

Friday, 1st March, 1889

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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,

1889

WITH INDEX.

VOLUME XXVIII.

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1890.

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 Vict., cap. 67.

The Council met at Government House on Friday, the 1st March, 1889.

PRESENT :

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

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

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

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

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

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

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

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

NEW MEMBERS.

The Hon'ble MUHAMMAD ALI KHAN and the Hon'ble MR. QUINTON took their seats as Additional Members.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Law relating to Fraudulent Marks on Merchandise be taken into consideration. He said :—

“The Bill has been most carefully considered by a Select Committee, three members of which belong to the mercantile community. The amendments which have been introduced were for the most part suggested by Chambers of Commerce and other bodies similarly conversant with mercantile affairs ; and

I think I may claim for the Bill as it stands that it is the outcome of the mature experience of the recognized organs of the commercial classes in India.

“The Bill relates to all classes of merchandise, and not merely to piece-goods, as some have erroneously supposed. It applies to articles of merchandise manufactured in India, as well as to those imported from other countries, whether by land or sea. And it deals with three classes of offences—(1) the imitation of trade-marks; (2) the application to goods of false trade-descriptions, that is, of words or figures indicating that goods are something which in fact they are not; and (3) trading in falsely marked goods.

“As regards the imitation of trade-marks the Bill follows the provisions of the Indian Penal Code, but gives a wider definition to the word ‘trade-mark’. It often happens that a trade-mark is applied to articles not actually manufactured by the owner of the trade-mark. Dealers both in India and elsewhere frequently have a particular class or quality of goods specially manufactured for them, which are known in the market by their name, and bear their brand, and are thus identified more with them than with the actual manufacturers. To protect the property in marks of this kind we have enlarged the definition of ‘trade-mark’ so as to cover marks used to denote that goods are either the manufacture or the merchandise of a particular person.

“As regards trade-descriptions, the main provisions of the English Merchandise Marks Act, 1887, have been adopted. The Committee has reduced the punishment for applying false trade-descriptions or dealing in falsely marked goods to those provided in the Penal Code for using false trade-marks. The offences being similar in character it seemed desirable to follow the Indian law rather than the more stringent provisions of the English Statute.

“It may be convenient here to notice an important alteration of principle in regard to offences under this Bill. Ordinarily it is incumbent on the prosecution to prove that the person charged had acted with intent to defraud; under the law now proposed it is incumbent on the person charged to prove that he acted innocently. In this respect, however, a distinction is made between the originators of the fraud, that is to say, those who make or apply false trade-marks or descriptions, or are responsible for their use, and mere dealers in falsely marked goods, whether as agents for sale or retailers. The former must prove absolutely that they acted without intent to defraud; the latter need only show that they took reasonable precautions, had no ground to suspect fraud and have given the prosecution all information in their power. Honest traders should have no difficulty in doing this.

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[*Mr. Scoble.*]

“So much in regard to offences and their punishment. With regard to prevention, the proposed amendment of the Sea Customs Act, whereby the importation of falsely marked goods into British India will be prohibited, will be the most efficient weapon in the hands of the authorities. But, as I said on introducing the Bill, the successful working of these provisions of the Act will depend on the extent to which the mercantile classes co-operate with the custom-house authorities. There will be difficulties no doubt here, as there were in England.

“In their Report for the year ended 31st March, 1888, the Commissioners of Her Majesty's Customs write:—

‘To have established a system of exhaustive examination of imported goods would have entailed a very large additional expenditure for the increased staff which would have been required; and there was the still more forcible objection that any such system would involve serious delay and inconvenience in the delivery of goods. There can be little doubt that if the trade at large had been exposed to constant risk of delay, or even to any considerable check in the present system of rapid delivery of goods, there would have been complaint that the evil to trade which the Act was intended to remedy was more than overborne by the evils which it had created. We had therefore to endeavour to give all reasonable effect to the intention of the Act without appreciable cost to the tax-payer, and at the same time to preserve the advantages of a restricted tariff which naturally facilitates the free movement of trade.’

“Fortunately, in India, we shall have the benefit of the experience gained in England during the past two years, and the Government will be glad to receive the assistance of the mercantile community in framing regulations which will secure the due operation of the Act without unnecessary friction or expense to the public.

