

Thursday, July 1, 1875

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.

1875.

WITH INDEX.

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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 provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 1st July 1875.

PRESENT :

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.

PANJAB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the better administration of law in the Panjáb.

PANJAB JUDICIAL ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the law relating to certain Courts and Offices in the Panjáb. He said that this was a Bill which was introduced into the Council by their hon'ble colleague, Sir Douglas Forsyth, for the purpose of providing relief for the Deputy Commissioners and the Tahsildárs in the Panjáb. When Sir Douglas Forsyth introduced it he explained that the intention of the Government was to provide for more separation than now existed in the Panjáb between the judicial and the executive duties of those officers; though it was not their intention to effect such complete separation as existed in more advanced parts of the country. The thing wanted was to appoint other officers having the same judicial powers as the Deputy Commissioners and Tahsildárs, not to fix their duties by law, but to let the Executive regulate their duties as required

by circumstances from time to time, the intention being that they should perform the judicial work which was now performed by executive officers, so as to leave those executive officers much more time than they had now to attend to executive work. It was found that the amount of alteration that the law required for that purpose was exceedingly minute, for the present Panjáb Courts Act provided that, in a certain state of the judicial business, and for temporary purposes, the Government might invest any other person with the powers of a Deputy Commissioner or a Tahsildár. Therefore all that was wanted was to give to the Local Government those same powers, not subject to any condition, and not for temporary purposes alone. That was the whole alteration of the law which was proposed. The Bill had now been published for a considerable time. Remarks had been made upon it by local authorities, and the result was that the Select Committee had made one or two merely verbal alterations. The Bill was substantially in the same shape as when Sir Douglas Forsyth introduced it. MR. HOBHOUSE called attention to that because he was about to move that the Bill be taken into consideration and passed. That was the usual course, but it was a course consistent with our rules, only that if any Hon'ble Member considered that the subject was one which required further consideration, he was entitled to object, and that objection must prevail unless the rules were suspended. The Bill had been pending now for some time, and the Panjáb Government were very anxious to begin the new system: and inasmuch as the Council had nothing to consider now, but what they had to consider about three months ago when Sir Douglas Forsyth introduced the Bill, he (MR. HOBHOUSE) thought he was acting within the limits of prudence in proceeding to the ulterior motions.

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 as amended be passed.

The Motion was put and agreed to.

INDIAN TELEGRAPHY BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend the law relating to Telegraphs. He said that the reason for amending the present Act was this. The law relating to Telegraphs was formerly regulated by an Act passed in the year 1854, and that Act gave power to the Governor General in Council to grant licenses for the establishment of Telegraphs, and it also gave the Government power to make rules for the conduct of Telegraphs established under those licenses. The Act of 1854 was repealed in the

year 1860, and there was passed Act VIII of 1860 containing the law which now governed the subject. The Act of 1860 repealed the Act of 1854, except as to any license for the establishment of a line of Electric Telegraph granted under that Act, but it did not expressly save the power of making rules for the conduct of Telegraphs which had been established under license granted under the Act of 1854. It gave the Government power to grant licenses under the Act of 1860, and to make rules for the conduct of Telegraphs under those licenses, but omitted to say that the power of making rules under the Act of 1854 was to remain.

The Government had recently been advised by the Advocate General that that power either did not exist or that it was at least doubtful whether it existed, and the Government therefore could not prudently make any such rules. It was necessary that the Government should distinctly have that power, and therefore we proposed to amend the present Act. An opportunity would be taken at the same time to bring the penal clauses of that Act into greater conformity with the Penal Code, which the Council would observe was passed subsequently to Act VIII of 1860, and also to make some of the penal clauses more effective and stringent.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION BILL.

