and in which the Government of India had concurred, and which might briefly be stated as being three in number,—*first*, that the salt-revenue would be increased; *secondly*, that taxation would be equalized, and *thirdly*, that the door would be opened to private enterprise—for these reasons, the Government of India resolved that it was expedient to go on with the Bill, and he proposed accordingly with the permission of the Council to bring it in. It was only an enabling Bill, and would not make it imperative on the Government to substitute a fixed duty for the selling price now prevailing, but would enable the Government to carry out that measure if it saw fit.

The Motion was put and agreed to.

REPEALING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to indroduce a Bill to correct a clerical error in the Repealing Act, 1874. The error which this Bill was intended to correct was of the simplest description. It had occurred to an Act which was for the purpose of settling matters of jurisdiction in Kulu, and it consisted in having written the word "two" for the wor "one." A glance at the schedule of the Act would show exactly how the error happened. In several Acts the repealing clause and the schedule referred to in it had been struck out. That clause happened to be clause two in both the next-door neighbours to this unlucky Kulu Act; so either in the copying or in setting up the type the word "two" got written for "one". However, there the error was, and the effect of it was that, instead of repealing the non-effective part of Act V of 1874, we repealed the effective part; and we proposed now to substitute "one" for "two".

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT observed that the President under the Rules for the Conduct of Business had the power for sufficient reason of suspending the Rules. It appeared to him that the reasons given by the Hon'ble Mr. Hobhouse were sufficient and that no inconvenience could result from the suspension of the Rules on the present occasion.

He therefore suspended the Rules.

The Hon'ble MR. HOBHOUSE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

BURMA COURTS ACT AMENDMENT AND BURMA FISHERIES BILLS.

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

For the further amendment of the Burma Courts Act, 1872.

To regulate Fisheries in British Burma.

The Council adjourned to Tuesday, the 9th February, 1875.

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

CALCUTTA;
The 2nd February 1875.