

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL 11

Book No. 1

2 Jan. - 6 April

1872

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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. 87.

The Council met at Government House on Wednesday, the 28th February 1872.

P R E S E N T :

His Excellency the Viceroy and Governor-General of India, K.T., *presiding*.

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief, G.C.B., G.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 B. H. Ellis.

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

The Hon'ble J. F. D. Inglis.

The Hon'ble W. Robinson, C.S.I.

The Hon'ble F. S. Chapman.

The Hon'ble R. Stewart.

The Hon'ble J. R. Bullen-Smith.

The Hon'ble F. R. Cockerell.

CONSOLIDATED CUSTOMS ACT AMENDMENT BILL.

The Hon'ble SIR RICHARD TEMPLE, in moving for leave to introduce a Bill for the further amendment of the Consolidated Customs Act, said that the List of Business shewed that the object of this Bill was stated in the title. Perhaps he could best illustrate the object of the introduction of the measure by reading to the Council the Statement of Objects and Reasons which accompanied the Bill :

“ The object of this Bill is to abolish certain ‘General Funds’ which have been formed under a provision of the Consolidated Customs Act, out of penalties imposed under the Act, and which at present can be employed only in reward of informers and persons who have assisted in seizures under the Act.

“ It is thought more convenient to transfer the sums so accumulated to the credit of Government, and thus render them available for the general purposes of the State, providing for all charges from the general revenues.”

The motion was put and agreed to.

19 L. D.

EXTRADITION.

EXTRADITION BILL.

The Hon'ble MR. STEPHEN introduced the Bill to consolidate and amend the law relating to offences committed in Foreign States, and moved that it be referred to a Select Committee with instructions to report in a month. He said that he had obtained leave to introduce this Bill some time since, and the Bill he had now to introduce had been prepared in consultation with the Foreign Department. He had very little to say about this Bill, except that, *firstly*, it was most necessary to consolidate the existing law, which was at present scattered over more Acts than one; and, *secondly*, he wished to point out that the Bill did not in any way alter in substance the present position of the Government in regard to Native States. In regard to some of the Native States, there were arrangements in force regarding extradition; this Bill would in no way interfere with them. But in almost every Native State in India, it had been the practice to invest the Political Agent with power to try offences committed in those States by British subjects. That was an arrangement for which precedents might be found, to some extent, from European experience. The Consuls of European States exercised power of that kind in Constantinople and in other places. It had been exercised without any question whatever in every Native State throughout Northern India: MR. STEPHEN was not quite certain as to the practice in Southern India. At all events, the power of the Political Agent to exercise such jurisdiction existed and it was not proposed to alter it, but simply to put it on a legal basis.

As to any Native States in which it might not hitherto have been the practice for the Political Agent to exercise this power (if any such there were), the Bill recognized the power of the Government, as against its own subjects, to erect Courts of this description, that it had nothing to do with its rights as between Government and Government to erect them. The propriety of erecting such Courts would be a political question. The position of no Native State would be altered by the provisions of this Bill. If such Courts had been erected, they had been erected according to the existing practice; if they had not already been erected, the question whether or not they should be erected was a political question between the Government and the Native State concerned, and it was a question with which the legislature had nothing whatever to do.

There were, however, some further provisions in the Bill, which were intended to remedy certain defects in the existing law, which would, MR. STEPHEN thought, be welcomed in every Native State, and the necessity for which had been very much felt. He alluded to the extradition of offenders in the case of crimes committed to them by Native States. There were some provisions in the existing law on this subject; but they were not in a satisfactory state. The crimes for which

extradition might be required were at present very loosely defined. They were contained in a list formed before the Penal Code was enacted. The effect therefore was that the whole law of extradition was at present in a very uncertain state. He hoped that the Bill would be found to provide a remedy for these evils. To the Native States, mixed up as they were, and in some cases divided from each other and from British territory by a merely imaginary line, it must be a great grievance to know that a person committing a crime within their territory could escape from pursuit, except under circumstances of great difficulty by crossing over into British territory. The effect of the present Bill would be that nearly all serious offences would be dealt with as easily if they were committed in Native States, as if they had been committed in British India.