The Hon'ble Mr. HOBHOUSE also moved for leave to introduce a Bill to regulate the emigration of Native labourers from the Presidency of Fort Saint George to the Straits Settlements. He said that in order to explain why it was proper to enact a special measure for the regulation of emigration to the Straits Settlements instead of leaving it to be regulated by the General Emigration Law, he must state briefly the course of events which had brought us to the point at which we stood. There had been going on for a great many years—he did not know how many, but at the least from the beginning of the present century—a considerable emigration of labourers from the Coromandel Coast to the Malay Peninsula. That emigration had been conducted with great advantage to both countries, and had resulted in the settlement of a large Tamil population on the eastern side of the Bay of Bengal. It was a purely voluntary movement on the part of the people, stimulated only by their own interests and wishes; it was not assisted by any law, neither was it impeded by any law till the year 1857.

In that year, however, and again in the year 1859, Acts were passed for the regulation of passenger traffic in the Bay of Bengal. The effect of such enactments was to render the voyage more expensive and to diminish the number of emigrants. To meet the change, the employers of labour in the Straits Settlements adopted the system of employing agents in India to advance money to persons willing to emigrate, and of making contracts with them to serve for a term of years. That system again remained untouched by law until the year 1864, when the first consolidated Emigration Act was passed. By the Emigration Act of 1864, a very curious and quite unintentional effect was produced on the Straits Settlements. It would be remembered that they were then part of British India. But by the definition of the expression "British India" contained in section 2 of the Act, it was not to include the Straits Settlements. Section 3 ran as follows:—

"Except under and in conformity with the provisions of this Act, it shall not be lawful to make any contract with any Native of India for labour to be performed in any place beyond British India, or to enable any Native of India to emigrate or to assist any Native of India in emigrating ;"

but with a proviso that the prohibition should not apply to the Island of Ceylon. Section 4 said that contracts might be made for emigration to certain places among which the Straits Settlements were not included. And sections 5 and 6 gave the Governor General in Council power to allow emigration to any other place, but only subject to all the provisions of the Act. Now, as he had had occasion to observe before in this Council, the spirit and object of our Emigration Laws was not to assist emigration, but to throw safeguards around it. In fact, they impeded the free course of emigration very much by requiring the observance of a number of formalities, both cumbrous and expensive. He was not now saying that these formalities were otherwise than beneficial, or even necessary, in order to avoid great abuses. He was not discussing that point now. All he now said was that, as a matter of fact, the law did impede emigration to places beyond British India.

Well, then, the legal position in which the Straits Settlements were placed by the Act of 1864, was a very unfortunate one. Emigration to Ceylon, which was not in British India, was left wholly unrestricted. Emigration to British Burma, again, was left wholly unrestricted. If the emigrant wanted to go to Tenasserim, the law had nothing to say against it; and nobody interfered with him. But if he wanted to go to Penang, which was not beyond British India as Ceylon was, and was practically at no greater distance than Tenasserim, every

body was absolutely forbidden under heavy penalties to assist him. He could not be assisted to emigrate to Penang except after an order of the Governor General in Council, and then only subject to all the safeguards which were thought necessary for a voyage to South America. Now he had said, that the effect thus produced was unintentional, and he said so because it was impossible to suppose that such a thing would be intentionally done in entire silence both on the part of the Government of India and this Council on the one side, and on the part of the inhabitants of the Straits Settlements on the other side. Moreover, the origin of the mistake was easily discerned. There could be little doubt that it was produced solely by the circumstance that the Act contained a fictitious and unreal definition of the expression "British India," and that Nature, who though thrust out with a pitchfork would constantly reassert herself, resumed her dominion over the draftsman's mind at a later stage of his work. In fact, so little was the result intended or known that for fully six years after the passing of the Act the system of emigration that he had mentioned went on without alteration, and without anybody remarking that it was wholly illegal.

The Act of 1864 was repealed in the early part of the year 1871, and was replaced by the Act of that year, which now constitutes the law regulating emigration to places beyond British India. The Straits Settlements had then ceased to be part of British India. But the Act of 1871 made no alteration in their legal position: on that point it simply left the Act of 1864 untouched; and it was clear that the existing anomaly was never brought to the notice of the Government of India, though a controversy about it had arisen in the Presidency of Madras under the circumstances he was about to mention.

