

**Friday,  
16th February, 1883**

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XXII**

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ABSTRACT OF THE PROCEEDINGS

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1883,

VOL. XXII.



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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.*

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The Council met at Government House on Friday, the 16th February, 1889.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.

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

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble Rájá Siva Prasád, C.S.I.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

The Hon'ble Sayyad Áhamad Khán Bahádur, C.S.I.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble R. Miller.

The Hon'ble Kristo Dás Pál, Rai Bahádur, C.I.E.

INDIAN RAILWAY ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Indian Railway Act, 1879, be taken into consideration.

He said that the object of the Bill was to make two or three minor amendments in the Indian Railway Act of 1879. The Bill as originally introduced was confined to three points :—first, the sanction required for the first opening of a railway or part of a railway for the public conveyance of passengers; secondly, the inspection of the railway which had been opened; and thirdly, the powers of Railway Authorities to impose fines on their servants. Since the Bill was circulated, several valuable suggestions had been made as to further points in which the Act might be amended. However, the Committee

thought that, as the extension of railways in this country would probably necessitate before long a general revision of the Act and the preparation of a Bill to meet the growing wants of the country, it would be expedient to confine themselves to matters with which the Bill before them was concerned, and to leave suggestions on other points to be considered when the whole law relating to Indian railways was dealt with. Accordingly, the Committee had made only such amendments in the Bill as they deemed necessary or desirable in order to give better effect to the present intentions of the legislature. These amendments were briefly as follows:—

(1) The Committee had enabled the Governor General in Council to appoint officers, either by name or by virtue of their office, to be inspecting officers under the Act,

They had drawn section 5B so as to render it unnecessary for the Governor General in Council specially to appoint an officer to inspect any particular railway; and, as it might, in some cases, be desirable that sanction should be obtained at once to the opening of a railway, and that the inspecting officer's report should be communicated by telegraph, they had omitted the provision requiring that officer's report to be in writing.

(2) They had given the Governor General in Council power to confer, in any particular case or class of cases, on the inspecting officer the power to sanction the opening of a railway or portion of a railway. As the Bill was drafted, this power had to be conferred in each particular case, and they considered that it would be more convenient to enable a general power to be conferred on the inspecting officer for dealing with any particular class of cases, such as minor additions to, or extensions of, a railway.

(3) They had reserved to the Governor General in Council a power to review any sanction given by an inspecting officer, and to cancel or modify it.

(4) To meet a case when it was desirable to sanction the opening of a line subject to conditions which were to be complied with by a Railway Administration, they had expressly declared that the sanction might be absolute or subject to conditions. They had accordingly provided that, when a conditional sanction was granted for the opening of a railway and the conditions were not complied with, the sanction should at once be deemed to be void, and that the railway should not be used until sanction was again obtained.

(5) To provide for the case where, after sanction had been given for the opening of a railway, an alteration was made in it by the Administration,

they had prohibited the use of any portion of a railway so altered as to interfere with the safety of passengers, until formal sanction had been obtained for the opening of the portion for the public conveyance of passengers.

(6) They had conferred upon officers appointed to inspect railways the additional power of inspecting the rolling-stock used on a railway.

The Committee had made no alteration in the section of the Bill which related to the powers of Railway Authorities to fine their servants. The effect of that section, as it was originally drawn and as it now stood, would be to give Railway Authorities in India the same powers with respect to the infliction and recovery of such fines as was given to Railway Companies in England by English legislation.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

### MERCHANT SHIPPING BILL.

The Hon'ble MR. ILBERT also presented the further Report of the Select Committee on the Bill to amend the law relating to Merchant Shipping. He said :—

“ I should like to take this opportunity of explaining the reasons which have induced the Committee to make a considerable change, not in the substance, but in the form of the Bill.

“ The Bill, as originally introduced, repealed and re-enacted, with certain amendments, two of the later Indian Merchant Shipping Acts, Act IV of 1875 and Act XIII of 1878.

“ When the Bill was before the Select Committee, it was decided that it would be advisable, for the convenience of persons connected with Merchant Shipping, to make the Bill more of a consolidating measure, and accordingly it was expanded into Bill No. II, which repealed and re-enacted not only Act IV of 1875 and Act XIII of 1878, but also the unrepealed portions of Act I of 1859 (the principal Indian Merchant Shipping Act), Act XIII of 1876, and Act VII of 1880, chapter III. Bill No. I consisted of 31 sections: Bill No. II consisted of 157 sections, and was in appearance, though not in reality, a somewhat formidable measure. Now I fully admit the great practical convenience of being able to find the whole of the Statute Law on a given

subject within the four corners of a single Act, and accordingly I think that the rule which we have adopted in India of repealing old law and re-enacting it with the necessary amendments, instead of passing a series of amending Bills, is a sound general rule to follow. It is a rule which cannot, under ordinary circumstances, be followed in England, for reasons which any one who is acquainted with English Parliamentary procedure will readily appreciate. But those reasons do not apply out here, and, as I have said, it is a useful general rule to observe.

