

Friday, February 4, 1881

COUNCIL OF GOVERNOR GENERAL  
OF  
INDIA

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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.

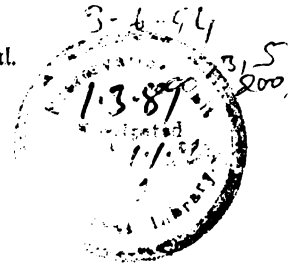
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WITH INDEX.

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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.*

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The Council met at Government House on Friday, the 4th February, 1881.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

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

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

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

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

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

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

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

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

PETROLEUM BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature be taken into consideration. He said that, in accordance with the opinion now expressed by the Government of Bengal, the Committee had done away with the distinction between first and second class petroleum. This distinction appeared to them unnecessary, and its abolition would much simplify the measure by reducing the classes of petroleum to be dealt with to two, as in England, namely, dangerous petroleum and ordinary petroleum. The measure might, no doubt, have been simplified still more by wholly prohibiting the importation of dangerous petroleum. But it appeared that there were certain useful purposes—such as making air-gas and cleansing cloths in dye-works—for which that class of oil was necessary.

The flashing point of dangerous petroleum, as originally fixed in accordance with the recommendation of the Bengal Committee at 83° F. by Abel's test,

had been objected to in many quarters as unnecessarily and inconveniently high. The Lieutenant-Governor of Bengal now proposed to reduce it to 78°; and on fully considering the papers submitted to the Select Committee, they proposed to reduce it even lower. There could be no doubt that the circumstance that the temperature of the air in most parts of India was throughout a great portion of the year higher than that which prevailed in England would, all other things being equal, make a petroleum flashing at a temperature between 70° and 80° F. more dangerous here than in England; but against this must be set off the greater openness and airiness of Indian buildings and the comparative absence of carpets, curtains and other things likely to catch fire. Moreover, he understood that into India the oil was always imported in tins and tightly closed cases, from which there was little risk of leakage, and that this was far safer than the practice of importing the oil in barrels, which prevailed in the English trade.

The Select Committee had accordingly fixed the flashing point of dangerous petroleum at 73° F. by Abel's test, equal to 100° F. by the old test.

The Committee had made some other amendments in the Bill, with a view to relaxing in certain particulars the restrictions it imposed; thus, in order to avoid the delay to which ships bringing petroleum to our ports might have been subjected if the samples furnished had to be tested by the Government Analyst before the petroleum was landed, they had altered the wording of the Bill so as to allow of the petroleum being landed as soon as the samples were delivered. They thought that the control which the Bill gave over the petroleum when landed would be sufficient to secure the object in view.

Again, the Committee had confined the provision of the Bill which required petroleum to be kept in indelibly marked vessels to *dangerous* petroleum, and they had reduced the maximum penalty for illegally importing, possessing or transporting petroleum from three months' imprisonment and one thousand rupees fine, to one month's imprisonment and five hundred rupees fine.

The other amendments made in the Bill were specified in the report and were too unimportant to require mention.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed. Thanks to the suggestions made by the Local Governments and the Chambers of Commerce, the Bill was now, he thought, likely to prove a useful and practical measure. The importation of petroleum into India had, he was informed, grown from 750,000 gallons in 1875-76 to nearly seven million gallons in

1879-80. There need now be no fear of the Bill strangling this vast and useful trade—a trade that not only supplied a want of the Native population, but allowed the export of a large quantity of cocoanut and other vegetable oils, which would otherwise have been used for lighting. He had only to add that, to guard against the possibility of hardship to holders or consignees of dangerous petroleum, the Bill had been amended so that it would not come into force till 1st July, 1881.

The Motion was put and agreed to.

#### NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the further Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873.

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

Leave was granted.

#### RECORDING EVIDENCE (HIGH COURT) BILL.

The Hon'ble MR. KENNEDY moved for leave to introduce a Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction. He said that, as Hon'ble members were aware, the decisions of the High Courts, as well as those of most other Courts in this country, were subject to appeal, not only in respect of matters of law, but also in respect to the decision in regard to matters of fact. There had been, perhaps, some difference of opinion as to the expediency of allowing such appeals, but that was too wide a question for the Council to concern itself with at present. But, for the purpose of making appeals on matters of fact possible, it was necessary for some provision to be made for the due record of the evidence upon which such questions were decided. Well, singularly enough, as far as MR. KENNEDY could discover, although in the Mufassal Courts there was very ample provision made for this purpose, with respect to the High Courts there was no such provision. In the High Court of Calcutta, and he believed in the High Court of Madras also, a practice which seemed as good as any that could be devised had for many years subsisted. In Calcutta, at any rate, he could say that it had for many years been invariably followed; that was to say, an officer of the Court, generally the Registrar, took down from the mouth of the witness a record of the evidence which he delivered, and that remained as the

record on which the decision of the Judge in the Court below could be considered in a superior, that is, the Appellate, Court.

However, as far as he could discover, there was no legal or binding sanction for the practice, and in consequence once or twice one or two of the Judges had disapproved of it, and adopted the course of recording evidence on their own behalf, not permitting the officer of the Court to take a note; and experience in those cases had shown that there was grave inconvenience. Mr. Justice Markby for a short time tried it, but soon gave it up. In fact, there was an indictment for perjury assigned upon evidence which had been taken before him, and there was some difficulty about proving the precise language of the witness alleged to have been perjured, and an acquittal was the consequence. But there was not only the difficulty of proving the statement in cases of indictments for perjury, but there were other inconveniences which arose where the Judge himself was the sole person who recorded the evidence. It was hardly possible for the Judge to pay the same attention to the demeanour of the witness in the same manner as he could do if he had only taken notes of the substance of the evidence given; and it had also the effect, where this practice had been tried, of causing considerable delay. And, in addition to that, the parties or their advisers had not the same power of seeing whether the person who recorded the evidence might not have made some mistake in taking it down. One could not very well ask the Judge what he had taken down in the same manner as he could ask an officer of the Court.

MR. KENNEDY believed it was the unanimous opinion of the profession that the practice introduced here by one of the Judges was not conducive, at any rate, to the rapid hearing of cases, and possibly not to their correct hearing and the due recording of the evidence. It was for these reasons that MR. KENNEDY asked for leave to bring in a Bill which would give legal sanction to the custom and the practice which hitherto prevailed in Madras and Calcutta. He understood from the Hon'ble Mr. Gibbs that a different practice had prevailed in Bombay, and it might therefore be necessary to make some arrangement by which that practice would not be disturbed if it had not been found to be inconvenient.

The Hon'ble MR. PAUL said that, in his opinion, the proposed change in the existing law would be highly beneficial to the administration of justice. The grave inconvenience of subjecting the Judge, who had himself recorded the evidence, to examination and cross-examination in a trial for perjury before the

High Court would be avoided, and other practical benefits would be ensured. On these grounds he supported the motion for leave to introduce the Bill.

The Motion was put and agreed to.

The Council adjourned to Friday, the 11th February, 1881.

CALCUTTA ;  
*The 4th February, 1881.*

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

C. H. L.