

28-37
1

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

7th February 1881, No. 282.

Bills—Legislative.

Read the following papers:—

No. 28. From T. E. MARSHALL, Esq., Deputy Master Attendant in charge, Administrative Department, to the Chief Secretary to Government, dated Madras, 21st January 1881, No. 493.

I have the honor to acknowledge receipt of the Proceedings of Government, Judicial Department, No. 71, of date 17th January 1881, furnishing copy of the "Obstructions in Fairways" Bill, and to offer the following remarks thereon.

2. The provisions of the Bill principally are very similar in character to the provisions contained in Sections 11 to 13 of Act XII of 1875, with regard to removal of obstructions and impediments to navigation within the limits of ports in British India, whereas the present Bill seeks to extend these powers beyond port limits to fairways on "Seas adjacent to British India." Two cases are cited in the Statement of Objects and Reasons as to the necessity for further legislation in this direction, viz., the removal of fishing stakes placed at the entrance to Bombay Harbour, and the prevention of the deposit of ballast in the mouth of the Rangoon river. It is, however, a question whether the necessities of these two particular cases could not be met by extending the limits of those ports to the extreme limits of pilotage waters under the powers laid down in Sections 5 and 6 of Act XII of 1875.

3. I would further observe that it seems desirable that the terms "Fairways" and "Adjacent to British India" should be defined in the Bill to prevent any difficulties arising with vessels flying Foreign European flags as to the extent of British jurisdiction. Moreover, Karrikal and Pondicherry roads are adjacent to British India, as well as the Travancore and Cochin Rajas' territories, as represented by Narrakel, Alleppey, Quilon, Anjengo, and Colachel roads, the approaches to which, I presume, it is not intended to interfere with. Goa and Mahé may also be cited as instances in this respect.

4. The clauses having reference to the recovery of property sunk, stranded or abandoned are identical with those of Chapter V of Act VII of 1880, and appear to be unobjectionable.

No. 29. From the Hon. P. O'SULLIVAN, Advocate-General, to the Chief Secretary to Government, dated Madras, 24th January 1881.

I have the honor to state that I have read the Bill to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions. I have no suggestions to make by way of alteration or amendment. The powers which the Bill gives ought, in my opinion, to be vested in the Government to meet cases which may occur at any time, and which have actually occurred in other parts of India.

செப்பனிகுபவர் பெயர்

செப்பனிகுவதற்காக எடுத்த தொள்ளப்பட்ட நாள்

செப்பனிகு முடிந்த நாள்

சுற்றுலா துறை அமைச்சர்
17/2/96
செய்யப்பட்ட

No. 30. *From L. McIVER, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 25th January 1881, No. 152.*

With reference to the Order of Government, dated 17th January 1881, No. 71, requesting the opinion of the High Court on the Bill to empower the Government to remove or destroy obstructions in fairways and to prevent the creation of such obstructions, I am directed to forward transcripts of the Minutes recorded by the Honorable the Chief Justice, the Honorable Mr. Justice Innes, and the Honorable Mr. Justice Muttusami Aiyar on the provisions of the Bill.

ENCLOSURE No. 1.

MINUTES recorded on the Bill to empower the Government to remove or destroy obstructions in fairways and to prevent the creation of such obstructions.

THE HONORABLE THE CHIEF JUSTICE.

To Section 6 I would add a few words authorizing the deduction from the proceeds of the sale of the articles removed where such articles are cargo liable to import duty, the duty leviable. To Section 10 I would add a clause declaring the rights of the Crown unaffected by the Act as well as the powers of Government.

I have no other observations to offer.

THE HONORABLE MR. JUSTICE INNES.

I see no objection to the Bill.

THE HONORABLE MR. JUSTICE MUTTUSAMI AIYAR.

I see no objection to the Bill. It seems to me sound in principle. I think that before the Local Government proceeds to remove the obstructions under Section 2, it may first require the party concerned to do so within a given time in cases in which its immediate removal is not necessary, and that such notice will save in many cases the necessity of instituting proceedings under Section 3.

No. 31.

CORRESPONDENCE THEREON, 7th February 1881, No. 282.

Ordered that the foregoing letters containing the opinions on the provisions of the Bill "to empower the Government to remove or destroy obstructions in fairways, &c.," be forwarded to the Government of India, Legislative Department, with reference to their letter, dated 7th January 1881, No. 10.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

Exd. T. O'Connor.

28-22
2

Govt. of 1881 Madras.
JUDICIAL.

Dated February, 7th.

