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ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.
1880.

WITH INDEX.

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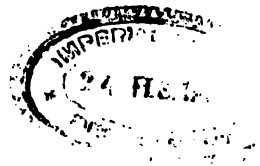
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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th March, 1880.

P R E S E N T :

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

The Hon'ble Sir J. 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.

Major-General the Hon'ble A. Fraser, C.B., R.E.

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.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill relating to Merchant Shipping be taken into consideration. He said that the Council would remember that the primary object of this somewhat heterogeneous, but, he hoped, useful Bill was to legislate in respect of unsafe and unseaworthy ships on the lines of the English Statute commonly called Plimsoll's Act; and he would now state shortly the principal modifications made by the Committee in the Bill.

The Committee had exempted from the operation of the chapter corresponding with Plimsoll's Act, vessels under 150 tons burthen engaged in the Native coasting-trade. It was urged that these vessels went to sea only in fair weather; for example, vessels of this class left the Madras ports when the south-west winds began, and did not return from Penang or Burma until the settled north-east breeze was blowing. "Thus," said the District Magistrate of Madura, "they incurred little risk, and lives were seldom lost from wrecks or foundering caused by unseaworthiness." To subject them to the stringent provisions of the Bill was unnecessary, and would probably have the effect of

stamping out the Native coasting-trade altogether. The Committee had been informed that the same considerations applied to the Native coasting-trade of the Bombay Presidency, and had ascertained that the Lieutenant-Governor of Bengal saw no objection to the proposed exemption. They had accordingly introduced, in section 3, a clause exempting coasting and fishing-vessels of less than 150 tons burthen from the operation of the chapter altogether.

As it was obviously desirable that there should be a certain harmony between our general and our special punitive laws, the Committee had reduced the penalty for sending or taking unseaworthy ships to sea (section 5) to six months' imprisonment and one thousand rupees fine, the penalty provided for similar offences by the Indian Penal Code, sections 280, 282.

They had, in the sections relating to deck and load-lines (33—43), fixed the responsibility entirely on the master, as, in a large proportion of the cases to which this portion of the Bill applied, the owner would be at too great a distance to exercise any effective control.

The Committee had, in accordance with a suggestion which he had made when the Bill was introduced, added to section 69 a proviso to enable the surveyors to Lloyd's Register and to the similar association called Bureau Veritas to discharge their duties as such without qualifying as ship-surveyors in the manner prescribed by the Bill; and he had given notice of an amendment which, if carried, would extend the operation of this proviso.

They had omitted chapters VII and VIII of the Bill as introduced, relating respectively to Port-inspectors and the Merchant Shipping Act of 1875, as they considered that the matters to which these chapters related would be more fitly dealt with in a Bill to consolidate Act IV of 1875 and the sections of Act XIII of 1878 by which it was amended. The Indian law of merchant shipping, scattered, as it would be when the present Bill was passed, through nine Indian Acts and ten or twelve British Statutes, was indeed, from the draftsman's point of view, in a most unsatisfactory condition; and anything that could be done to reduce the number of these enactments would be a boon, not only to the Courts and the legal profession, but to all merchants and sailors concerned in Indian commerce.

These were the chief modifications made in the Bill. The Council would see that the chapter on unsafe and unseaworthy ships was in the amended Bill, as it was in the Bill as introduced, restricted in its operation to British ships, although it had been urged on us from more than one quarter that it was chiefly in the case of ships owned by the subjects of foreign States in Asia that such a

law was required; that it was notorious that such ships were the most unseaworthy and unsafe that left Indian ports; that it was in them the greatest number of lives was lost; and that this chapter should accordingly be extended to them.

The suggestion was one which, in the opinion of the Committee, should not be lost sight of; but they were not prepared to deal with it in connection with the present Bill. They believed the only precedent for such legislation in regard to foreign ships was to be found in section 13 of the Merchant Shipping Act, 1876, and they were informed that, up to this moment, no attempt had been made to enforce that section. The Committee thought that, as it touched only the matter of overloading, it would not be sufficient to apply its provisions to the class of ships now referred to, the complaint regarding which was not so much that they were overloaded as that they were thoroughly rotten and insufficiently equipped.

It might be that, looking to the peculiar circumstances of the case, the Council would be warranted in legislating for some classes of foreign Asiatic ships frequenting Indian ports to an extent to which it was not usual to legislate for foreign ships in England; but the Committee were unable to judge from the papers before them whether they should or not. To enable them to form an opinion on this point, it would be necessary for them to have the fullest information as to the description of the various classes of ships in question, the sources from which their crews were drawn, the particular trade in which they were engaged, the States to which they belonged, and the nature of their relations with those States. To call for such information now would unduly delay the passing of the urgent measure before the Council, and the Committee accordingly recommended that the question of these foreign vessels be reserved for separate treatment.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that the following words be added to the title of the amended Bill, (namely) :—

“and for other purposes.”