“ On the other hand, there is another sound general rule which has to be borne in mind, and that is, that in subjects like Merchant Shipping it is desirable to make the Indian Statute Law correspond as closely as possible to the English Statute Law. It is very inconvenient for a merchant or a seaman to find himself under one shipping law in London and under a totally different shipping law at Calcutta. Accordingly in dealing with those branches of Merchant Shipping Law which are not regulated by Act of Parliament, and with respect to which we have power to legislate for ourselves, we have always taken care that our legislation shall conform as closely as circumstances will admit to Imperial legislation, and whenever any important amendment of the law has been made in England, we have usually followed suit at no distant interval out here.

“ But if we were to pass the consolidating Bill which was prepared last year, we should not be bringing our Indian Merchant Shipping Law into harmony with English Merchant Shipping Law. On the contrary we should be enacting for Indian ports certain provisions which have been repealed as to, and are no longer in force in, English ports. The provisions to which I refer are contained in Act I of 1859, and relate to the subjects of advance notes, of arrest without warrant and of imprisonment for desertion.

“ These sections were copied from corresponding enactments in the English law. But those corresponding enactments, or as much as remained of them, were deliberately repealed in 1880 by the English Parliament by an Act which extends only to the United Kingdom and leaves the Indian law untouched. So that if we enacted them here, we should be departing from instead of following the English law. And although it is perfectly true that when in the process of consolidation we re-enact any particular enactment, merely for the purpose of simplifying the form of the law, we are not to be taken as expressing any opinion in our legislative capacity as to the intrinsic merits of that enactment; yet I think it might be urged with some show of reason that, having regard to the obvious desirability of making the English

and the Indian Merchant Shipping Acts harmonious, we ought not to re-enact for India what has been repealed for England without justifying the difference which we should be thus maintaining between the laws of the two countries. Whether the alterations recently made in the English Merchant Shipping Law as to desertion are or are not beneficial, and whether similar alterations ought not to be made in the Indian law, are questions on which I shall be fully prepared to express my opinion when the time for discussing them arrives; but until that time does arrive, I think we had better avoid any form of legislation which would afford an opportunity for raising these difficult questions. Accordingly, we have thought it more prudent to steer quite clear of these delicate topics by cutting down our Bill to its original form of an amending Bill.

“ There are two further considerations which reconcile me to the abandonment of last year’s project of consolidation. The first is, that I shall probably have, before the end of the present winter session, to propose some further amendments of the Merchant Shipping Law, so that our consolidating Act would be swiftly followed by an amending appendix. The second is, that the consolidation which would have been effected, if the Bill had become law in last year’s form, would have been a very incomplete—I might almost say illusory—consolidation of the existing Merchant Shipping Law. It would only have consolidated so much of that law as is contained in the Indian Statute Book : it could not have comprised any part of the English Merchant Shipping Acts. But the Indian Merchant Shipping Law is a mere fringe on the English Merchant Shipping Law, much as under the old system in England the rules of equity were a fringe on the rules of common law, and the scattered enactments which make up this fringe are hardly intelligible without a reference to the still more numerous and scattered enactments which make up the body of the garment.

“ However, as I said before, I fully admit the inconvenience of having to search for the law up and down a large number of Acts; and although we do not at present see our way to removing this inconvenience by consolidation, yet I think we may find a practical, even if it be a temporary, remedy for it by bringing together in the form of a digest the various enactments, whether contained in the English or in the Indian Statute Book, which make up the sum total of the Indian Merchant Shipping Law. I hope that we may with the help of the Legislative Department be able to prepare some such digest as this before the end of the current year, which is the date at which we propose that this new Bill should come into force.”

## BENGAL PILOTS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to give power to arrest persons whose evidence is needed under Act XII of 1859.

## RULES OF BUSINESS.

The Hon'ble MR. ILBERT also moved that the following amendments be made in the Rules for the conduct of the legislative business of the Council of the Governor General, namely :—

(1) That after Rule 17 the following be inserted, namely :—

“ 17A. The Council may, at any time after leave to introduce a Bill has been granted, direct that the Bill be published in such manner as the Council thinks fit.”