Issued

Recd.

G.O., 7th February 1881, No. 282.

FEBRUARY.
Nos. 23-32.

Bills—Legislative.—Papers containing opinions on the provisions of the Bill "to empower the Government to remove or destroy obstructions in fairways, &c." forwarded to Government of India, Legislative Department.

28-22
7

JUDICIAL DEPARTMENT.

Bills—Legislative.

No. 283.

FROM THE HON. R. DAVIDSON, C.S.I.,
Chief Secretary to the Government of Fort St. George,

TO THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

With reference to your letter, dated the 7th instant, No. 10, I am directed to forward the Proceedings of this Government of this date, No. 282, embodying the views of the Honorable the Judges of the High Court and of the officers consulted on the provisions of the Bill "to empower the Government to remove or destroy obstructions in fairways, &c."

2. The Bill was published in the Fort St. George Gazette Supplement of the 12th January 1881.

I have the honor to be,

Sir,

Your most obedient servant,

R. DAVIDSON,
Chief Secretary.

FORT ST. GEORGE,
7th February 1881.

Exd. T. O'Connor.

1881.
JUDICIAL DEPARTMENT.

From
The Chief Secretary to the Govt. of
Part S. Govt.
To
The Secy. to the Govt. of India,
Legislative Department.

Dated 17th February 1881.

Issued

Recd.

No. 283.

Enclosure.

Note—I. g. b. l. c. —M. a. n. d. i. n. g. p. a. p. e. r. s. c. o. n. t. a. i. n. i. n. g. o. p. i. n. i. o. n. s. o. n. t. h. e. p. r. o. v. i. s. i. o. n. s. o. f. t. h. e. 12th c. 13. e. n. a. b. l. e. t. h. e. G. o. v. e. r. n. m. e. n. t. t. o. r. e. m. o. v. e. o. r. d. e. s. t. r. o. y. o. b. s. t. r. u. c. t. i. o. n. s. i. n. f. a. i. r. w. a. y. s. &c.

26-27
4
BILL

Empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways in the seas adjacent to British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called "The Obstructions in fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

2. Whenever in any fairway in any of the seas adjacent to British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in or near which such vessel, fishing-stake, timber or other thing is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed; or,

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, destroy the same or any part thereof.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be determined by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties.

4. The Local Government shall, when anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was removed.

5. If after publishing such notification; such thing is unclaimed,

Act VII of 1880, s. 75.

Government entitled to expenses incurred in removing obstruction.

Act VII of 1880, s. 75.

Dispute concerning such expenses.

Act VII of 1880, s. 76.

Notice of removal to be given by Local Government.

Act VII of 1880, s. 77.

Things removed may, in certain cases, be sold.

or if the person claiming the same fails to pay the amount due for the said expenses and any other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway in any of the seas adjacent to British India, the placing of fishing stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause or be likely to cause obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.

10. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL
TO

Empower the Government to remove or
destroy obstructions in fairways, and to
prevent the creation of such obstruc-
tions.

(Mr. Stokes.)

28-22
b

28-22
b

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are annually placed during the fine season in the sea of the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In another case which related to the deposit of ballast by ship-masters, at the mouth of the Rangoon river, a practice which, if permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon, the need for some further preventive powers than those which Government now possesses, has been made apparent.

There can be no doubt that it is extremely desirable that the powers of Government officers, and the procedure to be followed by them in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stands, does not deal adequately with the subject, the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statute 40 & 41 Vic., c. 16 the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond it in two material respects. The power to remove obstructions conferred by it is not confined, as in the statute, to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that, in addition to giving power to remove existing obstructions, it enables the Government to prevent the wilful creation of obstructions in the future. With this object the Governor General in Council is empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation.

CALCUTTA,

The 24th December, 1880.

WHITLEY STOKES.

Exd.—J. G.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

(Statement of Objects and Reasons.)

Administrative Department.

No. 493

MADRAS,

Marine Office,

21st January 1881.

From

J. C. Marshall
~~J. H. TAYLOR, Esq., Lieut., R.N.R.,~~

Dy Master Attendant, in charge
Administrative Department,
Madras.

To

The Honble R. Davidson C. S. I.

Chief Secretary to Government,
Marine Department,
Fort Saint George.

Sir,

I have the honor to acknowledge receipt of the Proceedings of Government, Judicial Department, No. 71, of date 17th January 1881, furnishing copy of the 'Obstructions in Fairways Bill', and to offer the following remarks thereon.

