

Wedndesday, October 26, 1881

COUNCIL OF GOVERNOR GENERAL
OF
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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.

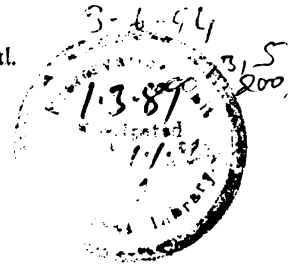
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WITH INDEX.

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1882.

*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, Simla, on Wednesday, the 26th
October, 1881.

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*.

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

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

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

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

EXCISE BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg be taken into consideration. He said that the amendments made by the Select Committee had been specified with great care in the Report of the Select Committee, which had been drawn up by Mr. Crosthwaite, and he need only now mention to the Council two or three of the more important changes. We had reduced from six months to four months the term of imprisonment provided in section 35 for illegally manufacturing spirit or liquor, in section 36 for illegally introducing country spirit, and illegally removing or illegally importing spirit, in section 39 for illicit sale of spirit, in section 43 for conniving at illicit manufacture or sale of spirit. We had also reduced the penalty provided in section 41 for the illegal possession of spirit, liquor or drugs. The penalty provided in the corresponding section of the Bill as introduced was imprisonment for a term which might extend to six months, or fine which might extend to one thousand rupees, or both imprisonment and fine. We considered that this was unnecessarily severe, and had therefore reduced the maximum term of imprisonment to three months, and the fine to five hundred rupees.

On the other hand, we were of opinion that the punishment which could be imposed under section 45 on an Excise-officer who made a vexatious search or seizure was inadequate. We had therefore, for the penalty of five hundred

rupees' fine, substituted a penalty of imprisonment for a term which might extend to three months, or a fine which might extend to five hundred rupees, or of both imprisonment and fine.

At the suggestion of two of the Local Governments concerned, we had inserted in the Bill the provisions of section 81 of the present Act (X of 1871), which provide for the grant of licenses for the sale and manufacture of spirits in military cantonments.

In section 54 of the Bill we had given the Chief Revenue Authority the power of revising the orders of Collectors and Commissioners.

We had also added a section giving the Local Governments power to exempt any specified article or any class of persons from all or any of the provisions of the Act. It was thought by the Local Government of British Burma that this power would be useful in that province, where certain tribes had, for many years past, been allowed privileges such as that of brewing, without a license, their own rice-beer for private consumption, or, at certain seasons, of being permitted, without payment of duty, to distil spirit for a propitiatory offering to the Nats, malevolent demons who dwelt in trees, jungles and other damp places, and who consequently liked to be fortified with alcohol.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that to clause (a), section 9, of the Bill the following words be added, namely,—

“and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery.”

Section 9 of the Bill provided that the Chief Revenue Authority might from time to time make rules as to the management of distilleries established under section 6. It had been thought by Mr. James, the Registrar of the High Court, Allahabad, who had greatly assisted the Select Committee in revising the Bill, that it did not provide with sufficient clearness for the power to impose conditions on the introduction into such distilleries of materials, such as the mahowa flower, to be used for the manufacture of spirit. With the addition now proposed the Chief Revenue Authority would be able to lay down rules as to the time for introducing such materials and the notices to be given to the Excise-officers as to such introduction.

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.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and for other purposes, and moved that the Report be taken into consideration. He said that the Report had been prepared in communication with the Bombay Government. It was unnecessary that he should say anything as to the principle of the Act, which had been fully discussed when it became law some years ago. The result of the past experience in regard to it had been that, owing to what the Bombay Government considered faults in the original Act, the measure had never had a fair chance of being worked as it was intended to have been, and certain amendments had been from time to time proposed and finally accepted in the form in which the Legislative Department here had prepared the Bill, which he had the honour to introduce into the Council some time ago. The Bill had been sent to Bombay, and had been carefully considered by that Government and by the Special Judge, Dr. Pollen, who had charge of the measure in that Presidency, and they had proposed certain amendments and alterations in the Bill. Those alterations had been fully considered by the Select Committee, and the Bill had been altered in accordance with what was considered to be the wishes of the Bombay Government. The first alteration made was the insertion of a new definition of "agriculturist." The definition originally given was considered not to have worked well, or to have carried out what was the intention of the proposers of the Bill; it was also objected to by the Bombay Government. It had been suggested to leave that Government to decide as to who should be considered an agriculturist, but taking into consideration the difficulties this would give rise to, the Select Committee had introduced into the Bill a new definition of "agriculturist" and had added two explanations which would make that definition more clear. They had also added in one of the sections the words "not being merely a surety for the principal debtor," chiefly owing to a decision given by the High Court of Bombay in which the wording of the Act as originally framed was found to have had anything but a beneficial effect,—in fact, it enabled creditors to get beyond what was the intention of the law; and the present Chief Justice and Mr. Justice Birdwood had come to the conclusion that, when the Act was amended, provision should be made to remedy this. Other alterations had been made, to some of which he need hardly allude. There was one made at the suggestion of the Bombay Government, namely, to give the District Judge power to transfer applications pending before one conciliator to the file of another conciliator. The reason for this was that we found that those conciliators were gentlemen who had a great deal of labour thrust upon them without any pay, and who often in consequence found it necessary for their bodily or spiritual health to take a pilgrimage to Benares or elsewhere, leaving their work behind them.

