

Thursday, September 4, 1879

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,

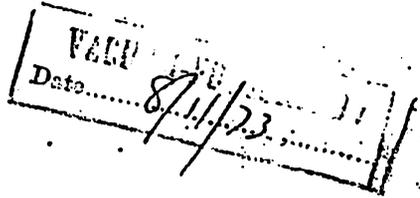
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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1880.

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 Thursday, the 4th September, 1879.

P R E S E N T :

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

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

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

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

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

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble Sayyad Ahmad Khán Bahádúr, C.S.I.

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

The Hon'ble B. W. Colvin.

HACKNEY-CARRIAGE BILL.

The Hon'ble MR. THORNTON moved that the Report of the Select Committee on the Bill for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments be taken into consideration. He said that the Bill, as an effort of legislation, was of the humblest character; but, judging from the remarks and criticisms received from the several Local Governments affected by its provisions, it would appear that it had, at any rate, one merit—the merit of being wanted.

It further appeared from the replies received from the same authorities that the provisions of the Bill, as introduced, were considered generally suitable. One critic, indeed, had expressed the opinion that too much power had been left in the hands of local authorities, and that it would have been better if many of the rules which it was left to those authorities to frame had been specifically enacted by the legislature. This point had, however, been duly considered by the framers of the Bill; but it was felt that the territories to which the measure was to extend were so vast, and their circumstances so

widely different, that such a course, however desirable from some points of view, would be impracticable. The course adopted—which had met with general approval—had been to make the Bill an enabling one, to indicate clearly and specifically what the local regulations might, and ought to, provide for, and to leave the details to be filled in by the municipal and local authorities concerned, subject to the confirmation of a central authority—the Local Government—and to the control of the Government of India. Hereafter, when more practical experience had been gained, it might be desirable that each of the Provinces affected should have one set of regulations in force throughout its limits; but that was a matter of local interest which might be safely left in the hands of Local Administrations.

So much for the general design of the Bill. In regard to its details, several valuable suggestions had been received, which had been embodied in the Bill as now amended; and some further amendments and additions had been made by the Select Committee after consideration of the provisions of similar enactments in force in India and in England. He would not trouble the Council by detailing the amendments thus introduced. It would suffice to say that they would all, it was believed, commend themselves at once to the approval of the Council and the public.

He would observe, in conclusion, that the framers of the Bill had had four somewhat conflicting interests to deal with and, if possible, reconcile—the interests of the passenger, the interests of the proprietor, the interests of the driver, and the interests of the horses. They had endeavoured to the best of their ability to deal fairly with all these interests, and he hoped, if the measure was permitted to become law, the result would be ultimately beneficial to all parties and no inconsiderable addition to the comforts of existence in the towns and cantonments of the interior of India.

The Motion was put and agreed to.

The Hon'ble MR. THORNTON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES introduced the Bill relating to Merchant Shipping, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Thornton and Hope and the Mover. He said that he had already explained that this miscellaneous but useful measure was intended to

effect in the British Indian law of Merchant Shipping eight amendments, of which the introduction of Plimsoll's Act (39 & 40 Vic., c. 80), as to unsafe and unseaworthy ships, was by far the most important.

The minor amendments were so fully described and explained in the Statement of Objects and Reasons that he would not take up the time of the Council by commenting upon them. But a brief exposition of the principal provisions of chapter II, which corresponded with Plimsoll's Act, would, he thought, be not altogether useless.

Section 4 of the Bill and the Act declared that whoever should send a ship to sea in such an unseaworthy state that the life of any person was likely to be thereby endangered should be punished with imprisonment or fine, unless he proved *either* that he used all reasonable means to insure her being sent to sea in a seaworthy state, *or* that her going to sea in an unseaworthy state was under the circumstances reasonable and justifiable. MR. STOKES found from a useful commentary on the Act, which had been published by its draftsman, Mr. Ilbert, that this provision had been objected to in England on the ground that it threw the burden of proof on the defendant; but it was perfectly right. The prosecution must show in the first place that the ship was sent to sea in an unseaworthy state. This raised a presumption (here under section 114 of the Evidence Act) of guilt on the part of the defendant; and the burden was thrown upon him to discharge himself by proving either that he used all reasonable means to make the ship seaworthy, or that the sending to sea was justifiable. These facts the defendant alone could prove, and the burden of proving them was rightly thrown on him. Similarly, in the case of stolen goods. If it were proved that a man was in possession of stolen goods soon after the theft, the Court might presume that he was either the thief or had received them knowing them to be stolen. He must then discharge himself, if he could, by proving that he came by them honestly.

As to the provision enabling the defendant to plead that the sending the ship to sea in an unseaworthy state was justifiable, that was intended to meet the case of a ship which had been badly damaged at sea and had taken refuge in a port where it was impossible to repair her satisfactorily. She would probably be patched up and sent to the nearest place where she could be conveniently repaired; and, assuming that no risk was recklessly incurred, it would be unreasonable, under such circumstances, to hold her owner or master guilty of a criminal offence merely because she was not perfectly seaworthy when she left her port of refuge.

It was unnecessary in India to justify the provision enabling the defendant to give evidence in his own behalf. It was obviously in favour of an innocent

defendant; and Mr. Ilbert said that, in the few cases which had arisen at home under the Acts of 1871 and 1875, it had always been made use of by the incriminated shipowner.

