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COUNCIL OF GOVERNOR GENERAL
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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.

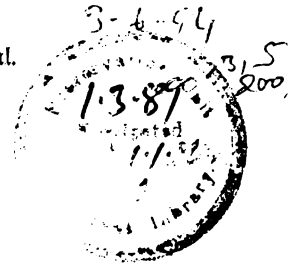
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WITH INDEX.

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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 and 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 20th July, 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*.

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

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

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.

INDIAN EMIGRATION BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to the Emigration of Natives of India, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major the Hon'ble E. Baring and the Mover. He said that when he had obtained leave to introduce the Bill, he had shortly stated the four substantial changes which it was intended to effect in the present law. The remaining amendments were, for the most part, in matters of detail; they were minutely specified in the Statement of Objects and Reasons, and he would therefore now merely mention a few of the more important.

In the first place, for the present definition of "Magistrate" in section 85 of the existing Emigration Act,—“any person invested with the powers of a Magistrate as defined in the Code of Criminal Procedure” (that meant a Magistrate of the first class)—the definition in the Straits Settlements Emigration Act, which allowed of the appointment of any person as a Magistrate for the purposes of the Act, had been substituted.

In the next place the Bill specified more clearly the reasons for which emigration might be prohibited by the Government of India.

Excessive mortality, and neglect to enforce in the colony the contracts made in India, and omission to furnish the Government of India with the information necessary to enable it to judge how Indian emigrants were treated, had been added to the reasons mentioned in the present Act. The Bill also defined more clearly the extraordinary power of suspending emigration which, under section 61 of the present Act, could be exercised by the Local Government on a pressing emergency; and this power had been restricted to a single case—the outbreak of plague or other epidemic disease dangerous to human life in the colony.

The last three sections of Chapter VI relating to Sub-Agents were new, and provided some much-needed clauses for the control of the local agency through which it was the practice of Emigration Agents to conduct recruiting operations. All Sub-Agents must be licensed by the Local Government; and the license, for which a fee of Rs. 30 (double that for a recruiter's license) was fixed, might be revoked on proof of misconduct. The remuneration of Sub-Agents would, like that of Emigration Agents under the present Act, be a fixed sum, and not in the form of head-money.

Perhaps the most important details were those dealt with by Chapter VIII, regarding the attestation of agreements and registration of emigrants. In this chapter, which corresponded with Part VI of the present Act, modifications had been introduced to provide for the agreement with the emigrant being executed before, and attested by, the Magistrate or the Protector; to alter the particulars required to be entered in the register; to state more clearly the reasons for which a registering officer might refuse to attest a contract; to provide for the examination of dependents as to their dependence upon the contracting emigrants and as to their willingness to accompany such emigrants; to provide for a medical examination of intending emigrants, where necessary, previous to their being registered under section 38; and, lastly, to revise the table of fees.

It was only necessary to observe, with regard to the third of these changes, that the Bill would give power, in accordance with the advice of the Government of the North-Western Provinces, to refuse attestation when the emigrant was a resident of a place beyond the jurisdiction of the Magistrate before whom he appeared. This, it was asserted, was a necessary precaution, as it was common for unscrupulous recruiters to convey intending emigrants long distances from their homes, to involve them in debt for maintenance during their journey, and thus to remove the temptation, and at the same time deprive them of the power, to return. It also often happened that an emigrant whose registration was refused by one Magistrate was taken before another in the next district, where it was hoped that the officer would be

more compliant. Power had also been given to refuse registration of a person who, if he quitted his home, would leave his family destitute, and of a married woman without the consent of her husband.

The next point of importance was in Chapter IX, relating to the conveyance of emigrants to depôts. In that chapter a provision had been added which enabled the Magistrate to order the Emigration Agent or recruiter to pay such sum as was necessary to enable an emigrant who had been rejected before arriving at the port of embarkation, or the dependent of such emigrant, to return to his home.

Then, passing over Chapter X, in which the alterations were unimportant, we came to Chapter XI, which related to emigrant vessels. The amendments in that chapter, which corresponded with Part IX of the present Act, were slight. There were some changes in the dimensions specified in section 60. The principal differences, as compared with the present law, were, first, that the height of the accommodation for emigrants was raised from $5\frac{1}{2}$ to 6 feet; secondly, that *all* children under ten, instead of only those from one to ten years of age, were counted at the rate of two to one adult; and, thirdly, that the space required for each child under ten was fixed at half that required for an adult, instead of, as now, two-thirds for children between two and ten. Those changes had been recommended by the Government of Bengal as far back as 1873, and were required chiefly to improve the accommodation for infants, among whom much mortality occasionally occurred. "Compounders, interpreters and female nurses" had been added in section 63, also in accordance with the recommendation of the Government of Bengal.