As the Act stood, there was no power to transfer the cases to another, and this was now provided for. Another and an important alteration had been made at the request of Dr. Pollen, the Special Judge, and that was in the provision of the original Act which prohibited legal practitioners of any kind from appearing in suits before a Village Munsif or Subordinate Judge. We had considered that question very carefully, and had come to the conclusion that it would be advisable to allow pleaders to appear before the Subordinate Judge in cases that came before him. The vernacular press had been very considerably exercised upon the point, and it was thought that the consensus of opinion in the press, together with Dr. Pollen's, which was in favour of such a change, should be accepted, and a clause had accordingly been inserted.

The only other matter he need mention was one to which he had already referred at a previous meeting of the Council, about allowing police patels to act as conciliators. The Bombay Government were of opinion that this should be allowed. The police patel in the Bombay Presidency was not like the ordinary policeman in blue coat and metal buttons, but was very often the most respectable man in the village, in which he was perhaps the hereditary revenue and police patel, and often the most influential person there. The Bill did not oblige the appointment of these men as conciliators, but it enabled the Local Government to appoint them if they considered that they were the best men for the business. There were also other minor alterations and amendments which would enable the Bombay Government to carry out the Act to the fullest extent, and to which it was unnecessary for him to refer.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BANKI LAWS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend the law in force in the Mahál of Bánki, and moved that the Report be taken into consideration. He said that the Select Committee had made no addition beyond that of a clause repealing two or three words relating to the Mahál, which were contained in three Bengal Regulations, and would when the Bill was passed become obsolete; and the only change made in the Bill was that the Mahál in question would now be attached to the District of Katák instead of to that of Púrí. This was in accordance with the wishes of the inhabitants of the Mahál, and those wishes seemed reasonable, as Katák was the head-quarters of the Commissioner, the Magistrate and the Collector.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

INLAND EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON asked for leave to postpone the consideration of the notices which stood in his name regarding the Bill to amend the law relating to Emigration to the Labour-districts of Bengal and Assam. He said that the Select Committee had hoped to have been able to show the introduction of several changes which it was thought would facilitate the working of the Bill; but within the last few days they had received a telegram from the Chief Commissioner of Assam, who pressed that further time should be given to him for the consideration of the measure, which was of great importance to the Province; and in view of this request, and also to enable the Chief Commissioner to consult the planters and officials in the Districts upon certain sections of the Bill, it had been thought proper not to ignore his application. It was hoped that by the time the Council reassembled in Calcutta the representations referred to would be received.

Leave was granted.

PANJAB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES, in the absence of His Honour the Lieutenant-Governor of the Panjáb, presented the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872, and moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed. He said that the Select Committee had made no substantial change in the Bill. He himself should have liked to have gone somewhat further. The Bill was a mere piece of patchwork, and the Act which it patched (IV of 1872) had been already twice amended, namely, by Acts XV of 1875 and XII of 1878. He would, therefore, have preferred to repeal the principal and the amending Acts, and to re-enact them with the alteration now thought necessary, omitting the sections of the principal Act which purported to deal with insolvency, and which seemed to have been framed by some one altogether ignorant of what an insolvency-law should be. They made, for example, no provision as to the personal application of the jurisdiction which they conferred: they omitted to provide for vesting the debtor's property in the assignee; and they gave no appeal from orders passed in insolvency-proceedings. In view of the provisions in the

twentieth chapter of the Civil Procedure Code, as amended by Act XII of 1879, the sections in question seemed absolutely useless, and he believed that his opinion was shared by the ablest judicial officers in the Panjáb. The Local Government, however, with the proverbial affection of a mother for her most rickety offspring, was unwilling to abolish this imperfect law, and he (MR. STOKES) had now done all that was in his power, in bringing to notice some of its most serious defects.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 7th December, 1881.

SIMLA ;
 The 26th October, 1881. }

R. J. CROSTHWAITE,
 Offg. Secretary to the Govt. of India,
 Legislative Department.