MR. STEPHEN hoped the Bill would be received in a spirit of friendliness by the Native States: it was introduced with the view of rendering the administration of justice more expeditious than at present. As regards British subjects who made themselves liable to punishment and left the State and came into British territory, they would be liable to be arrested and handed over to the Political Agent in that State, who might, in the case of every such British subject (not being a European British subject), direct him to be tried by the Courts of the territory in which the offence was committed, if the Government of India consented to that arrangement. The effect would be that those States which established a regular system of administration of justice would be placed in a position by which they would be authorized to try offences committed in their States by Native British subjects. European British subjects in Native States would be placed on the same footing as that in which they stood in regard to offences committed by them in other parts of the country.

The motion was put and agreed to.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. STEPHEN also introduced the Bill to amend Act XXIV of 1867 (the Administrator General's Act), and moved that it be referred to a Select Committee with instructions to report in a month. He said that this was a very short Bill, and not one of very general importance. It had two objects and but two sections. The first section provided that the Administrator General's Act might be extended to parts of India other than those in which it was at present in force. There was a considerable European community in many parts of Native territory, and the Administrator General had no power to deal with the effects of Europeans who died there. That was an omission in the Administrator General's Act which it was intended to supply.

The second section of the Bill related to a matter in which the public certainly had little interest, but which had given rise to questions between the late and the present Administrator General. The law declared that the Administrator General was to be paid by a percentage on the estates which he distributed, and he was authorized to take, at the period of distribution, one and a half per cent. commission on the amount. Some years ago, in the late Administrator General Mr. Hogg's time, a question arose as to what constituted a distribution. This question was referred for the decision of the Government, and the Government gave a decision upon the subject to the effect that, when an Administrator-General set out an account or otherwise dealt with an estate at the request of the executor, it was a distribution. This decision continued to be acted upon till the present time. At the death of Mr. Hogg, the present Administrator General, Mr. Broughton was appointed, and a question in which the public had no interest arose as to the exact point at which the one began, and the other ceased, to take percentage. As MR. STEPHEN had said, the point was of no public importance. But it was necessary that it should be decided in one way or the other in fairness to the Administrator General. He ought, no doubt, to get the advantage at one end or the other of his term of office; but no one Administrator General out to take it at both ends. The provision in this Bill had been so framed as to embody the ruling of the Government of India ten years ago, and he might say that the matter had been settled to the satisfaction of the parties concerned.

The motion was put and agreed to.

PANJÁB MUNICIPALITIES BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to prolong the operation of Act XV of 1867 (Panjáb Municipalities), said that the Panjáb Municipalities were established under Act XV of 1867, and in order to give the system a trial, it was enacted, in the first instance, for five years. The Act was on the verge of expiring: the period of time for which it was enacted was allowed to run very close, and the Panjáb Government was reminded of the fact by a communication from the Legislative Department. The law had been found to work very well, although there were one or two slight alterations which the Panjáb Government suggested. He had nothing to say on the subject at present beyond asking for leave to introduce the Bill: if any discussion did arise it would arise at a subsequent stage of the proceedings on this Bill.

The motion was put and agreed to.

TRANSHIPMENT FOR GOODS ACT AMENDMENT BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to amend Act XX of 1867 (*to authorize the transshipment, without payment of duty, of goods imported into Calcutta, Madras and Bombay by steamers*) said that this Bill also was of no general interest. Act XX of 1867 authorized the Government to permit the transshipment of opium, without the payment of duty, in the case of goods imported into the ports of Calcutta, Madras and Bombay. At the time that Act was passed, the ports of Burma were not thought of: it was now thought desirable that such transshipment should also be authorized at the ports in Burma. It was proposed to invest the Government with power to extend the Act to any port it thought fit.

