

Friday,
17th February, 1888

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVII

Jan.-Dec., 1888

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVII



Published by the Authority of the Governor General.

CALCUTTA :
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1889

The Council met at Government House on Friday, the 17th February, 1888.

PRESENT :

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

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

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON moved that the Report of the Select Committee on the Bill to amend the law relating to the Regulation of Police be taken into consideration. He said :—

“ Having at the last meeting of the Council explained the object of the Bill, and the manner in which it was proposed to meet it, it does not occur to me that any remarks on the details of the Bill will assist the Council in coming to a determination on it.”

The Hon'ble RAJÁ PEÁRI MOHAN MUKERJI said :—“ This is one of those measures in which the legislature must content itself with investing Your Excellency in Council with the proper powers for devising a scheme and making rules for working it. The necessity for an imperial police service becomes evident when it is considered that, by reason of the rapid extension of railways, the local police of different districts and provinces have to deal not merely with

[Rájá P. M. Mukerji ; Sir Charles Aitchison ; [17TH FEBRUARY,
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local criminals but others who come from distant parts of the country. But the inconvenience of having an inter-provincial police service should not be lost sight of. It would be difficult for such a service to utilise the valuable local knowledge possessed by the police of different districts and provinces, and there is also the graver question as to how to regulate the subordination of officers when an imperial service overlaps the local service and exercises a jurisdiction of its own. These are matters which will, no doubt, be provided for by the rules which will be made under the Act."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

METAL TOKENS BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to prohibit the making or issue, by private persons, of pieces of metal for use as money, and the making of coins in resemblance or similitude of coins of Foreign States. He said :—

" Before explaining to the Council the circumstances which have led to the introduction of this Bill, I wish to state at the outset that the Government has no intention of introducing any crusade against what are ordinarily known as ' dumpy ' pice. These pice have been in circulation in India before the British Government held it, and they no doubt are very convenient to the people, whose transactions are on such a small scale that they cannot be adapted to the legal unit of the rupee. In the remoter parts of the districts of the North-Western Provinces and the Punjab hardly any copper coin is seen but these dumpy pice. No doubt, as commerce and trade become more developed, the people will realise the advantage of having a copper coinage to which the character of a legal tender attaches, but it would be quite unjustifiable for us to interfere with the actual current circulation of the dumpy pice. It would be something like a revolution if some millions of villagers in the remoter parts of these districts were to wake some morning and find that the whole of their store of copper coin had become valueless, and that they could not make their ordinary day's purchases without rendering themselves liable to a prosecution under the law. To interfere with coin in such familiar use is far from our intention ; but it would be equally unjustifiable if we were to permit private persons to engage

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in the manufacture of these pice for their own profit, and thus to interpose obstacles to that gradual process by which ultimately a better condition of coinage and currency will be attained in these places. As matters at present stand, the manufacture of these dumpy coins is unfortunately not within the limits of the Penal Code. The reason is that, although the counterfeiting of coins is a severely punishable offence, coin itself is defined as 'metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.' Dumpy pice are not issued by the authority of any Government in order to be used as money, and, therefore, a person who makes coin of that kind does not come within the penalty attached to the offence of counterfeiting coin. It is possible that such coinage may come within some other section of the Penal Code, but it is assuredly proper for the Government, if it intends to suppress the coinage, to take up the matter directly, and to define the making of these pice as—what to all intents and purposes it is—a fraudulent fabrication of coin.