“The provisions thus far summarized do not go beyond those of the English Act; but in one important respect the Select Committee has felt itself at liberty to take a step in advance of English legislation. We have added to the Bill clauses requiring all goods sold by length or the piece to have their real length stamped on them in standard yards before they are brought into British India in the case of imported goods, and before they are removed from the factory in the case of goods manufactured in British India. The adoption of a compulsory provision of this kind was advocated by the Madras Chamber of Commerce, and has been strongly pressed upon us by the Bengal Chamber. In a communication received by us from the latter body it is stated:—

‘A very important suggestion put forward by the Sub-Committee—though with one dissentient—is that the stamping upon all goods sold by length or the piece of the length

of such goods in standard yards of 36 inches or fractions of a yard should be made compulsory.

'The Committee of the Chamber of Commerce have, after special consideration of the principle here involved, come to the decision that the interests of the trade generally, of the honest trader and of the Indian consumer require them to give to this recommendation their strong support. The scope of the "Indian Merchandise Marks Act" is so wide that, as regards goods sold by length, a door would be left open for a resort to those fraudulent practices the measure is intended to combat if the importation of goods not bearing a stamp of length were permitted. The Committee have made enquiries which satisfy them that even in Calcutta this way of escaping the provisions of the Act has already begun to be availed of, and they have reason to believe that the importation of goods having no stamp of length is on the increase.

'Some five years ago a powerful agitation against "unstamped goods" sprung up in Bombay and led to a combination on the part of native dealers which resulted in the almost total displacement of such goods in the Bombay market. The agitation spread to Calcutta, where it forced itself on the consideration of the Chamber of Commerce, and induced the Committee to sanction special arrangements for the protection of native buyers, not only against goods not stamped with an indication of length but also against goods incorrectly so stamped. To-day the Committee feel themselves justified in saying that the experience of the various Indian import markets points very clearly to the mischief which will result from allowing goods to be brought forward for sale bearing no indication of their length, and on this point they would ask to be excused if they briefly mention some of the evidence which has been put before them.

'In Calcutta itself a trading firm in the import trade felt themselves compelled to stamp the length on certain goods, because they discovered that the goods they had imported unstamped were being fraudulently stamped in the bázár.

'At Karáchi the importation of unstamped goods has quite recently almost disorganised that market. The Committee have before them a notice, published at Karáchi, and dated 1st of October, 1888, in the Sindhi, Marwari, Persian and Arabic languages, which runs as follows :—

"Notice—Caution.

"Dealers in European piece-goods are warned that for some time past goods have been imported and sold in the Karáchi market bearing no length stamp as has been the invariable custom up to this time.

"Buyers of goods without length stamp plainly written on each piece run the risk of being deceived."

'The state of things which has given rise to the necessity for such a notice as that just quoted would probably cause at Karáchi, as it did in Bombay and Calcutta, a combination amongst dealers against the purchase of unstamped goods; and, as at Bombay and

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[Mr. Scoble.]

Calcutta, such a combination would not do more than check, to a greater or less extent, the evil at which it was directed and would fail to stop it altogether. The question which thus forces itself upon the consideration of the legislature is whether, such an Act as the Indian Merchandise Marks Act being under consideration, the mercantile communities of India should be left to combat an admitted mercantile mischief by the proved ineffective means of combinations amongst native buyers.

'The Committee of the Chamber of Commerce are in a position to supplement what they have said above by evidence not only weighty in itself but so independent in character as, in their opinion, to increase its value. During the discussions on the Bill the Committee received from Mr. James Kerr Bell, a member of the Manchester Chamber of Commerce, a letter dated from Madras, the 19th December, 1888, in which that gentleman says :—

"I find in my visits to the Indian bázars that the *omission* of length stamps is a source of great misrepresentation in the sale of piece-goods. I would suggest that the new Act should make the stamping of exact length compulsory. In this way the honest trader would be protected from the many underhand ways which are at present in vogue to elude the scope of the English Act."

'The Madras, Bombay and Karáchi Chambers of Commerce and the Bombay Mill-owners Association were consulted by the Committee with reference to this proposal of the Bengal Chamber and requested to state their opinion as to whether or not effect should be given to it. These bodies have all replied that in their opinion the fullest effect should be given to the proposal. And the recently established Chamber of Commerce in Upper India, in a valuable communication received since the publication of the Report, desire 'to emphasise the vital importance of the suggestion.' In view of this very unanimous expression of opinion, the Committee felt bound to take the desired action; but, as no such provisions were contained in the Bill when originally introduced, and in order to give time to dispose of unstamped stocks, section 19 postpones the operation of these clauses as regards foreign made goods until the 1st of August, and, as regards piece-goods made up in bales in factories in British India before the day on which it is proposed that this Act shall come into force, until the 1st of July, 1889.