Then we came to Chapter XII, relating to embarkation and departure. Section 67 declared that "no emigrant shall embark, except with the special permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the dépôt." This was in accordance with a recommendation made by the Protector of Emigrants at Calcutta, who considered it a precaution necessary "not only to afford the opportunity of ascertaining the freedom of emigrants from latent and communicable diseases which had distinct periods of incubation, but to give such as were ill-nourished and had been recruited in famine-stricken districts some time to rest and recover themselves after their journey, and prior to undertaking what proved in all cases a trying voyage to Indian emigrants generally."

Section 68 embodied the present views of the Government of India regarding the seasons at which embarkation should be allowed. This matter had been the subject of much discussion. The conventions allowed the French and Dutch colonies a longer period than the Act allowed the corresponding British

colonies; and, in the case of the latter, it had been represented that even the period allowed by the Act was too long, since emigrants shipped late in the season for the West Indies arrived there at a very unhealthy season of the year, and were liable to great mortality in consequence. When the provisions of the existing law were framed, the embarkation seasons were settled with reference to one point only, namely, the necessity for avoiding the stormy weather encountered in the neighbourhood of the Cape of Good Hope during the Antarctic winter; consequently no impediment was offered to the shipment of emigrants at any time of the year for colonies east of the Cape. But hurricanes prevailed in the neighbourhood of Réunion between the months of November and April; and they were also prevalent in the Fiji Islands during the same season. Moreover, the necessity for landing emigrants in their place of destination at a healthy season of the year was another consideration which made it necessary carefully to regulate the period of despatch.

In the Bill, therefore, power had been taken to enable the Governor General in Council to regulate the departure of all emigrant vessels, whether bound for places to the east or west of the Cape of Good Hope. The present limits, the 31st July to the 1st March, for places west of the Cape of Good Hope, however, had been retained as a maximum; and the provision in the present Act permitting departure for such places on an emergency up to the 1st April had been struck out. Cases of loss of emigrant vessels allowed to be despatched after the 1st March, as well as heavy mortality during such voyages, had occurred, and it was thought inexpedient to continue the concession.

The special privilege of carrying emigrants at any time of the year now enjoyed by steamers had also been done away with, as being inconsistent with the regulation of the season for departure with reference to that of arrival in the colony; but, as a concession to the superiority of such vessels over sailing vessels, the time within which they might depart for places west of the Cape of Good Hope was extended from the 1st to the 15th of March.

The chapter on offences would require, and would doubtless receive, most careful consideration in Committee. The penalties provided in the present Act, sections 72 to 75, were merely fine extending to 500 rupees. It was thought necessary by the Home Department to add imprisonment, as in the Straits Settlements Emigration Act of 1877.

Section 90 had been introduced to cover the case of unlicensed persons acting as Sub-Agents.

Section 96 (as to landing emigrants at any place other than the place for which they had shipped) was new; it had also been adopted from Act V of 1877, section 44.