(2) That in the fourth paragraph of the 24th Rule the word “ and ” be omitted, and that the following be added to that paragraph, namely :—

“ and the date on which the publication has taken place, or, where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.”

(3) That to the 24th Rule the following paragraphs be added, namely :—

“ When the Committee recommend the republication of a Bill which was originally ordered by these Rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be republished in every such Gazette and every such language.

“ If the Committee are of opinion that it is unnecessary to republish the Bill in any such Gazette or in any such language, they shall, in their report, state the grounds of their opinion.”

(4) That after the 29th Rule the following be inserted, namely :—

“ 29A. Notwithstanding anything in the foregoing Rules, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill, or any part of the Bill, to the Council section by section. When this procedure is adopted, the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question ‘ that this section, or (as the case may be) this section as amended, stand part of the Bill.’ ”

He said that the object of the first amendment was to supply what appeared to be an omission in the rules. Under the rules as they stood, there



was no provision made for the publication of a Bill, for the introduction of which leave had been asked until a motion had been made, after the introduction of the Bill, that it be referred to a Select Committee, taken into consideration or circulated for opinion. As the principle of the Bill might be discussed when any such motion was made, it was considered desirable that the Council should be enabled to have the Bill published as soon as leave to introduce it was granted, so that the public might have an opportunity of giving their opinions as to its provisions, and members of Council might be in a better position to discuss its principle and provisions, when the time for discussion arrived. With respect to the last three of the amendments, he had on a previous occasion explained pretty fully the reasons which induced the Government to propose them, and the objects aimed at by each of them, and he did not think it necessary that he should recapitulate to-day what he had said before. These amendments had been for some time before the public, they appeared to have received general approval, and he had not received any suggestion for their modification. Under these circumstances, all that was necessary was that he should formally move that they be taken into consideration and the rules be passed.

His Excellency THE PRESIDENT said :—" Before I put the amendment I should like to point out that the present arrangement is rather more anomalous even than my hon'ble and learned friend has stated it to be; because under Rule 22 of the existing Rules, ' the Governor General, if he see fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill.' So that you can publish a Bill before introducing it, but you cannot publish it, under the Rules, immediately after leave is given to introduce it, but must wait until it has actually been introduced. I think that sufficiently shows that it is by an accidental omission in the Rules that such an anomaly exists, and that it is quite right that it should be removed.

The first amendment was put and agreed to.

The second and third amendments were also put and agreed to.

The Hon'ble KRISTODÁS PÁL said :—" My Lord, before the last amendment is put to the vote, I wish, with Your Lordship's permission, to make a few general remarks. In the first place, I desire to express my high appreciation of the enlightened and liberal spirit in which changes in the Rules of Business of this Council have been proposed to-day. The primary object

of these changes, as the hon'ble and learned Member has explained, is to afford the public a better and fuller opportunity to discuss the measures laid before this hon'ble Council. I will not go over the grounds which have been already traversed by the hon'ble and learned member in proposing the changes in question, but I submit that the public feel deeply grateful to Your Excellency's Government for the steps that are being taken to give a wide publicity to legislative measures, to enlist the co-operation of the Press in their discussion, to educate and strengthen public opinion, and thus to legislate in the broad light of day.

" While upon this subject I venture to invite the attention of Your Excellency and of the hon'ble Council to some points connected with the Rules of Business of this Council. Rule 9 provides that, after a motion is made, the debate shall be opened by the junior member, who shall be followed by the other members in consecutive order. Although I am the youngest member of this hon'ble Council, and have had no experience of the working of its rules, still it strikes me that this rule is a source of much practical inconvenience. It may happen that, after the mover of a motion has spoken, the junior member may quite concur with him, and may have, therefore, little to add to what has been already said; but after hearing other members, who may object to the motion, he may wish to answer them, but under this rule he will be tongue-tied. He must speak first, or not at all. Practically, therefore, the junior member and those immediately above him are put under a bann. I am not aware of any legislative assembly, society or corporate body which has such an inexorable rule. I think this rule requires amendment.