The motion was put and agreed to,

CARRIERS BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to amend the Law relating to Carriers, said that this Bill required a little more comment than the others. It was a bill of very considerable importance, although it was not likely that any discussion would arise upon it at present. His Lordship and the Council were aware that the Contract Law had long been under the consideration of a Select Committee of the Council. It had been scrutinized by the Committee which sat upon it with the utmost care, and had been under the examination of the Committee for at least three years. MR. STEPHEN hoped, after this long period of incubation, it might soon become part of the law of India. It was originally intended that the Carriers' Act and a part of the Railway Act, which at present regulated the Law of Carriers in India, should not form part of the Contract Law. It appeared to him that it would be a decided improvement to introduce these enactments into the Contract Law, so as to make that Law as complete as possible. He had not a doubt that that would be the right and convenient course; and, accordingly, a new chapter of the Contract Law was drawn up, to consolidate the Carriers' Act and a part of the Railway Act, and to put the whole matter on a satisfactory footing. That Chapter was forwarded to the Public Works Department and the Financial Department (which were the Departments principally interested in the subject) in order that the Committee might have their opinion as to the manner in which the present Bill would affect the Railways in which the State was so largely interested. An exceedingly strong expression of opinion was received from the Public Works Department, to the effect that the law was at present in a most unsatisfactory state, and that we could not adopt the

law of England (as MR. STEPHEN had proposed) without incurring very great inconvenience. The law as it stood was contained partly in the Carriers' Act—an Act not very well drawn in itself—and partly in three sections of the Railway Act, which did not fit well into the Carriers' Act; and considerable difficulty had been found in construing these different provisions in such a manner as to form them into one law. It was proposed to draw the Bill so as to fit these provisions into the Contract Law. The general principle of what was proposed was in accordance with the law of England, namely, that Carriers (including in the term the Railway Companies and the Government) should be liable for loss or damage to goods carried by them and be able to limit their liability by entering into special contracts. The Public Works Department wrote an opinion on this subject, which would be published when the Bill was introduced to the effect that these proposed restrictions would be more mischievous; that Department gave it as its opinion that the liability of Railways for injury should be absolute, except only as to certain specified things, and that they should not be able to exonerate themselves from liability for damages caused by a variety of accidents which they ought to prevent. MR. STEPHEN need not go into the subject now; but when the Bill was introduced, he might do so more fully.

The Committee on the Contract Law, after reading this opinion, were, generally speaking, disposed to agree with the Public Works Department; but they felt that it affected the interests of the Railway Companies so largely that it would be impossible to carry the Bill through without hearing them. Accordingly, it was determined that these sections should, as originally proposed, be omitted from the Contract Law,—that is to say, that MR. STEPHEN'S proposition should be withdrawn, as the Committee did not think it would be worth while to postpone the passing of the Contract Law until the opinion of the Railway Companies and other parties interested in the subject could be obtained. On the other hand, it was felt to be clear that very great inconvenience did exist with regard to the Law of Carriers which ought to be remedied. It was therefore determined that MR. STEPHEN should introduce a Bill on the subject, and that it should be read as part of the Contract Law when passed. The Bill would be submitted for opinion; it would of course have to be sent home to England for the opinion of the Boards of the Railway Companies, in order to hear what they had to say on the subject, and would be taken into consideration next cold weather. The Contract Law would, in the meantime, be submitted to the Council without that Chapter.

The motion was put and agreed to.

PANJĀB LAWS BILL.

The Hon'ble MR. STEPHEN asked leave to postpone the presentation of the final Report of the Select Committee on the Bill for declaring what laws are in force in the Panjāb.

Leave was granted.

BURMA COURTS BILL.

The Hon'ble MR. STEPHEN asked leave to postpone, also, the presentation of the Report of the Select Committee on the Bill to regulate the Courts in British Burma.

Leave was granted.

HIGH COURT JURISDICTION (SIND) BILL.