We then came to section 5. The Common Law rule was that a master was not liable to pay compensation to a servant for the consequences of a risk incident to the contract of service, and that an accident caused by the negligence of a fellow-servant was such a risk. Now the object of section 5 was to modify this rule so as to render the shipowner liable to seamen, not only for his personal neglect, but also for that of certain of his agents, who were technically, but were not to ordinary understandings, "fellow-servants" of the seamen. The section also prohibited the shipowner from contracting himself out of the obligation thus imposed—an obligation which, by the way, was continuous, being not merely to make the ship seaworthy, but to keep her so during the voyage to which the contract related.

The Bill enabled the Government to detain a ship provisionally; and section 27 provided rules as to liability of Government for the costs of the detention and survey where the ship was provisionally detained and it appeared that there was not reasonable and probable cause for such detention. Section 28 also provided a rule as to the liability of the shipowner for costs where the ship was finally detained, or where it appeared that she was unsafe at the time of provisional detention. But there was no provision for the case which would sometimes occur, namely, where there was reasonable and probable cause for the detention but the ship was, at the time of detaining her, as a matter of fact, not unsafe. In such case each party would, in England, bear his own costs, and it was presumed that the same result would follow in this country.

Section 32 declared how grain-cargo should be stowed so as to be secured from shifting, and imposed a penalty of Rs. 3,000 for improper stowage of such cargo. The penalty was heavy, but it would probably be seldom incurred; for a more effectual sanction for this section would be found in the fact that a shipment contrary to its provisions would endanger the validity of any policies of insurance effected on the voyage. Thus in *Cunard v. Hyde*, 2 E. & E. 1, the Court of Queen's Bench decided that where a deck-cargo was put on board with the privity of the owner, whereby the object of an Act of Parliament was defeated, and whereby the vessel sailed upon an illegal voyage, a plea stating these facts would be a good defence to an action on the policy; and this decision was cited with approval by Blackburn J., in *Dudgeon v. Pembroke*, L. R. 9 Q. B. 585.

The Statement of Objects and Reasons said that, in adapting to India an English Act of this nature, it seemed advisable to make the Indian Act as

nearly as possible identical with the English one, and that in drafting this chapter the provisions of 39 & 40 Vic., c. 80, had, therefore, been followed as closely as possible. There would, he thought, be no dispute as to the general propriety of this course. But in the present case the Legislative Department had gone a little too far, and, like Chinese tailors, copied the patches on the garment given to us as a pattern. Thus the proviso to section 5 might be construed as implying that there were circumstances in which the shipowner was not bound to use all reasonable means to ensure the seaworthiness of his ship. It was objectionable also on other grounds, for (as Mr. Ilbert remarked) if, for the sake of convenience or economy, a ship was sent to sea in an unseaworthy state and loss of life was caused by her unseaworthiness, it was not clear why compensation should not be paid to the families of the deceased persons. Criminal liability was quite another matter. This proviso was inserted in committee by the House of Commons, and should, Mr. STOKES thought, be omitted. Again, section 38 imposed a penalty on any owner or master of a ship who allowed her "to be so loaded as to submerge *in salt water* the centre of the disc." This clause was also inserted in committee; and the effect was, if construed literally, to subject a shipowner to a penalty whenever his ship did not stand exactly upright in perfectly smooth water. A single sea-wave submerging the disc on either side would render him liable to a fine of Rs. 1,000. Of course, these defects and any others that might be pointed out by the mercantile community would be removed by the Select Committee to which Mr. STOKES trusted the Bill would now be referred.

The Hon'ble SIR EDWIN JOHNSON enquired whether the exemption of ships, under clause 3, extended to ships temporarily taken up by Government for military purposes.

The Hon'ble Mr. STOKES said that, if such ships were in the service of Government, they would be exempted. It might, however, be well to insert some words in committee, such as "permanently or temporarily in the service of Government," to make the matter quite clear. The point was not of much practical importance; for, as the Secretary had just suggested to him, ships taken up in this way were always carefully surveyed by Government officers, and after such survey it was highly improbable that they would be detained under the Act.

The Hon'ble SIR EDWIN JOHNSON remarked that he thought there might be a possibility of vexatious detention in such a case.

The Hon'ble Mr. STOKES did not think it likely that any vexatious detention could occur, as the persons authorized to detain ships would always be officers of Government or judges of the Courts of Survey.

The Motion was put and agreed to.

SALT TRANSPORT BY SEA.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He took the opportunity of mentioning that the propriety of exempting Lloyd's Surveyors from the operation of sections 65 and 66 would be duly considered by the Select Committee, and that that Committee would not commence its sittings until the Council had re-assembled in Calcutta, by which time he trusted that they would be strengthened by the addition of a mercantile member.

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. THOMPSON presented the Report of the Select Committee on the Bill to appoint Commissioners for the Port of Rangoon.

SALT TRANSPORT BY SEA BILL.

The Hon'ble MR. HOPE asked for leave to postpone the presentation of the final Report of the Select Committee on the Bill to restrict the transport of Salt by Sea.

Leave was granted.

The Council adjourned to Thursday, the 11th September, 1879.

SIMLA;
The 4th September, 1879. }

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.