“ Information has recently reached the Government from several places which makes it evident that this coin is coming to be manufactured and issued in several parts of India. The first information we received was from the Gya district. The district authorities brought to the notice of the Accountant General of Bengal that a local firm, calling themselves *Jadu Roy, Ramgopal & Co.*, had established a factory for dumpy pice and were flooding the district with them. They had actually issued a proclamation of which I have a copy in my hand, and which I shall read to the Council, as it shows the extent to which they had carried on the practice. The notice runs thus :—

“ Notice is hereby given to the public that Messrs. *Jadu Roy, Ramgopal & Co.*, having taken all necessary legal steps for the manufacture of Gorakhpuri pice, and having, on the 17th June, 1886, informed the District Magistrate of Gya the fact of such manufacture and sale, opened manufactory at *Kandi Nawada* near Gya, where they manufacture and issue the said pice of superior copper and equal weight to that of the current pice, and are now ready to sell the same to the public at the rates given below, and they beg at the same time to assure the public that the sale, purchase and use of their pice are not illegal and therefore not penal. *Bázár* rate for retail sale, and one pice more per rupee than *bázár* rate for wholesale.’

“ It will be observed that this notification gave it to be understood that these pice are being manufactured by these private persons under the authority of the Government. Of course, there was not a word of truth in that statement, but at the same time they must have discovered that the penal law was not sufficient to reach them. When their proceedings were brought to the notice of the Gov-

ernment of Bengal in December, 1886, that Government issued a proclamation stating that the manufacture was unauthorized, and that the pice would not be received in the Government treasuries or post offices. It was hoped—but I do not know how far the hope has been realised—that by this means the circulation of the pice would be stopped.

“ A short time after this date the pice were found in the districts near Gya, namely, Shahabad, Sarun and Gorakhpur; and in some or all of these districts it was found necessary to issue a proclamation informing the people that these pice were not pice of legitimate manufacture, and would not be accepted in any Government treasury or institution. The operations of the firm seem to have extended still farther. In May, 1887, the Deputy Commissioner of Hissar, in the Punjab, reported that a local trader, Jai Ram Dass, had presented Jadu Roy's proclamation and solicited permission to commence a similar manufacture. And in July a Mr. Carapiet, of Mirzapur, solicited a similar permission from the Government of the North-Western Provinces, stating that he had heard that an authorized manufacture had been started in Gya and other places. The Magistrate of Mirzapur, to whom the application was referred for some enquiries, stated that he had received similar applications from other people, but, of course, had rejected them all. During the same months the Collector of Saharanpur brought to notice that his district was being flooded with dumpy pice known as Mansúri pice, which he had reason to believe were manufactured at Jagadhri in the Ambala district and at Nayanagar near Ajmere. We could not stop the circulation, but we directed that the Mansúri pice should be refused by Government and railway officers and the municipalities, and we made enquiries regarding the alleged manufacture.

“ About the same time information came independently from Ludhiana, from the octroi-collectors, that large quantities of the pice had been imported there under consignment to local traders, who were busy issuing them in large quantities. They were described as coming from Nayanagar near Gya, which appears to be a mixture of the names of two of the places of manufacture already noticed. The sale of these pice was going on openly, one trader stating that he had disposed of Rs. 15,000 worth within a year. Moreover, there was also a local manufacturer whose name was Gauri, and whose issues received the name of Gauri-wala pice. Other pieces of information have reached us, but it is evident from what I have said that the trade is openly practised, and that the time has come when Government must choose between accepting it and putting it down.

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“It is unnecessary to state here such elementary principles as that the State has the right to the profit accruing by the issue of token coin, and that moreover the State is bound, for the convenience of the people, to supply, for the purposes of circulation and exchange, coin that shall have the character of legal tender, and to protect them from coin which has not that character. The laws for the protection of coinage are in every country very severe. In India they are equally so, but, as already explained, they do not, as matters stand, reach coiners of the kind to which I have been alluding. It is one thing to permit a people who are in a comparatively early stage as respects the development of commerce and trade to continue to pass from hand to hand the imperfect copper coin which has come down to them from before British times; but it is quite a different thing to allow people to set up within our own territory a manufacture for the purpose of perpetuating these imperfect coin, and not only to compete with the State in the exercise of a function which, in India especially, represents the sovereign power, but to appropriate a profit which properly belongs to the State generally.

“The facts which I have stated show that the same reasons which have led to the attachment in all countries of severe penalties to the unauthorized fabrication of coin compel us in India to penalize equally the fabrication of copper dumps intended to be used as coin.

