

Wednesday, January 29, 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,

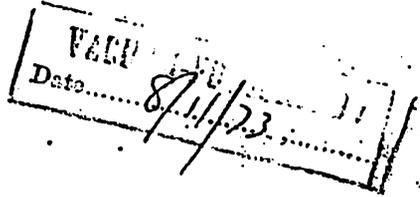
ASSEMBLED FOR THE PURPOSE OF MAKING

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 Wednesday, the 29th January, 1879.

P R E S E N T :

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

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

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.

The Hon'ble Sir J. Strachey, K.C.S.I.

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

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

Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

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

The Hon'ble G. H. P. Evans.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

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

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

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

NEW MEMBER.

Lieutenant-General the Hon'ble SIR M. K. KENNEDY took his seat as an Additional Member.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON introduced the Bill for the regulation and control of Hackney-carriages in certain municipalities and cantonments, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Sayyad Ahmad Khán and the Mover. He said that the circumstances which had led to the introduction of the measure had been explained at the last meeting of the Council. Briefly stated, its object was to provide for the regulation, where necessary, of hackney-carriages in those Provinces and parts of India in which there were no local legislatures.

It was accordingly provided in the Bill, that the law should be applicable, if required, to the following localities ; namely :—

- (1) to municipalities situated in the territories known as the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg ;
- (2) to cantonments situated in those territories ; and
- (3) to British cantonments situated in the territories of Native Chiefs.

As to the mode of operation, it was proposed that the regulation of hackney-carriages, where effected, should be effected by local rules. These local rules would be made, in the case of municipalities, by the municipal committees, subject to confirmation by the Local Government ; in the case of cantonments in British territory, by the Local Government, with the previous sanction of the Governor General in Council ; in the case of British cantonments in the territories of Native States by the Governor General in Council.

The several matters to be dealt with by the rules were set forth in section 5 of the Bill. They might require, *inter alia*, that carriages offered for hire, and the animals and harness used with them, should be in proper condition ; that fit persons should be employed as drivers ; that the fares charged should be reasonable, and that the carriages should not be over-laden.

The Bill further provided that breach of rules should be punishable with fine extending to fifty rupees ; and that disputes between the hirer and owner or driver of a carriage, as to amount of fare, should be determinable by a Magistrate.

The Motion was put and agreed to.

The Hon'ble MR. THORNTON also moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PLEADERS BILL.

The Hon'ble MR. STOKES presented the preliminary Report of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865. He said that the Committee had made only two additions of any substantial importance. The first of these was the bringing of the practitioners

in the Presidency Small Cause Courts within the scope of the Pleaders Act. He had already explained that, owing to Sir Barnes Peacock's interpretation of the expression "Courts of Small Causes" as used in that Act, there was no power to make rules as to the qualification, admission and control of those practitioners; and the expediency of making such rules would (MR. STOKES supposed) be admitted by every one except, perhaps, some of the practitioners in question.

The second addition had been suggested by the Chief Justice of Bengal, for whose wise and kindly counsel, given on this and on many other occasions, MR. STOKES wished to express his hearty thanks. The addition was the giving power to make rules for the qualification, admission and control of mukhtárs practising on the Appellate side of the High Court. The present Act, XX of 1865, section 44, purported to give such a power, and it was clear that the intention of the legislature at that time was to oblige all persons who desired to practise either in the High Court or the Mufassal Courts as mukhtárs, to be duly admitted and enrolled as recognized officers of those Courts, and to place them under the Court's supervision and control.

Accordingly, under the power thus conferred upon them, the High Court at Fort William on the 19th of January, 1871, passed the following rules relating to mukhtárs in the High Court:—

"I. Persons who have hitherto practised as mukhtárs on the appellate side of the High Court, and also persons desiring so to practise, may apply to be admitted and enrolled as mukhtárs in the High Court.

"II. No person so applying shall be admitted, except he shall satisfy the Court as to his character and competency.

"III. Every person so applying, on being approved by the Court, shall, before he is admitted and enrolled as a mukhtár, be required to give security in the sum of Rs. 2,000 for his honesty and good conduct, for his compliance with the rules and orders of the High Court, and for the faithful discharge of his duties towards the Court and towards his employers.