He said, the object of this amendment was to make the title correspond more accurately with the subject-matter of the Bill, which would not relate merely to Merchant Shipping, if, as he anticipated, his amendment relating to assessors in admiralty-cases were carried.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the following words be added to section 69, (namely) :—

“or apply to any person specially exempted by the Local Government from the operation of this section.”

Chapter IV of the Bill, section 68, enabled the Local Government to appoint competent persons for the purpose of examining persons desirous of practising the profession of a ship-surveyor, and to make rules for the conduct of such examinations, and the qualifications to be required, and for the grant of certificates to qualified persons, and section 69 declared that no person should, in any port in which there was a person exercising the profession of a ship-surveyor, and holding such a certificate, exercise such profession in such port unless he also held a certificate granted under section 68. The object of the chapter was two-fold; first, by creating a monopoly in favour of persons who had passed examinations, to induce them to go to small ports in which there were no ship-surveyors at present; and, secondly, to amend the present system of ship-surveying as practised in Calcutta by subjecting to some control men on whose professional skill, and on the care with which they exercised it, the safety of valuable property and still more valuable life so greatly depended. The desirability of making such amendment had been recognised not only in India but in England, owing to the startling statements made in the last report of the Registrar of Wrecks. He had not yet seen this report; but the *Pall Mall Budget*, for February 6, 1880, after remarking that the last return of wrecks and casualties in Indian waters seemed to shew that there was need of a Plimsoll in this country, quoted the report and proceeded—

“The *Coda Bux*, with fifty souls on board, left False Point for Madras in May, 1877, and has not since been heard of, though there was no very bad weather at the time. One surveyor refused her a certificate on any terms, yet two other experts were found who passed her as seaworthy. The *Wild Rose*, which left the Hugli in June, 1878, has, so we learn from the same report, ‘a reputation so bad that a crew can scarcely be got to sail her, and she has been the cause of more unfortunate seamen being sent to gaol than almost any vessel afloat.’ Notwithstanding all this, and that she had some time previously put back to Adelaide in a leaky condition after having been a month at sea, though only in ballast trim, and that no repairs were executed in Calcutta, surveyors were found willing to pronounce her a good vessel. The cause of this state of things is not far to seek; for the Registrar adds that ‘the present system of ship-surveying, as practised in Calcutta, offers a premium to dishonesty, inasmuch as a man who does his duty strictly and understands it may almost starve, whilst dishonourable competition makes a rapid fortune.’ ”

MR. STOKES did not endorse the truth of that statement, as he had not enquired into the facts of the two cases just mentioned; but he believed the Council would admit that a *prima facie* case was established in favour of legislating in the way proposed.

Since the Select Committee's report was signed, the Government of India had received, through the Secretary of State, letters not only from Lloyds, but from the General Shipowners Society, objecting that the application to their employes of the provisions as to ship-surveyors was not needed and might cause inconvenience and hardship. The Committee had already exempted persons employed by Lloyds or Bureau Veritas from the provisions of the Bill requiring examinations and certificates. The General Shipowners Society, however, pressed for further exemption. They said,

"the shipowners of this country are supremely interested in this proposal of the India Government, seeing the immense value of the property which is now engaged in loading to the Indian ports. If your Lordship will reflect for one moment on the value of one canal-steamers and on the amount at risk on ship and cargo when any accident happens to such a ship, it will be no surprise to learn that, in such circumstances, it is not an uncommon thing to send experts possessing the confidence of both shipowner and merchant to India from this country for the special purpose of surveying and directing repairs. The very best men who can be found are invariably sent, and if this Bill becomes law, no such surveyor can commence his duties until he has passed an examination by Indian officials, of whom those interested know nothing, and who themselves would never be employed for surveying purposes in preference to the man whom they have by law to examine."