Section 98 of the Bill was one that would require especial consideration ; it provided for the punishment of emigrants who deserted after a contract had been duly entered into with the recruiter before a Magistrate. The proposed penalty was only a fine of Rs. 20 or the cost of getting the emigrant to the depôt, whichever was greater ; and in default of payment, a month's imprisonment ; and the section had been so drawn as to require the sanction of the Protector of Emigrants to every prosecution instituted under it. The present law provided no punishment for that kind of desertion, the deserter's only liability being to a civil suit for breach of contract—a proceeding which was, of course, useless in most cases of the kind. There was no doubt that, in view of the class of men who worked as recruiters, and the many risks of deception and ill-treatment to which intending emigrants were exposed at their hands, it was necessary to guard the power to inflict a penalty for desertion in such cases most carefully. Still, cases had arisen, and might easily arise, of impudent deception on the part of persons who professed willingness to emigrate, and under such profession obtained board and lodging in the Mufassal, and free conveyance to the port of embarkation, where they deserted or refused to emigrate. To meet such cases the section had been devised. MR. STOKES was well aware that, in general, a mere breach of contract ought not to be an offence, and he was as averse as any one could be to making unnecessary additions to our penal law. But it must be admitted that breaches of certain contracts were proper subjects for penal legislation when committed by persons from whom it was impossible to recover damages. And for such legislation there were precedents, in India, in the Penal Code, Chapter XIX, in Act XIII of 1859, for the punishment of breaches of contract by artificers, workmen and labourers, in Act IX of 1860, section 8, for the punishment of persons employed on public works who neglected or refused to perform their engagements, and in Bengal Act VII of 1873, section 92, which provided that any emigrant to Assam, Káchár, &c., whose contract had been executed and who deserted while in transit, might be punished with imprisonment for three months. In England, too, from the time of George II, it had been found necessary to give Justices of the Peace criminal jurisdiction in disputes between master and servant. He might mention 20 Geo. II, c. 19, s. 2, 6 Geo. III, c. 25, s. 4, 4 Geo. IV, c. 34, s. 3, and 30 & 31 Vic., c. 141, s. 9.

The only other point to which it now seemed necessary to call the attention of the Council was with regard to the French colonies. The special provisions as to those colonies, which were found in Part XII, sections 63—70 of the present Act, had been omitted as unnecessary, it being considered that all emigration, whether to British or foreign colonies, should be conducted on one system. He might observe that no such special provisions had been found necessary in the case of emigration to Surinam, which had been carried on under a convention with the Netherlands Government similar to that with France. The

convention with France was now about to be amended, and if in its amended form it should be found to include any points requiring a deviation in matters of detail from the general procedure of the Bill, such points, together with the question of the adaptation of the Bill to emigration from French ports, could be left for consideration to the Select Committee, to which he hoped the Council would now refer the Bill.

HIS EXCELLENCY THE PRESIDENT said that he quite agreed with his hon'ble friend Mr. Stokes that section 98 of the Bill would require careful consideration, and he should like to reserve his own opinion upon it. As he had stated when the Bill was introduced, sanction to the present legislation had been given a good while ago by his predecessor, and he had not yet had an opportunity of considering the measure in detail. HIS EXCELLENCY hoped that the Committee would direct their attention, among other things, to the particular section to which Mr. Stokes had drawn attention.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

ASSAM AND CHITTAGONG EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to amend the law regulating emigration to the Chief Commissionership of Assam and Chittagong. He said that the subject to which the proposed legislation referred had always been considered one of very great importance by the Government of India, and perhaps he might be allowed to say that no question which came under the cognizance of that Government had received greater supervision in all its details than that which related to the transport of labourers from the inland districts of India to other places, whether by a system of inter-provincial emigration, or by a system of colonial emigration. That which he had now to bring before the Council related to the law regulating the emigration of labourers from the interior districts of India, generally from districts in Bihár and Oudh and parts of the North-Western Provinces, to the districts under the Chief Commissioner of Assam, and, as this Bill added, to Chittagong. The law which referred to the colonies was that which his hon'ble and learned friend had referred to in his recent speech. The law now in force which regulated this inland labour emigration was Act No. VII of 1873, an Act passed by the Council of the Lieutenant-Governor

of Bengal, and which received the assent of the Governor General on the 30th of December of that year. Looking back to the proceedings connected with that Act, he thought we should see that the first attempt to establish a system of free emigration was then made. By "free emigration" he meant the emigration of natives of India to Assam without the aid and solicitation of others, or the independent efforts of tea-planters and tea-companies to obtain labour for their estates in Assam without the direct interposition of Government. For reasons to which he need not refer here—because the whole subject had been reviewed very completely in a report by a very able and intelligent Committee in Calcutta, the results of whose labours he should have to notice at a later stage—the consideration had been forced on the Government of India that many of the restrictions which now existed as regards free emigration, and free recruitment, might well be relaxed; and that many circumstances of the present day, in connection with the improved facilities of communication between Bengal and Assam, and the growingly satisfactory condition as regards comfort and prosperity of those coolies who had emigrated to Assam, favoured the conclusion that the time had come when the interests of the employer and the employed in this matter might be best served by being left to themselves without any very minute interference from Government.

