

**Friday,
29th February, 1884**

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1884

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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 Friday, the 29th February, 1884.

P R E S E N T :

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

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

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

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

The Hon'ble Sir A. Colvin, K.C.M.G.

The Hon'ble H. S. Thomas.

The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

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

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

N E W M E M B E R.

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK took his seat as an Additional Member.

I N L A N D S T E A M - V E S S E L S B I L L.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the law relating to the Survey, and the examination and grant of certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels, be taken into consideration. He said :—

“This Bill, as introduced, was little more than a consolidating measure. It brought together the provisions of some seven local Acts with respect to the survey of inland steamers, the grant of certificates to their officers, and investi-

gations into casualties connected with them. The only alteration of importance was the extension of the period for which a certificate of survey is to be in force from six months to one year; and the only addition of importance was a chapter regulating the carriage of dangerous goods on inland steamers on the same principles as those on which the carriage of dangerous goods by railway is regulated under the Indian Railway Act of 1879.

"Since the Bill has been circulated we have received numerous useful criticisms and suggestions from the various Chambers of Commerce, Port Commissioners and other persons, official and non-official, and by their help we have made some changes in the law which will, I hope, prove to be substantial improvements.

"In the first place, we have altered the procedure for obtaining a certificate of survey. Under the existing law the survey has to be made by two officers, who receive the fees and grant the certificates themselves. Instead of this, we propose to adopt the system now in force under the English merchant shipping law, which is, that the survey should, under ordinary circumstances, be conducted by one surveyor only, and that he should be paid by salary, that the fees should be paid to and accounted for by Government, and that the certificate should be granted by Government on the declaration of the surveyor. As surveys will in future be made only once a year instead of twice, and as we anticipate that they will be made more fully and carefully than at present, we propose to double the rate of fees. But, in order to make the increase of fees press as lightly as possible in the case of small craft, we propose that vessels under 100 tons should pay a fee of Rs. 25 only. The revised scale of fees will be found in the second schedule to the Bill. We have empowered Local Governments to alter this schedule by rules, and we have provided that drafts of any rules which the Local Governments may propose to make for this purpose, or for any other purpose under the Bill, should be published in such a manner as to give persons interested an opportunity of being heard against them before they take effect. Of course, our only object is to fix the fees at such a rate as will prevent the cost of survey from being a charge on the State.

"The Bengal Chamber of Commerce have directed our attention to the great variety of classes to which inland steamers belong. They point out that there are no less than four distinct classes of such vessels, namely: (1) the large river-steamer with its attendant flats; (2) smaller vessels of about 120 tons net register and 80 nominal horse-power; (3) ferry-boats in the Hugli; and lastly (4) steam-tugs, steam-launches, small cargo-boats, tugs and coal-barges plying for hire.

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“And they observe that these different classes require different treatment under the law, and that it is impossible to lay down any hard-and-fast rules applicable to all of them. I fully agree with these observations, but I think it will be found that the Bill, as we have now amended it, has become so elastic as to be applicable without hardship or injustice to all the different classes of vessels which will come within its scope. For instance, we fully recognize the fact that all inland steamers do not require a complete survey every year, and that the requirement of such a survey would in many cases entail considerable and needless expense on the owners. Accordingly, we have given the Local Governments power to define by rule the cases in and the extent to which, under ordinary circumstances, a survey may be dispensed with before the grant of a new certificate; and we have no doubt that the power will be exercised in such a way as to avoid unnecessary interference with vessels which are in a substantially good condition.

“Again, we have recognised, and made provision for, the difference between large and small craft with respect to the numbers and qualifications of the officers whom they may be reasonably expected to carry. Most of the smaller inland steamers ply under the charge of Native serangs and engine-drivers. The Bill as introduced required every inland steamer to carry a certificated master and engineer, and recognised only one class of masters and engineers. It was pointed out that the effect of this provision would be to require all these serangs and engine-drivers to pass the same examinations, and obtain the same certificates, as the masters and engineers of the large river-steamers. This objection is perfectly sound, and, in order to meet it, we have divided the masters and engineers into different classes, and have provided for the granting of different certificates to the members of each class. There will be first-class and second-class masters' certificates, and there will be engine-drivers' certificates as distinguished from ordinary engineers' certificates.