“The opportunity of this Bill has been taken to improve the law relating to coinage in another point which the Government for some time has had in contemplation. In December, 1885, a man of the name of Jala Vijnand was found in Bombay engaged in manufacturing certain current Turkish coins which go by the name of ghazis. Complaints had for some time been made on the part of the Turkish Government that these coins had been imported into Turkey from Bombay, and there can be little doubt that this manufacture was connected with these complaints. Upon the trial which took place before the High Court in Bombay the whole of the facts were admitted, but the man pleaded that he manufactured the coins not for use in circulation but for use as ornaments. The fact that he was a working goldsmith by trade gave colour to this plea, and at all events he was pronounced not guilty.

“The law, as it stands at present, attaches a penalty to the counterfeiting of coin, but it defines this counterfeiting in this way. ‘A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.’ It is consequently incumbent on a Judge,

trying a case like this in India, to leave to the jury the question whether it is sufficiently proved that the person charged with counterfeiting coin intended to practise deception, or knew it to be likely that deception would be practised. Under the law, however, as it stands in England the Judge would have instructed the jury that the facts, admitted by the defendant in this case, of themselves constituted an offence punishable with seven years' imprisonment. Suppose the circumstances had been reversed; suppose, for example, we had been receiving importations of rupees from Turkey; that some person in Turkey had been arrested in the open practice of the fabrication of these rupees, that he had been taken before a Turkish Court, and had there pleaded that he did not make the coin for circulation, but only for the purposes of ornament; and suppose the Turkish Court had been obliged to acquit him; one could easily imagine that we would have said many evil things of the insufficiency of the Turkish law or the incompetency of the Turkish Courts. It is obvious that the Turkish Government have the same cause of complaint against us as we under the circumstances stated would have against them; and, now that the defect in our law has been pointed out, we ought not to place ourselves a second time in the position of having to give the Turkish authorities such an unsatisfactory answer as on that occasion we were obliged to give. We propose, therefore, to adopt in this respect the law already current in England and in Canada and to make the mere making of a similitude of any actually current coin a punishable offence."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill. He said :—

"As regards the first intention of the Bill, that relating to copper dumps, the third section is the principal one. It prohibits the making of pieces of metal intended or likely to be used as money, and attaches a penalty of three years', or on a second conviction seven years', imprisonment to the offence.

"The main difficulty in drawing the Bill has been to frame it so that no penalty should attach to the mere passing of dumps received in actual circulation. At the same time we cannot place ourselves in this position that, when a man is arraigned for manufacture, he should be able to escape by pleading that he only stayed outside and passed the coins into circulation while his brother manufactured them inside. We must attach a penalty to issue, but we carefully guard it in several ways. First, we define issue, not as passing on in circulation, but as initiating the circulation. We make 'issue' an offence not cognizable

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by the police, and require the authority of a District Magistrate before cognizance is taken of it.

“ If we prohibit manufacture in India, we must also prohibit systematic importation, in merchantable quantities, of dumps manufactured (say) in Nepal or elsewhere. The ordinary law enables us to do this, but the fourth section of the present Bill provides a penalty similar to that for manufacture in India.

“ It need not be said that any prohibition issued as here proposed will be carefully so worded as not to extend to persons who merely cross a frontier with a few dumpy pice in their pocket belonging to the circulation of the State from which they come.

“ We deem it necessary to provide by the law that dumpy pice shall not be received by railway companies or municipalities. So far as the Executive Government is concerned, we do not receive dumpy pice in any Government establishment. Though we do not interfere with their circulation, it is our deliberate purpose to discourage them, and to draw a line of distinction between authorized pice of Government issue and dumps; and we do not think it right that public bodies, like municipalities, which are constituted by our law should be permitted to treat as lawful coin of the realm a coin which has no authority from Government, and is in many cases the produce of what we now stigmatize as a severely punishable offence.