The attention of the Government of India had been directed to this and to other points of inland emigration, when, about the middle of last year (he believed in May), a memorial was received from the Indian Tea Districts Association in London, of which Sir Douglas Forsyth, who was very well known in India, was the Chairman. That memorial, which was now before him, representing directly, as it naturally would do, the interests of the large and important tea-industry in Assam, brought to notice that the continued existence of this tea-industry as one of the staple industries of India was menaced by the great and increasing difficulties and drawbacks which attended its prosecution; and among the prominent causes which affected its stability and progress, it was especially pressed upon us that

"upon an adequate supply of coolie-labour at a cost calculated to leave a fair margin of profit hinged the entire question of the future of the tea-enterprise."

It was not, of course, upon the tea-interest alone that the Government relation to that question was bound; but to show, very briefly, the extent to which tea-culture had grown within the last thirty years, he might remind the Council that, whereas in 1850 the whole area under tea-cultivation did not reach more than about 1,000 acres, in the present year, taking in all the parts of the country where the plant was grown, it extended to more than 200,000 acres; and of that acreage the greater proportion appertained to the tea-districts to which

the present labour law applied. Then, again, within the period to which he referred, the outturn of tea had increased from 250,000 lbs., or say a quarter of a million, to the respectable figure of 40,000,000 lbs. The capital invested in those districts was represented as amounting to some £15,000,000, and it was also said that there was an annual expenditure of about £2,000,000 in the maintenance of plantations and the general working of the system. What the future prospects of this industry might be, to what extent the productive area under tea-cultivation would increase, and to what point the exports of this valuable product from India would reach, it was, of course, impossible to predict; for although from the memorial it appeared that for a considerable time there had been some depression in the trade—and he was sorry to find that that depression still existed—and although a fear was entertained, from the opening out of new fields of tea-culture in Japan and Ceylon, that the general tendency might be to a permanent lowering of prices, we had the counterbalancing fact that within the last few months the markets of our Australian colonies had been opened to Indian teas, and thus the prospects of a large and extending tea-industry in India might not be so gloomy as they were sometimes represented to be. However that might be, if we had succeeded as a Government in doing something to give an impulse to this trade between India and Australia, and if we were fortunate in the endeavours being made to extend it to the United States of America, he thought we should hardly be justified in holding our hands in relieving, where we could properly do so, the difficulties which beset the tea-planting interests, established at such a large expense of time, labour and money, on the north-eastern frontier of India. What the nature of those difficulties was, he should perhaps best express if, with the permission of the Council, he might read a very brief extract from the memorial to which he had referred. Speaking directly of Assam it said that—

“Tea-culture alone, apart from other products, is capable of almost indefinite expansion. Land and capital can be found in abundance, and the sole impediment to its continuous development is the difficulty of obtaining an adequate supply of labour on terms admitting of its profitable employment. This hindrance to progress does not arise from the inability of the industry to afford the wages necessary to render labour highly remunerative to the immigrant, but, from the excessive cost of recruitment and transport largely due, in the opinion of all tea-growers, to the stringency of the labour laws.”

And they went on to say that it appeared to the Association that Act No. VII of 1873, the law which he proposed to amend, might, with great advantage, be revised generally in the direction of greater simplicity and freedom of contract. It would thus be seen that the memorialists complained of the excessive cost of recruitment and transport and of the stringency in those respects of the present labour law, and they recommended the introduc-

tion of amendments in the direction of withdrawing the present restrictions on trade, and the allowance of greater freedom of contract. One definite request which they made was that the period of contract of a labourer emigrating to Assam, which under the present law was limited to three years, should be extended to a maximum of five years. Of the correctness of a great deal recorded in that memorial the Government of India had very little doubt; for, from independent returns which we had before us, it was as a matter of fact known that the cost of recruiting was steadily increasing, and that at the present time it was very much higher than it need or ought to be. Without entering into the particulars of this fact, which were fully recorded in the papers before him, and being assured of its certainty and of the fact that the experience of later years had established beyond dispute the increased facilities in communication between Bengal and Assam, it seemed to the Government quite possible, without serious dangers or risks, to enlarge the system of free emigration into the tea-growing districts; and it was in this direction that the Government of India thought that amendments might be introduced. Under the law of 1873 as it stood, though recruiting by the private agency of the employer was recognised, certain limitations and restrictions were placed upon it—that was, upon the system by which the planters tried to obtain labour for themselves, which hindered the development of that system; and it was in that direction principally that a much less unrestricted action was possible, both as extending the operation of private enterprise in a matter in which private enterprise was chiefly concerned, and also as tending to abolish the contractor system at Calcutta and elsewhere, which, in his judgment, was one of the main causes of the delay, difficulty and expense connected with emigration to Assam.