“Then we have divided inland steam-vessels into two classes, those having engines of eighty nominal horse-power or upwards, and those having engines of under eighty nominal horse-power. We have required every vessel of the former class to carry as her master a person having a first-class master's certificate, and as her engineer a person having an engineer's certificate, and every vessel of the latter class to carry as her master a person having at any rate a second-class master's certificate, and as her engineer a person having at any rate an engine-driver's certificate. In order, however, to relieve persons who are duly qualified to act as masters or engineers of inland steam-vessels, but have not certificates of competency under the special law relating to those vessels, from

the necessity of taking out fresh certificates under that law, we have placed persons having certificates as masters or engineers under the Indian or Imperial Acts relating to sea-going ships in the same position as persons who have obtained masters' or engineers' certificates under the Bill. And, on the recommendation of the Bengal Chamber of Commerce, we have added a proviso making it clear that one and the same person may be both the master and engine-driver of a steam-vessel of under eighty nominal horse-power.

"The existing law provides for the grant of certificates of service, which are to be given without examination, and are to have the same effect as certificates of competency granted after examination. I believe that these certificates of service were devised for the purpose of meeting a transitional state of things, and that the necessity for granting them has long since disappeared. When the examination system was first introduced, it was very right and proper that old and experienced masters and engineers should be released from the necessity of proving their competency by passing an examination. But all the men who were entitled to these certificates have got them long before now, and it has become unnecessary to do more than provide that the certificates of service already granted shall have the same effect as certificates of competency. We have done this, and have not made any provision for the grant of further certificates of service.

"The English Merchant Shipping Acts contain some useful provisions for regulating the conduct of passengers on board steamers, imposing penalties on drunken and disorderly passengers, and on persons travelling without tickets, or refusing to produce their tickets, or committing other offences of a like nature. It has been pointed out that there are no similar provisions in the Indian law, and that an addition to that effect would be useful. Accordingly, we have added to the Bill a chapter enabling Local Governments to make rules providing for the cases in which passengers may be refused admission to, or may be required to leave, inland steam-vessels; the payment of fares and the exhibition of tickets or receipts showing the payment of fares; and the regulation generally of the conduct of passengers in inland steam-vessels; and empowering them to impose fines not exceeding twenty rupees for breach of the rules.

"The Bill, as introduced, extended to the whole of British India, including the Madras Presidency. There is a local law of this character at present in force in Madras, and, as the Madras Government appear to be of opinion that the introduction of such a law is not required, at all events for the present, we have exempted Madras from the immediate operation of the Bill, but have empow-

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ered the Governor in Council to extend the measure to that Presidency if at any future time it is found to be required.

“And, lastly, we have reserved to each Local Government considerable powers of exempting certain classes of vessels from the operation of parts of the Bill, or of applying its provisions subject to modifications. As I said before, it is absolutely essential to a measure of this kind that it should be made reasonably elastic. The object which we have kept in view in framing the Bill has been to secure uniformity in matters of principle whilst providing for elasticity and variety in matters of detail; and I have every reason to believe that the result will be a useful and workable law.”

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.

INDIAN STEAM-SHIPS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the law relating to the Survey of Steam-ships and the grant of certificates to Engineers of those ships be taken into consideration. He said :—

“This Bill is the twin-brother of the measure which has just passed the Council, and the resemblance between the two is so close as to make a separate description of each unnecessary.

“In this case also we have recast the provisions relating to survey in such a way as to bring them into conformity with the English law. The expediency of making this change has been strongly pressed upon us by the Board of Trade, and I need hardly say that the reasons for making the English and Indian law harmonious in this particular are even stronger in the case of sea-going ships than in the case of inland steamers.

“We have also modified the sections relating to the grant of certificates to officers by omitting the provisions for the grant of further certificates of service, and by legalizing a practice which appears to exist in Bombay of granting certificates for engine-drivers as distinguished from engineers. It seems from the report of Captain Morland, the Port Officer of Bombay, that certificates are issued in that Presidency to Native engine-drivers for working small harbour or coasting steamers; and it is desirable, for reasons to which I have already

referred in speaking of the Inland Steam-vessels Bill, that the grant of such certificates should be recognized and controlled by the law. Accordingly, we provide for the grant of such certificates by any Local Government; but, as we do not know whether all the maritime Local Governments wish to impose the obligation of carrying certificated engine-drivers on the small steamers which are at present exempted from the necessity of carrying certificated engineers, we have left it to the Local Governments to decide whether this obligation shall or shall not be imposed.