2 The provisions of the bill principally are very similar in character to the provisions contained in Section 11 to 13 of Act 711 of 1875, with regard to the removal of obstructions and impediments to Navigation within the limits of Ports in British India, whereas the present bill seeks to extend these powers beyond port limits to Fairways on Seas adjacent to British India. Two cases are cited in the statement of Objects and Reasons as to the necessity for further legislation in

in this direction, namely the removal of
fishing stakes placed at the entrance to
Bombay Harbour, and the prevention of
the deposit of ballast in the mouth of
the Rangoon river. It is, however, a question
whether the necessities of these two particular
cases could not be met by extending the
limits of these ports to the extreme limits
of pilotage waters under the powers laid
down in Section 5 and 6 of Act XII of 1845.

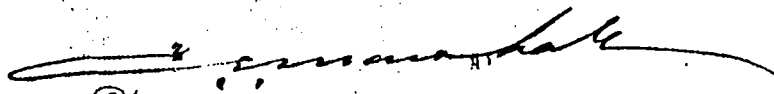
3 I would further observe that
it seems desirable that the terms 'Foreigners'
and 'Adjoacent to British India' should be
defined in the Bill to prevent any difficulties
arising with vessels flying Foreign European
flags as to the extent of British jurisdiction.
Moreover, Cochin and Pondicherry roads are
adjoacent to British India, as well as the
Tranconore and Cochin Royals' territories,
as represented by Kannur, Alleppey, Quilon,
Angam and Calicut Roads, the approaches
to which, I presume, it is not intended to
interfere with. You and Marine may also be
cited

20/25
cited as instances in this respect.
4 The clauses having reference to
the recovery of property sunk, stranded or
abandoned are identical with those of Chapter
V of Act VII of 1880, and appear to be
unobjectionable.

I have the honor to be

Sir

Your most Obedt Servant


Dy. Master Attendant in Charge
Administrative Department

MM

From

The Master Attendant,
Administrative Dept.
Madras,

To

The Chief Secy. to Govt.,
Marine Department,
Fort Saint George.

Dated

Received

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188

No.

For

File 1001/Dep't
(Kills)

R. D.

21 JAN 81

1001/Dep't
1001/Dep't
1001/Dep't

The Dy Master Attendant
in charge
Administrative Department
Madras

The Chief Secretary to Govt.
Marine Department
Fort Saint George.

Dated 21st
Recd 21 } January 1881

No. 217. N. 493

Enclosure. None

Offering certain remarks
on the "Obstructions in
Fairways" Bill recorded
in G. O. No. 71 of 17 Jan
1881 Judicial Dept

Recd
21/1

Madras, 24 January, 1881

No 29 From

The Honorable P. O'Sullivan
Advocate General.

To

The Honorable R. Davidson C.S.S.
Chief Secretary to Government
Fort St. George.

Sir,

I have the honor to state that I have
read the Bill to remove or destroy obstructions in
fairways, and to prevent the creation of such obstruc-
tions. I have no suggestions to make by way of al-
teration or amendment. The powers which the Bill
gives ought, in my opinion, to be vested in the Govern-
ment to meet cases which may occur at any time,
and which have actually occurred in other parts
of India.

I have the honor to be
Sir

Your most Obedient Servant

P. O'Sullivan
Advocate General.

Full (1881.) dept.
From (Bills)
The Advocate General
R.D.
Madras
25 JAN 81

The Chief Secretary to Govt.
Fort.

Dated 24th January.

Despatched 24th — 0—

Received 25

No: 254

Bill to remove or destroy ob-
structions in fairways, and to
prevent the creation of such
obstructions. Remarks on the.

R.D.
25 JAN 81

From

Lewis M. S. Esq. Esq.,
Acting Registrar of the
High Court of Judicature
at Madras.

To

The Honorable R. D. D. Esq.,
Chief Secretary to
Government.

Honorable Sir,

With reference to
the Order of Government, dated,
17 January 1881, No 71, request-
ing the opinion of the High
Court on the Bill to empower
the Government to remove
or destroy obstructions in
fairways, and to prevent the
creation of such obstructions,

28-22 13

I am directed to forward
transcripts of the minutes
recorded by the Honorable
the Chief Justice, the Hon-
orable Mr. Justice James,
and the Honorable Mr.
Justice Muthusami Aiyar
on the provisions of the
Bill.

I have the honor to be,
Honorable Sir,
Your Most Obedient Servant,

Lewis W. Dorr

Acting Registrar,
Appellate Side.