At the time when the memorial of the Association in London came under the notice of the Government of India, he should explain that the attention of the Government had also been directed to the much larger question affecting the over-population of many parts of India by the report which Mr. Caird had submitted to the Secretary of State, at his request, upon the general question. The Government of India had been asked by the Secretary of State to submit their views on Mr. Caird's observations; and, in acknowledging that letter, while it was admitted in reply that the evil existed, it was added that every effort was being made, and had been made, to diminish its ill effects by promoting the voluntary emigration of the people from overcrowded to thinly populated tracts in India. Attempts had been made to do this in Burma by a system of Government emigration, and efforts had also been similarly directed to the settlement of certain isolated tracts in the Central Provinces; so that really it was not a question which referred to the tea-interest only, but was one which, in its general consequences, affected to a great extent the

administration of the whole country. It was held that, as a matter of the utmost importance to the empire generally, attention was required to simplify and facilitate the emigration of the surplus populations of crowded districts in the Gangetic Valley and Oudh to less densely populated tracts. In one direction there existed a redundant and increasing population which the land could not adequately support or employ, and in another an abundance of uncleared but fertile soil with a bounteous and regular rainfall, ready to receive, and capable of maintaining, a large population; so that every inducement prevailed to start and promote a steady flow of emigration from one part of the country to another. It was in the knowledge of all those facts, which the memorialists represented as affecting the particular interests of Assam, and of the general question raised by the report of Mr. Caird, that the Government of India decided, in communication with His Honour the Lieutenant-Governor of Bengal and the Chief Commissioner of Assam, to refer the whole question to the consideration of a Committee. After some correspondence it was decided that the general and larger subject should be withdrawn from the cognisance of the Committee, and, as the more pressing enquiry related to emigration to the tea-districts, their attention should be directed to that measure especially. The Committee was presided over by Mr. A. Mackenzie, the able Secretary of the Bengal Government, and with him were associated not only official members under each of those administrations especially conversant with the details of emigration, but members of the mercantile community of Calcutta and of the tea-planting interest in Assam.

The Committee having reviewed the whole question in all its details have submitted through the Local Government the report which he now held in his hand.

It was upon that report that measures were now proposed to be taken for the introduction of a law to amend that which was now in force. Of the detailed recommendations of the Committee on the subject of the Bill, this was not the time to speak, but he might mention the general points upon which the Committee considered that an amendment of the present law was desirable. They said :—

“ From the official and other papers laid before us, and from our own personal knowledge of the subject, we find that the present ‘ Labour Districts Emigration Act ’ is defective in respect chiefly of the points numbered I to IV below :—

“ I—In that it does not afford sufficient encouragement to free emigration.

“ II—In that it imposes unnecessary restrictions upon sardári recruiting.

“ III—In that it fails to provide for the enforcement of contracts made otherwise than under the provisions of the Act itself, even in the case of imported labourers.

“ IV—In respect of the remedies provided for employers in the event of the unlawful absence, idleness or desertion of their contract labourers.”

It would thus be seen that the investigations of the Committee extended over the whole scope of the present emigration law; and if the Council had followed him in his statement, he thought it would be accepted that a clear necessity had arisen for fresh legislation. If permission was given to him to-day to introduce the Bill of which he had given notice, when the draft of the measure was before the Council, he would take the opportunity of pointing out its most salient points, and the necessity which existed, in his judgment, for changes in the present law. He would only now say that very few modifications of principle at any rate had been introduced upon the recommendations of the Committee in Calcutta, but that the Government was still concerned rather in contending jealously for two points: those were, that, in the first recruitment of the labourer for a distant employment he should understand clearly the nature of his engagement, for after all these labourers were credulous, ignorant and simple beings; and, secondly, that in cordially promoting, as far as possible, the system of free emigration, it was desirable to protect the labourer for at least the first few years of his residence in Assam, because it would be to him a strange and a new country.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 3rd August, 1881.

R. J. CROSTHWATE,

*Officiating Secretary to the Govt. of India,
Legislative Department.*

SIMLA ;
The 20th July, 1881. }