“ The last section deals with the question of the Turkish coins, and its wording is based upon that of the English law. It will be for the Select Committee to whom this Bill will be referred to consider the question whether the necessity for this section might not be avoided by a revision of the definition of ‘counterfeiting’ as it exists in the Penal Code. There are two points which have to be considered in matters relating to coinage. The first is the prevention of fraud, and the second the maintenance of a certain fixed standard of purity and genuineness. Now, as the law at present stands, there is nothing to prevent any one undertaking the manufacture of coin so long as the intention to defraud cannot be proved against him. That is to say, although we carefully provide a huge establishment at the cost of the State for the manufacture and maintenance of our current coin, and carefully provide precise and exact limits regarding the regulation and manufacture of coin on the part of the Government, we do not protect the monopoly of manufacture by subjecting to penalty any person who on his own account manufactures coin if it is meant to be good. It is true that

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private persons are not likely to undertake a business of the kind, as it is pretty certain to end in loss ; but at the same time the privilege of coinage is a prerogative of the Sovereign Power, and the value of a rupee rests upon the assurance which people have that it has issued from our Mints, and from no other place. As I have mentioned, the law of England attaches a penalty to the making of coin quite irrespective of any question of fraud, and we might do well to follow the example of English law in applying penal legislation to protect the purity and genuineness of our coin, as well as to guard against the fraud ordinarily implied in counterfeiting."

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and 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.

INVENTIONS AND DESIGNS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Protection of Inventions and Designs. He said :—

" Many communications have been received by the Committee or published in the Press regarding this Bill. We have endeavoured to give them all our attentive consideration, and I will now briefly state the alterations which we have thought it desirable to introduce. These alterations relate mainly to matters of detail, for we have determined to adhere to the main principle of the Act of 1859 as originally framed by Sir Barnes Peacock, under which the exclusive privilege springs into existence by operation of law and is not conferred by grant from the Crown.

" The first requisite of a patent, we have been told, is that it should be cheap. Inventors are often poor men, and are prevented from reaping the fruit of their ingenuity by the cost of obtaining protection. We have fixed a scale of fees in Schedule IV suited to the poorest purse. The term of a patent being maintained at fourteen years, we propose that the initial payments of ten rupees on filing the application and thirty rupees on filing the specification—forty rupees in all—shall secure the exclusive privilege for four years, a period sufficient in ordinary cases to determine whether the patent is worth maintaining or not. If it is, the inventor can retain it by annual payments of fifty rupees for the

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next five years and one hundred rupees for the last five years of the time. If he obtains an extension of the time, he will have to pay one hundred rupees annually. By omitting to make the payment he may abandon the exclusive privilege at any time, and his invention, *valeat quantum*, becomes available for the benefit of the public. In this way the inventor is made the judge whether it is worth his while to maintain his patent or not; and the fees are graduated so as to correspond approximately with the increasing value which the invention may be supposed to acquire as it becomes more generally known and used. By this procedure also patents for inventions of small value are speedily eliminated and cease to stand in the way of more valuable combinations.

“In the next place, as the consideration for every patent is the communication of useful information to the public, we have provided, in section 9, that the specification must describe the invention in such full, clear and exact terms that any person skilled in the art, process or manufacture to which the invention relates shall be able to make and use it without difficulty. This is the American rule, and is supported by a long series of decisions in the English Courts. To secure this complete description we provide that drawings or photographs must be supplied when necessary; and, objection having been taken to the expense of models, we propose that these shall be furnished only when especially required by Government. To ensure proper publication of the invention in India, we think that specifications should be filed not only in Calcutta, Madras and Bombay, but also in Rangoon, and such other places as the Governor General in Council may from time to time appoint.