"An enquiry has been made as to what is to become of existing stocks of falsely marked goods after this Act has come into operation. I can only say that, directly a trader gets notice that a mark on his goods is a false mark, he had better remove it or he may get into trouble.

"It remains to notice one or two points in connection with prosecutions under this Act. Acting on a suggestion of the Bengal Chamber of Commerce that

the Governor General should be empowered to make rules for the guidance of Courts as to the mode of measurement to be adopted, and the amount of variations to be allowed—matters of considerable technical difficulty—section 16 enables the Government by notification in the official Gazette to issue instructions for observance by Criminal Courts in such matters. The Select Committee has also introduced a section, in accordance with the precedent of the English Act, empowering Courts to award costs to either prosecutor or defendant, as the justice of the case may require. The Committee was unable to adopt the suggestion of the Bengal Chamber of Commerce that all prosecutions under the Act should be conducted by the Public Prosecutor, as they were unwilling to fetter the action of private firms or public bodies that might be interested in the efficient working of the Act; but in section 15 the Committee has given effect to a very general desire that some limit should be fixed to the time within which prosecutions for offences against the Act may be commenced, and has adopted in this respect the same rule which prevails in England, namely, three years after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever first happens.

“I have now gone through the principal provisions of the Bill, and it only remains for me to express, on my own behalf as well as that of the Select Committee, our best thanks for the great assistance which we have received from the criticisms and suggestions supplied by the various authorities to whom the Bill was referred for consideration. The Chambers of Commerce especially have afforded most valuable information and assistance in framing the draft so as to meet the circumstances of trade in India, and, if they will be equally ready to do their part in carrying out the provisions of the Act, I have no doubt it will be successful as a working measure.”

The Motion was put and agreed to.

The Hon'ble MR. STEEL moved that in section 10, sub-section (2), of the Bill, in clause (f), sub-clause (i), to be added to section 18 of the Sea Customs Act, 1878, after the word “stamped” the words “in English numerals” be inserted; and that in section 12, sub-section (1), of the Bill, after the word “stamped” the words “in English numerals” be inserted. He said:—“This amendment is a late suggestion of the Bengal Chamber of Commerce. Under the Bill as it stands each piece of goods must be stamped with the length, but there is no stipulation as to whether this shall be expressed in numerals or in words. The effect of the amendment will be to require the length to be stamped in English numerals. The English numerals, derived from the Arabic,

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are perfectly well understood throughout the country; but the numbers expressed in words of a foreign language would be unintelligible. The amendment is considered to be of importance. I believe it will be accepted by the hon'ble member in charge, and I trust the Council will assent to it."

The Hon'ble MR. SCOBLE said:—"I have no objection whatever to this amendment."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved that the Bill, as amended, be passed.

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"As a member of the Select Committee to whom this Bill was referred for consideration, I have hardly anything to add to the remarks which have been made in their Report. The Bill appears to satisfy the legitimate requirements of trade, but I must observe that a great deal will depend on its proper and considerate working before it can fulfil the objects for which action has been taken by the legislature. I am sure that the Chamber of Commerce will gladly lend its assistance to enable the Government to carry out the objects of the Bill to the satisfaction of all parties concerned."

The Hon'ble SIR DINSHAW MANOCKJEE PETIT said:—"Since the Report of our Select Committee on this Bill was presented by my hon'ble friend Mr. Scoble to Your Excellency's Council on the 8th ultimo for consideration, I have again considered the question of stamping breadth as well as length on piece-goods which was discussed by the Committee, and, as the Bill is still under consideration of Your Excellency's Council, I venture to express some views on the subject. Owing to the practice of not stamping the breadth, buyers are deceived by wholesale and retail dealers, whereby they suffer great loss in the same way as they suffer loss when length is not stamped. For instance, a buyer goes to a market to buy a piece of cloth of the known breadth of 40 inches; he buys a piece without measuring the same under the presumption that it is of the usual breadth; but when it afterwards turns out to be narrower by one to two inches, he would suffer loss in respect of the deficient breadth from $2\frac{1}{2}$ to 5 per cent. Perhaps it may be urged by some that a provision for compulsory stamping of breadth is not necessary, as a buyer can easily see the breadth at a glance. Against this argument I should say that I know from my experience that even dealers well versed in piece-goods are unable to