The Hon'ble MR. CHAPMAN, in moving for leave to introduce a Bill to remove doubts as to the jurisdiction of the High Court over the Province of Sind, said that the Bill would be of a purely declaratory character. The High Court of Bombay had never exercised jurisdiction in the Province of Sind, and it was certainly not the wish or intention of the Government that they should do so. There was, however, a case now pending before the High Court in which the question of jurisdiction had been raised; and it was just possible that, owing to a doubt as to the way in which the word "Presidency" was used in the High Court Act in the Letters Patent, the Court would be obliged to assert their jurisdiction. The proposed Bill would remove this doubt.

The motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

The Hon'ble MR. STEWART said—"MY LORD: I have the honour to move for leave to introduce a Bill for the protection of Patterns and Designs used in Manufacture, and, in doing so, I shall venture briefly to describe to the Council what I conceive to be the necessity for such a measure.

"I think it will not be disputed that every person who has an inherent right, by invention or acquirement, to any specific design, and who is willing to conform to suitable regulations in the matter, has as clear a title to have that right recognised and enforced as the owner of any other property of a like nature can have; and, in fact, the law of England affirms this principle by certain Statutes which protect the proprietor of duly registered designs against imitation of such designs,

if such imitation be effected in England, and against the sale in England of such imitation, whether it be effected there or elsewhere.

“ But these Statutes have not been extended to India, and, this being so, the proprietor of a design registered in England is not protected against the imitation of his design in India, nor can he, in India, restrain the sale of any imitation of his design, while the local proprietor is equally unprotected.

“ Common sense and the precedent of English legislation must satisfy us, I think, that this state of things should not be allowed to continue ; but it is not on the ground of theoretical justice alone that I deem legislation necessary. Numerous instances have arisen of imitations of designs, registered in England, being imported into and sold in India ; while I am informed that, at this moment, there are persons in this immediate neighbourhood, part of whose trade it is to imitate designs which have been registered in England and found suitable for India, so that legislation appears, not only theoretically right, but practically necessary.

“ The measure which, if the Council shall give me leave, I propose to submit, will provide for the extension to India of the Statutes now in force in England, with such modifications and additions as may appear to be expedient ; and the result, if the Bill shall be passed into law, will be that the owner of a design registered in England will be protected in the enjoyment, in India, of the rights and privileges which he already enjoys in England, but of which the existing state of our law deprives him ; while the local proprietor will have conferred on him, so far as this legislature can confer them, the same rights—rights to which I think he already possesses an undoubted moral claim.

“ It may be thought that the provisions of the Penal Code relating to trade-marks are applicable to such cases as I wish to provide for ; but I understand that it is more than doubtful whether a design is a trade-mark at all ; and at all events it is well, I think, that there should be a remedy by civil process.”

The Hon'ble MR. STEPHEN said that he had only one observation to make with reference to this Bill, which he was sure the Council would be obliged to the Hon'ble Mr. Stewart for introducing. It was the last observation which the hon'ble gentleman made, in reference to the provisions of the Penal Code as to property and trade-marks, regarding which MR. STEPHEN wished to say a word. He fully agreed with Mr. Stewart that there ought to be a civil as well as a criminal process for punishing the offence of counterfeiting trade-marks. As far as MR. STEPHEN had been able to learn, the fact that the criminal law was used for the purpose of obtaining redress for civil wrongs was one of the greatest blots on the administration of justice in India.

The motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the law relating to offences committed in Foreign States ——— The Hon'ble Messrs. Strachey, Chapman and Cockerell and the Mover.

On the Bill to amend Act XXIV of 1867 (the Administrator General's Act) — The Hon'ble Messrs. Inglis, Chapman, Stewart, Bullen Smith and Cockerell and the Mover.

The Council adjourned to Tuesday, the 5th March 1872.

CALCUTTA ;
The 28th February 1872. } H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making
Laws and Regulations.