"There are only two other points to which I need call attention in connexion with this Bill. In the first place, it has been said that, by requiring our own steamers to be surveyed once a year, and by not imposing a similar requirement on foreign steamers, except when carrying passengers between places in British India, we place our own steamers at a disadvantage and tend to divert the passenger-traffic between India and foreign ports to foreign bottoms. Now, even if I admitted, which I do not, that the requirement of periodical survey placed a ship at a disadvantage, it is perfectly obvious that in legislating for foreign vessels we cannot go a step further than is warranted by international law. In the provisions which we have made for their survey we have gone precisely as far as Parliament has considered itself justified in going; and, if we attempted to go any further, we should expose ourselves to the risk of international complications of a serious kind. However, we have amended that Bill by making it clear that the term 'British steam-ship' includes ships owned by Natives of India.

"Then, it has been suggested that the provisions of the Bill conflict with those of the Native Passenger Ships Act, which also provides for the survey of ships and the grant of certificates of survey. But, if the two measures are carefully compared, it will be found that there is no such conflict as has been supposed. Under the Bill, no steam-ship can enter upon passenger-traffic of any kind, Native or European, without a certificate of survey as specified in the Bill. If the steam-ship carries more than sixty Native passengers, she will come under the Native Passenger Ships Act, and will then require a further certificate under the Native Passengers Act, in addition to the certificate which is required under the Bill. The two measures, therefore, supplement and do not conflict with each other.

"There is, however, a slight inconsistency between the provisions of the Bill which permit the grant of certificates to hold good for one year, and the provisions of section 19 of the Act, which assumes that no certificates granted

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by the British Indian Government can be in force for more than six months. This inconsistency we have removed by section 40, which amends section 13 of the Native Passenger Ships Act. We have also by the same section added some words to section 13 of the Act to make it clear that the certificate referred to must be one which is in force and applicable to the voyage on which the ship is about to proceed or the service on which she is about to be employed."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that after section 34 of the Bill the following section be inserted, namely :—

"35. The provisions of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) with respect to the certificates of competency or service of the master and mate contained in section 31 and section 32 of that Act shall apply to certificates of competency granted under this Act in the same manner as if certificates of competency granted to engineers under this Act were specially mentioned and included in those sections."

He said :—"The object of this amendment is to remove a slight discrepancy between the English and the Indian Acts which had escaped the notice of the Select Committee. Under the English law, it is necessary to produce the certificates both of the master and the mate and of the engineer before a port-clearance is granted. The Indian law requires the production of the master's and mate's certificates, but makes no provision for the production of the engineer's certificate. It is obviously desirable to remove this discrepancy between the two laws, and that is what this amendment is intended to do."

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.

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Negotiable Instruments Act, 1881. He said :—

"The main object of this Bill is to amend the Negotiable Instruments Act with respect to a small point in which it is not quite in harmony with mercantile practice and mercantile convenience. The point is this. Under the Act, a person who wishes to accept a bill of exchange for honour is required to go through

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certain formalities in the presence of a notary public. In prescribing these formalities, the Act accurately reproduces the existing law as laid down in the leading text-books. But it appears that in modern mercantile practice the strict observance of those formalities has been found to be unnecessary, and that they are commonly dispensed with. The truth is that, as often happens, the text-books have not kept quite abreast of the times, and have failed to take note of changes which are apt to take place in mercantile usage when it is not stereotyped by codification. The Council are probably aware that the English law on the subject of bills of exchange has recently been codified by a Statute which became law in 1882, a year after our Indian Act. The Bill for this Statute was framed on the lines of the Indian Act, and, as introduced into the House of Commons, contained provisions similar to those which I have described. But, during the passage of the Bill through Committee, the discrepancy between the usage as stated in the text-books and the usage as actually obtaining was discovered and the provisions were removed. A similar discovery has been made out here. We have received representations from some leading bankers to the effect that the retention in our Statute-book of an enactment requiring the observance of formalities which are unnecessary and have fallen into disuse has caused, and is likely to cause, practical inconvenience. I propose to apply the obvious remedy by amending the Act in such a way as to bring it into conformity with what has recently been declared to be the law in England and appears to be the established usage here. And I propose to take the opportunity of supplying certain defects in the Act with respect to the appointment and control of notaries public, by making it clear that a person may be appointed a notary either by name or by virtue of an office; that he may be appointed for a limited area, and may be removed from his office; and further, that rules may be made for the guidance and control of notaries appointed under the Act, and may, among other matters, fix the fees payable to such notaries."

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th March, 1884.

D. FITZPATRICK,

FORT WILLIAM;
The 6th March, 1884.

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