Now it seemed to him that a gentleman sent out to survey and direct repairs of a single specified ship, and making that survey and directing those repairs in an Indian port, could hardly be said to "exercise the profession" of a ship-surveyor within the meaning of our section. Nevertheless, to preclude all possible chance of hardship to competent persons, he proposed that the Council should empower the Local Governments to exempt specially any person from the operation of section 69; and he had no doubt that each of the four Local Governments concerned would readily exercise this power whenever it was applied to, by, or on behalf of, any person sent out by the General Shipowners or any other respectable society. The power might also be exercised in favour of any person of skill, experience and character now practising as a ship-surveyor in Calcutta or any other British Indian port.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that, for the title to chapter VII of the amended Bill, the word "MISCELLANEOUS" be substituted. He said, that the adoption of this amendment would depend upon the adoption of the next amendment which he would propose, and which he had reason to believe the Council would accept.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the following section be added to the Bill, (namely) :—

" 85. And whereas it is also expedient to provide for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction ; it is hereby further enacted as follows :—

Assessors in causes of salvage, &c.

" In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors ; and such assessors shall attend and assist accordingly.

" Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct."

The reason for making this amendment was known not only to the Committee but to the Council. It was suggested by a case recently heard by Mr. Justice White, who was kind enough to send him a letter which had been printed as paper No. 12 and circulated to Hon'ble Members. The learned Judge said, that he thought it was very desirable that the Court should have the assistance of nautical assessors as the Courts in admiralty-cases had in England, and then he went on to say—

" It is very unsatisfactory to the public and very perplexing to the Judge that causes of collision should be tried, as they now are in our Court, by a single Judge sitting alone. I experienced the difficulty very recently in the case of *The Ava v. The Brenhilda*."

The Hon'ble and learned Advocate General had also favoured the Council with a note which was printed as paper No. 11, in which, referring to that very case, he said the presiding Judge expressed a desire to have the assistance of a nautical assessor.

" There being no provision in the existing law for the appointment of an assessor, it was proposed to nominate one by consent ; but the parties not having been able to agree to the selection of an assessor, the learned Judge was obliged to hear the admiralty-cause without the required assistance. In having to call and examine a great many skilled witnesses as experts, the parties were necessarily put to great expense, and the Court lost much time in recording their examination. Such expense and inconvenience would have been avoided, either altogether or to a great extent, had the cause been tried by the Judge and an assessor."

Therefore, his Hon'ble and learned friend proposed that a clause be added to this Bill providing for assessors in cases of salvage, towage and collision. The majority of the Committee, however, thought that such a clause would

not be appropriate in a Bill relating merely to Merchant Shipping, and that, as the matter did not appear to be pressing, it would be better to put it into the Code of Civil Procedure when next that Code was amended. But since the Report of the Committee was presented, he learned from the Advocate General that the matter was really a pressing one, and MR. STOKES had accordingly framed the section for the insertion of which he now moved.

The Hon'ble MR. PAUL observed that, in his opinion, the section which was proposed was essential for the due administration of justice, and he should be glad if the Council accepted its introduction. He had already expressed in a short letter his reasons for urging on the legislature the necessity of introducing such a clause. The reasons for its insertion in the Bill were so very obvious, that he did not think it necessary to take up the time of the Council. The power was absolutely required for the proper trial of admiralty-cases. It would doubtless be more appropriate to insert such a provision in the Code of Civil Procedure, but he thought it would be detrimental to the interests of justice to wait until the time arrived for the further amendment of the Code of Civil Procedure; he had therefore suggested that the present section be introduced in the Bill. If, for the sake of uniformity, it be necessary to incorporate this section hereafter in the Code of Civil Procedure, that of course could be done.

The Hon'ble MR. STOKES said that, before the question was put, he thought it right to mention that the Secretary of State had just sent us a set of draft Rules for the Vice-Admiralty Courts in Her Majesty's possessions abroad, which had been received from the Colonial Office. These Rules had been framed by a Committee nominated by the Colonial Office for the purpose of revising the procedure and scale of fees in the Vice-Admiralty Courts in the Colonies, with a view to the establishment of an uniform system in all those Courts, based on the present practice in the Admiralty Division of the High Court of Justice in England. They provided for assessors as follows:—

“ 97. The Judge, on the application of any party, or without any such application, if he considers that the nature of the case requires it, may order the attendance at the hearing of one or more nautical or other assessors to be appointed by him.

“ 98. The fees of the assessors shall be paid, in the first instance, by the plaintiff, unless the Judge shall otherwise order.

And the tables of fees provided for payments to each assessor of sums varying, according to the case, from £1 to £5. It would be seen that there was no very substantial difference between his section and the Rules proposed by the Colonial Office. Those Rules would be referred for consideration to the

Presidency High Courts and, he presumed, the Recorder of Rangoon, who exercised admiralty-jurisdiction under Act XVII of 1875, section 65; and if the shape which they would ultimately assume involved any conflict with the section before the Council, nothing could be easier than to repeal that section.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Friday, the 12th March, 1880.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

CALCUTTA ;
The 5th March, 1880. }