High Court of
Judicature at
Madras.
25th January 1881.

Cd
J. L. S. S. S.
S. S. S. S.

28-52/14
5-102

Minutes recorded on the
Bill to empower the Government
to remove or destroy obstructions
in fairways and to prevent the
creation of such obstructions.

The Attorney General:- To section 6 I would
add a few words authorizing the
deduction from the proceeds
of the sale of the articles removed
where such articles are cargo
liable to import duty, the duty
leviable.

To section 10 I would add
a clause declaring the rights of
the crown unaffected by the Act
as well as the powers of Govern-
ment.

I have no other observations
to offer.

The Honorable Mr. Justice Ames: - See
no objection to the Bill.

The Honorable Mr. Justice Matthews: - See
no objection to the Bill. It
seems to me sound in principle.

I think that before the Local
Government proceeds to remove
the obstructions under Section 2
it may first require the party
concerned to do so within a
given time in cases in which
its immediate removal is
not necessary, and that

28th 6th 15th

Such notice will save in many
cases the necessity of instituting
proceedings under Section 3.

/True Copies/

Lewis for Jux

Acting Registrar,
Appellate Side.

See Jud: 26/4/81.

P. H. H. H. H. H.

Judicial (1881) Dept. to Govt.
(Bill)
H.

From
The Ag. Registrar of the
High Court of Judicature
at Madras.

To
The Chief Secretary to
Government.

Dated 25 } January 1881.
Received 26 }

No. 152.

(With one Enclosure.)

No. 264

Circ
Forwarding

transcripts of the Minutes
recorded by the Honorable
the Chief Justice, Mr. Justice
James & Mr. Justice Smith & Mr. Justice
Cajal on the provisions of the
Bill to empower the Govern-
ment to remove or destroy
obstructions in fairways &
to prevent the creation of
such obstructions.

28-31 Judicial DEPARTMENT. 16

No. 219, 251 & 264.

From the Master Attendant, Madras,
dated 21st January 1881, No. 193.

"-the Advocate General, dated 24th
Jan'y 1881.

"-the Ag. Registrar of the High Ct.
Madras, dated 25th Jan'y 1881,
No. 152.

FOR ORDERS.

The above are the replies
to G.O. of 17 Jan'y 1881 No
71 giving opinions on
the Obstructions in fairways
Bill.

No reply has been re-
ceived from the Chamber
of Commerce; & as an
answer is due to India
by 3 Feb'y the letters
above recorded may alone
be sent with a covering
letter.

25/1/81

28th / 17

Obtained in India
Bill -

FOR ORDERS.

2. The Ex. Secy. to Govt.
1. The Secy. to Govt.

20 Jan 202 / 203 2/2021

256/11 Recd
R 25/1

78th
Judicial Department.
28th / 18

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters:-

From the Master Attendant, Madras, dated
21st January 1881, No 493.
"- the Advocate General, Madras, dated 24th
January 1881.
"- the Dy Registrar of the High Court, Madras,
dated 25th January 1881, No 152.
N 31 Order thereon, 7th July 1881 No 282

Ordered that
the foregoing letters
containing the opinions
on the provisions of the
Bill to empower the
Government to remove
or destroy obstructions
in fairways &c., be
forwarded to the
Government of India,
Legislative Department,
with reference to their
letter

Letter dated 7th January
1881, No 10.

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Jesp with 1881
31 240 - 100
To
No 283

The Secretary to the
Government of India,
Legislative Dept.

Sir,

With reference
to your letter dated
the 7th instant, No 10,
I am directed to for-
ward the Proceedings
of this Government of
this date, No 282,
embodying the views
of the Honble the Judges
of the High Court and
of the officers consulted.
ad

28/3/8 19
on the provisions of the
Bill "to empower the
Government to remove
or destroy obstructions
in fairways, &c."

2. The Bill was
published in the Port
St. George Gazette
supplement of the 12th
January 1881.

For St. George }
7th Feb 1881.

1881
J. T. Spence

L-100 copies

Cont. of {1880} Affairs.

To

Date
Recd.

}

1880. No.

Nos.

Urgent
Govt. of 1881 Madras.
March 7

Ind C

Containing
Letter
replied

to 282 & 283

G.O. 7 Feb'y 1881, No. S.A.

Nos. 28-32

Bills Legislative Papers
containing opinions on
the provisions of the
Bill to empower ^{the} Govt.
to remove or destroy
obstructions in passing
for "forwarded to Govt.
of India a Legislative
Dept.

Unit in letter

replied