"IV. Every person admitted and enrolled as a mukhtár of the High Court shall be at liberty—

- (1) to instruct counsel or vakíl ;
- (2) to inspect the records of any civil or criminal case in which he is engaged as mukhtár, and if necessary to obtain copies of any papers or documents in order to the preparation of a brief or instructions for the counsel or vakíl employed, or to be employed, in the case ;
- (3) to deposit in the office money or securities on behalf of his clients ;

- (4) to withdraw monies or securities deposited on account of his clients ;
- (5) to receive back original or other documents filed in any case, after the case shall have been completely disposed of ;
- (6) and, generally, to do all other such duties on behalf of his clients as mukhtárs are now, according to the existing practice in the Court, empowered to do ; provided that no monies, securities or documents shall be handed out to any mukhtár, except on production of a special or general power-of-attorney under the hand of his client, and duly registered, authorizing him to receive the same.

“ V. Mukhtárs, within the first fortnight in January in every year, or on the occasion of taking out or renewing their certificates, shall be required to satisfy the Registrar as to the state of their securities.”

Soon after this, on the 15th of April, 1872, the vakils of the High Court presented a petition to the Judges, praying that the rules so made might be reconsidered, upon the ground that the introduction of a fourth class of practitioners, under the name of mukhtárs, into the High Court was injurious to the rights and privileges to which they (the vakils) were entitled under the Letters Patent of 1862 and 1865, and the rules made by the High Court pursuant to those Letters Patent.

Their contention was, that the Letters Patent provided for only three classes of practitioners in the High Court, namely, advocates, vakils and attornies ; that clause 10 of the Letters Patent of 1862 contained a positive prohibition against any persons being allowed to act in any way for suitors in the High Court, except vakils and attornies, and that section 44 of Act XX of 1865 was *ultra vires* of the Indian legislature, in so far as it contravened, or enabled the High Court to contravene, this prohibition. They insisted, therefore, that the introduction of a fourth class of practitioners to act in any way for clients in the High Court, under the name of mukhtárs, was contrary to law notwithstanding section 44 of the Act of 1865 ; and they prayed the Judges, upon those grounds, to rescind the rules of December, 1871.

This petition was opposed by a large number of persons, professing to be the mukhtárs of the High Court, who contended that they were, and had been for years past, acting for clients in that capacity, and that their status, as such, was recognized by the vakils and the public, as well as by the Act of 1865.

The question thus raised was argued before the Judges ; and, upon reconsideration, a majority of the Court were of opinion (no formal decision was given) that the rules which they had made in 1871 were contrary to law ; and those rules were consequently rescinded.

MR. STOKES did not for a moment presume to question the correctness of the opinion of the High Court as the law then stood or was supposed to stand. But three days before Act XX of 1865 was passed, the Statute 28th Vic., c. 15, had been enacted by Parliament, and under it new Letters Patent were granted to the High Courts. The sixth section of the Statute expressly saved our legislative powers, and though clause 10 of the new Letters contained a prohibition like that in clause 10 of the former Letters, the 4th clause of the new Letters expressly declared that all the provisions of the Letters Patent (including, of course, the prohibition) were subject to the legislative powers of the Governor General in Council. Furthermore, owing to the full discussion which the authority of the Indian legislature had received in Meares' case, 14 Beng. 106, in Feda Husain's case, I. L. R. 1 Cal. 431, and in Bura and Bukh Singh's case, I. L. R. 3 Cal. 63, there could now be no reasonable doubt as to the extent of those powers.

The ground was therefore cleared. This legislature was fully competent to modify the Letters Patent and to enable the High Court to regulate the mukhtárs that practised on its appellate side. As to the expediency of so doing, there could be no question. "In order to the due protection of suitors (MR. STOKES quoted Sir R. Garth) from injustice and wrong, all persons, by whatever name they may be called—vakils, mukhtárs, agents, or otherwise—who are allowed to take any part in the business of the Court, should have a defined and recognized position as the Court's officers, and should be bound by such wholesome rules as the Court should from time to time think fit to pass. In other words, it was highly desirable, in the interests of the public, that the intention of the legislature in 1865 with regard to High Court mukhtárs, as well as others, should be fully and fairly carried out." MR. STOKES had lived too long in India to be sanguine as to the complete success of any measure intended to stop an evil practice. But he did hope and believe that the rules which the High Court at Fort William, and also, he presumed, the High Court at Alahabad, would pass as soon as the Bill became law, would to some appreciable extent restrict the dishonest and demoralizing custom of giving commission on fees paid to legal practitioners.

Act XX of 1865 having been already thrice amended, the Committee had thought it better to repeal and consolidate, with the changes proposed by the Bill and those now described, than to have the law on so small a subject contained in five Acts.

The Council adjourned to Wednesday, the 12th February, 1879.

CALCUTTA ;
The 29th January, 1879. }

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