It was in the year 1870 that a Madras Magistrate, believing that a system of kidnapping Indian peasants for the Penang market had been set on foot, drew attention to the state of the law, and actually commenced some prosecutions for penalties. The Madras Government then deputed Mr. H. J. Stokes, the Sub-Collector of Tanjore, to enquire into the matter, and he sent in a very able and careful report, showing that the supposed system of kidnapping did not exist, and that the system which did exist worked with a large preponderance of benefit to the Indian population. In the meantime, the employers of labour in the Straits Settlements represented the injury they would suffer by the stoppage of their supply of labour; the injustice of forbidding to Penang what was allowed to Tenasserim and to Ceylon; and the absurdity of enforcing the same regulations

for a long voyage to the West Indies, and for a run of eight or ten days to the Straits of Malacca. Under these circumstances we passed Act XIV of 1872, which merely empowers the Governor General in Council to exempt the Straits Settlements from the provisions of the General Emigration Act. When he (Mr. HOBHOUSE) introduced the Bill, he intimated that arrangements would be made between the Government of India and that of the Straits Settlements to put the system of emigration on a definite footing, but that time was necessary for the arrangement of details, and that in order not to disturb the industry of the Straits Settlements, it was necessary to leave the matter for a while in the hands of the two Executive Governments. Well, on that footing the matter had rested ever since. It had been decided that in order to secure the well-being of the emigrants, an ordinance must be passed by the Straits Settlements Legislature; and he believed that the provisions of that ordinance had now been put into a shape satisfactory to the Government of India, if indeed it had not actually passed into law.

On our side we had to frame such safeguards as were deemed necessary to throw around emigration to the Straits Settlements. He confessed he was in hopes that when a sufficient law had been passed on the other side of the water, nothing would have been found necessary on our side beyond the mere removal of the shackles placed on emigration by the Act of 1871. But the Madras Government, who had the local knowledge necessary for a due understanding of the matter, and on whom lay the responsibility of duly protecting their subjects, did not think so. They were of opinion that, though a great deal of machinery required by the General Emigration Act might be dispensed with, some was still necessary to provide against abuses and disorders. Indeed, it was not the emigrant only who required protection; the employer of labour was liable to be cheated by the recruitment of infirm persons, or by the substitution of such for sound recruits in their passage to the ship that conveyed them away.

He believed he had now explained why it was necessary to have a special law to regulate this particular province of emigration. The Council were aware that the same necessity had been found in other provinces of the same wide subject, according to the special circumstances affecting them. The transit of labour between Bengal and Assam had its special law; that between Madras and Ceylon had its special law; and if Hon'ble Members would cast their eyes on the item No. 8 in to-day's list of business, they would see that a Bill was before the Council for making a special law as between British Burma and the rest of India. The special circumstances as between Madras and the Straits

Settlements were the short distance, the long-standing continuance of the traffic, and the consequent numbers of the population already drawn from Madras among whom the emigrant would find himself not wholly a stranger. It was premature to speak in detail of the contents of the Bill; that would be more properly done when he introduced it. He had already indicated its general principle, namely, the allowance of emigration under as few restrictions as were consistent with security. He thought we might congratulate ourselves on having the assistance in this matter of Sir Andrew Clarke, who had not only been engaged in preparing the ordinance of the Straits Settlements on this subject, but had seen the other side of the shield, and would be able to supply us with a kind of knowledge which he (MR. HOBHOUSE) had always felt that we wanted in discussing questions connected with emigration, namely, a knowledge of the actual life led by the emigrant in the country to which he was conveyed.

The Motion was put and agreed to.

OUDH LAWS BILL.

The Hon'ble Mr. HOBHOUSE also moved that the Hon'ble Mr. Eden and the Hon'ble Sir A. J. Arbutnot be added to the Select Committee on the Bill to declare and amend the laws to be administered in Oudh.

The Motion was put and agreed to.

BURMA LABOUR CONTRACT BILL.

The Hon'ble Mr. HOBHOUSE also moved that the Hon'ble Sir A. J. Arbutnot and the Hon'ble Sir A. Clarke be added to the Select Committee on the Bill to regulate the transport of Native labourers to British Burma, and their employment therein.

The Motion was put and agreed to.

The Council then adjourned to Thursday, the 15th July 1875.

SIMLA,
The 1st July 1875.

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