“As litigation in regard to patents is frequently of the most vexatious and expensive character, we have provided that, when a plaintiff impeaches the validity of a patent under section 30, he may be required by the Court to give security for costs, and that the Court may add, as parties to the suit, any persons claiming an interest in the subject-matter. In this way, it is hoped, multiplicity of actions may be avoided and frivolous applications discouraged. In like manner, we propose that, when application is made for the prolongation of the term of a patent beyond fourteen years, the Court may hear what is to be urged for or against the extension by any person interested in obtaining or opposing it. As there would be a manifest inconvenience in maintaining in India a patent which had expired in the United Kingdom or any foreign country, we have provided that when from any cause a patent ceases to exist in its country of origin it shall also come to an end in this country.

“With a view to encourage foreign inventors, we have provided that any act required to be done in regard to the obtaining of an exclusive privilege in

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India by an inventor may be done on his behalf by an agent duly authorised in writing; and, as it may be difficult for an inventor to protect his rights in a country of such extent as this, we have provided that he may assign them in any province or other local area as he may see fit. We have not thought it wise to adopt a suggestion that has been made that Government should maintain a special police for the purpose of discovering and punishing infringement of patents. The patentee must guard his own privilege: the duty of the legislature and of the Government is at an end when he is provided with reasonable facilities for doing so.

“In the part relating to designs we have made a few amendments of a subsidiary character.

“Surprise has been expressed in some quarters that this Bill does not, like its English prototype, deal with trademarks as well as with inventions and designs. Upon this point it may be sufficient to say that a Bill for the registration of trademarks was prepared in 1879 at the suggestion of the Bombay Mill-owners Association and the Bombay Chamber of Commerce, and abandoned in 1881 at the almost unanimous request of the mercantile community throughout the country, including the two Associations above-named.”

DEBTORS BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Halliday be added to the Select Committee on the Bill to amend the law relating to Imprisonment for Debt.

The Motion was put and agreed to.

RESERVE FORCES BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved for leave to introduce a Bill to regulate Her Majesty's Indian Reserve Forces. He said:—

“The object of the Bill is stated in the title, but I may just mention for the information of the Council that in 1885, when the Government were engaged in various measures for improving the efficiency of the Indian Army, they determined, with the approval of Her Majesty's Government, to introduce into that army the system, which has been established some years with great success in the British Army, of what is known as the reserve system, under which soldiers are returned to private life on reduced rates of pay with the liability to be called upon to join their regiments in cases of emergency. It is considered

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that a system of this kind, which is unquestionably not only efficient but economical, is peculiarly adapted to the circumstances of the Indian Army, because that army is composed in a great measure of people drawn from the agricultural population, who ordinarily live in their villages, ready to be found, and to whom it is thought such a system would be peculiarly acceptable. I may mention that although the Indian Army is technically a long service army, insomuch that every soldier is eligible for pension if he serves for a pensionary period, and is entitled to remain in the service until he has become eligible for pension, nevertheless, as a matter of fact, it is a short service army, so far that a great many of the soldiers take their discharge within from five to ten years' service. The reason for this state of things is generally supposed to be that these men, being agriculturists and having an interest in their lands, cannot conveniently absent themselves from their homes for long periods of service. But, although long service is not practicable for many of them, they are a class of men who are military in their instincts and are quite ready to come for shorter periods; and it is hoped and believed that the attraction of a reserved rate of pay, carrying with it only the liability to be called upon for active service on emergency, as I have mentioned, will be acceptable to a large number of those men who now take their final discharge after short periods of service in the Army. I should mention that, although the reserve system was nominally introduced by notification about a year ago, practically not much progress has been made with it up to this time, in consequence, first, of a large part of the army being engaged in active service in Burma, and also because the Bengal Army has been undergoing a small augmentation, and until that is completed it is not possible to allow men to be drafted into the reserve. It was originally contemplated that the reserved soldier would be on the footing of a man on unlimited furlough, and that his legal status should not be affected by his going into the reserve on this condition. But on further consideration it was found desirable, following the practice in England, where a special Reserve Act has been passed, to deal with soldiers in the reserve also of the Indian Army in this country by a legislative enactment setting forth the conditions of service in the army reserve."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in

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English, and 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.

The Council adjourned to Friday, the 24th February, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM; }
The 23rd February, 1888. }