[*Sir Dinshaw Manockjee Petit ; Mr. Steel.*] [1ST MARCH,

detect shorter breadth (say two to three inches in 50 to 60 inches breadth, one to two inches in 40 to 50 inches, and half to one inch in 20 to 30 inches) than the usual breadth without actual measurement; and this being the case consumers cannot at a glance find out short breadth. If one has to buy about a dozen pieces of different descriptions of cloth in a market and his time be limited, it is easy to judge whether he will ever be able to detect short breadth without wasting a great deal of his time in going about measuring the breadth of every description of cloth from shop to shop, in order to satisfy himself as to whether the cloth he is purchasing is of the usual breadth or not. If therefore, the correct breadth be stamped on a piece, the buyer will not be deceived, and he can make the purchase without any doubt. This will be a great boon to the public at large, and I dare say the same, instead of doing any injury to the trade, will do it a great deal of good. I therefore, under these circumstances, trust that Your Excellency's Council will see their way to insert the necessary provision in the Bill."

The Hon'ble MR. STEEL said :—" I have little occasion to address the Council on the subject of this Bill, but it would scarcely be fitting that a measure of so much interest and importance to the mercantile community should pass into law without remark from me.

" I am happy to say that I have no criticism to offer except by way of commendation. There has long been a general consensus of opinion that legislation was called for to protect the consumer from fraud and the honest trader from unfair competition. While fully sharing this opinion the representatives of commerce have considered that it would be premature to press for legislation until opportunity had been afforded to watch the operation of the English Act of 1887, with the object of avoiding any defects which might be observed in the practical working of the law.

" Sufficient time having elapsed, we think the proper occasion was chosen for the introduction of this Bill. We acknowledge with gratitude to the hon'ble member in charge that he has taken full advantage of the experience gained. His original draft Bill was an extremely careful and able endeavour to adapt the law to the special conditions of Indian trade. The Bill was energetically discussed and considered by the Chambers of Commerce of Bengal and Bombay and other competent authorities. Sundry valuable suggestions were offered which have been adopted by the Select Committee, and the Bill now comes before the Council fortified by the approval of those most interested in its provisions. My hon'ble friend Sir Dinshaw Manockjee Petit has expressed the

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[*Mr. Steel; Mr. Hutchins.*]

opinion that it would have been proper to require the stamping of the breadth as well as the length on piece-goods. He made the same suggestion to the Committee, and no doubt it is in accordance with the principle of the Bill. It was, however, considered that the proposal was unnecessary, and therefore inexpedient. The buyers of piece-goods can easily inform themselves of the width of such goods by inspection, and under this condition they are considered quite competent to protect their own interests. Any incorrect marking of width would, of course, be an infraction of the law. In dealing with a subject of so much difficulty and complexity it would be too sanguine to expect perfection, and it is quite possible that some modification of the law may be called for in the early future; but I have authority for saying that the Chamber of Commerce accepts the responsibility of recommending the legislature to pass the Bill in its present form."

The Motion was put and agreed to.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to abolish the Office of Coroner of Madras be taken into consideration. He said:—"The Bill is a short one and its general effect may be stated in a few words. The second and third sections repeal such parts of the existing law as require the appointment of a Coroner. The fourth section repeals a clause in the Code of Criminal Procedure which prevents the police of Madras from holding inquests under sections 174 to 176 of that Code, and provides that those sections shall be read with certain modifications within the limits of the City of Madras. The practical effect of the measure therefore will be that inquests will be held in future by certain specified police-officers instead of by the Coroner, and, subject to the modifications already alluded to, the system will be that which prevails throughout British India, including nearly all its largest towns.