" The next point is the publication of a Bill when material alterations have been made in it by the Select Committee to which it may have been referred. Already a motion has been carried to-day that, if in any case the Select Committee should recommend the publication of the amended Bill, it should be published for general information. I make no doubt that the Select Committees will act in the spirit in which the new rule has been made; but supposing that in any case a Select Committee should act otherwise, surely any member of the Council ought to be at liberty to move that an amended Bill should be published for the reason stated. I think it necessary to mention that considerable dissatisfaction is now and then produced in the public mind on the score of scant opportunities allowed to the public for the discussion of a Bill at the last stage, though radical alterations might have been made in it at that stage. The rules of the old Legislative Council,

better known as Lord Dalhousie's Legislative Council, were more liberal in this respect. Rule 85 of the old Council ran as follows:—

“ ‘LXXXV. Any member may likewise move in Council that the draft be repub-  
 lished for general information, on the ground that the  
 Re-publication for general informa- amendments which may have been adopted are of so new  
 tion. and important a nature that the Act ought not to be passed without being previously  
 published for general information; and, if the motion be carried, the amended Bill shall  
 be published, and notice may be given of a day on which the third reading and passing  
 of the Bill will be moved.’ ”

“ I would humbly recommend the adoption of this rule and extend it to Bills when they have been subjected to material alterations by a Select Committee.”

The hon'ble speaker then proceeded to point out the absence of a rule to permit private individuals to be heard by counsel in respect of private or personal Bills as under Rule 29 of the old Legislative Council.

The Hon'ble MR. HOPE said he thought the Hon'ble Member was out of order in speaking upon points which were not then before the consideration of the Council.

His Excellency THE PRESIDENT:—“ Strictly speaking, no doubt, the Hon'ble Member is out of order in referring to portions of the Rules not before the Council. I was going to make that remark myself afterwards; but I thought that, as this is the first occasion on which we have had the pleasure of hearing the Hon'ble Member addressing us in this Council, I should be acting in accordance with the wishes of the Council if I did not interrupt him. Strictly speaking, Mr. Kristodás Pál can only speak on the motion before the Council at this moment; but of course it is open to him to make suggestions to Government on the points on which he desires to represent his views. If my hon'ble friend Mr. Hope presses his objection, I must rule in his favour; but I was anxious to hear what my hon'ble friend Mr. Kristodás Pál had to say.”

The Hon'ble Mr. HOPE remarked that there was considerable inconvenience in discussing in the Council matters which were not before it for discussion.

His Excellency THE PRESIDENT:—“ Then, if objection is taken, I must rule my hon'ble friend out of order. At the same time, I hope that he will

do us the favour of indicating his views to the Government on the points to which he desires to draw attention, and I can assure him that they shall receive full consideration."

The Hon'ble KRISTODÁS PÁL explained that, before venturing to address the Council, he had consulted the hon'ble and learned Law Member, who had advised him not to move substantive amendments, but to confine himself to general remarks and suggestions for the consideration of the Council.

The Hon'ble MR. ILBERT said he thought what he intended to say to the hon'ble member was this—that although in his opinion it would be out of order to move any substantive amendment of which notice had not been given, he thought there would be no objection to suggestions being made and general outlines given of proposed alterations, not with the object of inviting discussion, but that they might be moved and discussed on some future occasion.

The fourth amendment was then put and agreed to.

The Hon'ble MR. ILBERT gave notice of his intention to propose a very minor amendment of the rules, which had been necessitated by the recent changes in the arrangement of the tables. Under the existing rules it was provided that the Commander-in-Chief should sit on the right of the President, and the Governor or Lieutenant-Governor should sit opposite to the President. There was some little inconvenience in giving strict effect to that rule under the existing arrangements, and as a matter of fact the rule had not been observed. Accordingly, he would suggest that the rule should be modified in this way, namely, by substituting for Rule 5 the following:—

"That the Governor or Lieutenant-Governor and Commander-in-Chief should sit on the right of the President; the Legal Member should sit wherever it might be convenient; and, subject to these provisions, the Members should sit according to seniority, the Junior Member sitting to the left of the President."

His Honour THE LIEUTENANT-GOVERNOR said that, while deprecating the wrath of the Hon'ble Mr. Hope and the risk of being called to order by the President, he wished to say one word. He thought it would be a very salutary change if the rule requiring members to speak without rising from their chairs be altered, so as to provide that hon'ble members should speak standing instead of sitting.

HIS Excellency THE PRESIDENT said he must rule that His Honour the Lieutenant-Governor was out of order. A rule which applied to the junior member of the Council was equally applicable to the Lieutenant-Governor.

The Council adjourned to Friday, the 23rd February, 1883.

R. J. CROSTHWAITE,

*Additional Secretary to the Government of India,  
Legislative Department.*

CALCUTTA;

*The 16th February, 1883.*