

Thursday, August 21, 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,

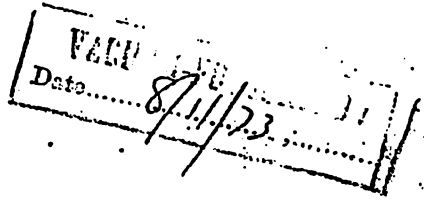
ASSEMBLED FOR THE PURPOSE OF MAKING

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 21st August, 1879.

P R E S E N T :

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., Senior Member of the Council of the Governor General, *presiding*.

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

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

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

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

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

The Hon'ble F. R. Cockerell.

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

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

The Hon'ble B. W. Colvin.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

The Hon'ble MR. STOKES asked leave to postpone the motion that the Report be taken into consideration and the motion that the Bill be passed.

Leave was granted.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill relating to Merchant Shipping. He said that the object of the Bill was to make eight amendments in the law relating to merchant shipping, which he would briefly specify :—

First, to extend to this country the principal provisions of the Statute 39 & 40 Vic., c. 80 (commonly called "Plimsoll's Act"), relating to the seaworthiness of ships, the stowing of grain-cargoes, and the marking of ships with deck and load lines ;

Secondly, to provide for the examination and licensing of fit persons to be marine surveyors, and for prohibiting unlicensed persons from acting as marine surveyors in any port in which there might be a licensed surveyor ;

Thirdly, to provide for the appointment of receivers of wreck, here following the precedent of the English Merchant Shipping Act of 1854 ;

Fourthly, to provide for the appointment of persons to inspect ships for the purpose of seeing whether they were properly furnished with lights, and with the means of making fog-signals, in accordance with the regulations for preventing collisions at sea ;

Fifthly, to provide for the appointment of a Port-inspector, who would not only perform the duties at present performed by the Health-officer, but would inquire into any complaints which might be made on the arrival of a ship in port by any of the crew against the master or any other of the crew ;

Sixthly, to amend the Indian Merchant Shipping Act, 1875, so as to give power to hold Marine Courts of Enquiry in certain cases which were at present unprovided for ;

Seventhly, to empower the Local Governments to fix a minimum scale of provisions for lascars or Native seamen ; and

Eighthly, to provide for the conveyance home of distressed Asiatic seamen in Indian waters, and to fix a reasonable rate of allowance for their subsistence when on the voyage.

The Motion was put and agreed to.

PLEADERS BILL.

The Hon'ble MR. STOKES presented a further Report of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue-agents Act, 1865. He said, with the President's permission, that the changes made in the Bill since the presentation of the former Report were carefully enumerated in the present Report. Only two required special notice. One was the provision in section 28 that agreements between pleader and client regarding the remuneration for services rendered by the former should always be in writing and be filed in Court, and the further provision in section 29 that, when a suit was brought on such an agreement, the Court, unless the transaction were proved to be fair and reasonable, might reduce the amount payable under it or set it aside altogether.

These provisions were, it was thought by the Committee, better suited to this country than the elaborate rules contained in the English Statute 33 & 34 Vic., c. 28, sections 4, 5, 8, 9 and 10.

The other was the penalty which section 36 would impose on the practice of giving or receiving commission on fees paid to legal practitioners. This shameful practice was injurious in many ways. First of all, it injured the interest of those whom the recipients of the commission were bound to protect. On this point Mr. STOKES would quote Sir Richard Garth :—

“I will explain the way in which the evil works by an illustration founded on fact.

A mukhtár is employed by his client (a zamíndár of eminence) to retain Counsel in Calcutta to conduct a case in the Mufassal.

He is entrusted for this purpose with a liberal retaining-fee (of say Rs. 1,000), with which it is of course his duty to obtain the best professional talent which such a sum can procure.

But the mukhtár's first object is to take care of himself; and, although, for his own credit as well as his client's benefit, he is willing to obtain the best assistance he can, he will only do so subject to his own interests being first provided for. Accordingly, he applies in the first instance to some gentlemen of eminence at the Bar, and offers him the case and the fee, provided he will return him some 25 per cent. of it for his own commission.

The offer is of course indignantly refused; whereupon the mukhtár descends lower, and eventually retains some far less competent, as well as less conscientious, Counsel, who is content to share with him both the fee and the dishonour, and to allow him a much larger commission than he would have dared to ask from a Barrister of good position.

The result is that the mukhtár's client is cheated. The money which he gave for one purpose is fraudulently misappropriated to another; the case is not conducted nearly so well as it would have been in the hands of an abler Advocate; and the more honourable and eminent members of the Bar are thus supplanted by others of inferior character and position.

Secondly, it sometimes imposed an undue liability on the litigant to whom the practitioner giving the commission was opposed. Thus Mr. STOKES was credibly informed that in one of the Districts of Lower Bengal a certain wealthy litigant, who was constantly engaged in suits, habitually gave his mukhtár a certain sum, say Rs. 200, to fee his pleader. The mukhtár might get back any commission he could for himself; but it was an essential part of the arrangement that the pleader was to give back a certain percentage of the fee (say 20 per cent.) to the client himself. The pleader gave a receipt for the whole sum, Rs. 200; and if he was successful and costs were decreed, the Rs. 200 were charged against the opposite party, so that the latter was made to pay a sum to the client under the name of pleader's fee, which the client had in fact never paid to the pleader at all.

Thirdly, the practice demoralized the practitioners who consented to give commission.

Fourthly, it inflicted great hardship on the younger men who honourably refused to submit to it.

Lastly, it led to the bringing and maintaining of many frivolous suits and appeals, and thus wasted the time of the Courts and the money of the suitors.

This salutary addition to their penal law was strongly recommended by the Chief Justice of Bengal and the Madras High Court; and MR. STOKES trusted that nothing would prevent its enactment at an early date.

In the meantime the Committee would further consider and finally decide on the expediency of empowering the Chief Court of the Panjáb to make rules for the admission of Advocates in that Province.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON presented the Report of the Select Committee on the Bill for the regulation and control of Hackney-Carriages in certain Municipalities and Cantonments.

SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Thornton be added to the Select Committee on the following Bills:—

To provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons.

To make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 4th September, 1879.

SIMLA ;
The 21st August, 1879. }

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

NOTE.—The meeting which was originally fixed for the 7th instant was postponed to the 21st instant.