"Under section 174 the officer will usually be the officer in charge of the station, but, like the Coroner, he is required to associate with himself a jury or pancháyat of respectable neighbours. According to the Code and the Bill as drafted, the jurors would be two or more, but in the Select Committee we thought it more prudent to require five at the least according to the present practice under the Coroner. They have to draw up and sign a report or inquest

paper, showing the apparent cause of death and full particulars of any marks of injury: also, as far as it can be ascertained, the nature of the weapon or instrument, if any, by which such injuries seem to have been inflicted. To enable them to do this, the station-house-officer, or other person presiding, is required by subsection (3) to cause a *post mortem* examination to be held by the district surgeon or such medical officer as the Government may direct. He is bound to do this whenever the death appears to have been caused by violence, whenever there is any doubt about the cause of death, and whenever there are any other circumstances which seem to render such an examination desirable. He is also required with the jury to examine all persons apparently acquainted with material facts which may throw light on the case.

“Then, under section 175, the Local Government and, subject to its control the Commissioner, are empowered to make rules prohibiting the station-house-officer from closing the inquest when the presence or sanction of a superior officer may be considered necessary. The most important rules contemplated are, that whenever there appears serious ground for suspicion the inquest shall be held by an inspector or officer of still higher grade, and that in other cases the body shall not be burnt or interred till such superior officer has seen and considered the proceedings. Lastly, by section 176, the Chief Presidency Magistrate, or some other Magistrate appointed by him, is required in case of a death in prison or police custody, and authorised in any other case, to supersede the action of the police and himself hold such investigation as may be necessary.

“It will thus be seen that the lowest officer by whom any inquest whatever can be held is a station-house-officer, and I am glad to say that the Government of Madras, recognizing the responsibility which the legislature has thought fit to cast upon an officer in charge of a station, has recently assigned him a special allowance, over and above the pay of his grade, which will afford a material guarantee for the faithful performance of his duties. Further, his proceedings will be forthwith reviewed by his divisional superior, and, whenever there is serious ground for suspicion of crime, his action will be stayed and superseded by an officer of superior rank or, if a Magistrate sees cause to intervene, by a regular magisterial investigation.

“So much as to the officer by whom future inquests will be conducted. I have no doubt that the Madras police can be safely entrusted with the duty, and no petitions against the Bill have been received; but I have reason to

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[*Mr. Hutchins; the Mahārājā of Vizianagram.*]

believe that the nature and effect of an inquest is misunderstood in some quarters, and I would ask leave to make a few short remarks on that point also.

“An inquest is not a judicial enquiry in the sense that a decision then arrived at has any conclusive effect whatever. Its object is simply to place on record the apparent cause of death, and secure that a sufficient medical examination is held before it is too late. The verdict is merely a contemporaneous record of things seen and *primā facie* conclusions, and would not in itself, at all events not in a criminal case, be even *primā facie* evidence either of the existence of those things or the correctness of those conclusions. Nor does the enquiry extend beyond the apparent cause of death. An instance which will be familiar to every one in Madras is the terrible fire which occurred in the People's Park on the last night of 1886. The Coroner's inquisition was very brief: he stayed his hand as soon as it was made clear that the deceased had met their death from burning. When subsequently the Government desired to have the origin of the fire investigated, they made use of the Coroner's agency, it is true, because there was no other agency available, but they had to award him special remuneration for presiding at the enquiry as it was outside his proper duties. Under the present Bill such an investigation would be held by a Presidency Magistrate.

“I think that with the safeguards I have indicated and under the eye of the very efficient Madras Press the duty of drawing up a record of visible injuries, of the medical opinion and the apparent cause of death may safely be entrusted to the Madras police. I now move that this Bill be taken into consideration.”

The Hon'ble THE MAHARAJA OF VIZIANAGRAM said:—“Before this Bill will receive Your Excellency's final sanction I beg to submit that while I fully agree with every cogent reason lucidly set forth in one of the leading columns of the *Madras Mail*, a most reasonable and reliable journal in that presidency, I saw no objection to subscribing my name to the Report of the Select Committee now under Your Excellency's consideration for two reasons:—the first is that the Bill only gives the requisite power to the Madras Government, but does not directly abolish the office of Coroner; and my second reason is that I have every faith that the Government of Lord Connemara will not put this or any other Act into execution unless they see very strong reasons for their doing so.”

The Motion was put and agreed to.

CORONER OF MADRAS.

[*Mr. Hutchins.*]

[1ST MARCH, 1889.]

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

The Motion was put and agreed to.

The Council adjourned to Friday, the 8th March, 1889.

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

FORT WILLIAM; }
The 6th March, 1889.