

Wednesday, February 24, 1864

**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

**VOL. 3**

**JAN. - DEC.**

**1864**

**P. L.**

*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., C. 67.*

The Council met at Government House on Wednesday, the 24th February 1864.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding*.  
 His Honour the Lieutenant-Governor of Bengal.  
 Major-General the Hon'ble Sir R. Napier, K. C. B.  
 The Hon'ble H. B. Harington.  
 The Hon'ble H. Sumner Maine.  
 The Hon'ble W. Grey.  
 The Hon'ble R. S. Ellis, C. B.  
 The Hon'ble A. A. Roberts, C. B.  
 The Hon'ble H. L. Anderson.  
 The Hon'ble J. N. Bullen.  
 The Hon'ble Maharaja Vezearam Guzzepetty Raj Bahadur of Vizianagram.  
 The Hon'ble Rajah Sahib Dyal Bahadur.

BURMAH CUSTOMS BILL.

The Hon'ble MR. MAINE introduced the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah), and moved that it be referred to a Select Committee, with instructions to report in two weeks.

The Motion was put and agreed to.

OFFICIAL TRUSTEE BILL.

The Hon'ble MR. MAINE also introduced the Bill to constitute an office of Official Trustee, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said the Bill was one of those which had been published under the 19th of the Council Rules, by order of the late Lord Elgin. It was a measure introduced principally for the relief of a large class who suffer much from the existing state of the law, although they had not much opportunity of complaining of it—viz., women and minors. The inconveniences to which he alluded were felt much in England, but they made themselves still more felt in India,

owing to the condition of Indian society. Trusts of private property might be said to have two objects—the first was to ensure the safety of the Trust Funds, the second was to ensure the regular payment of the annual income derived from those funds. It was impossible to over-estimate the hardships which were suffered even in England in consequence of breaks occurring in the Trusteeship—breaks arising from the death of Trustees, their leaving England, their becoming lunatics or generally from the Trustees becoming incapable or unwilling to act in the trusts for the management of which they had been appointed. All the ingenuity of the framers of English trust-deeds had been used to make provision against these contingencies, and several Acts of Parliament had also been passed to remove the difficulties of most usual occurrence. The expedient had sometimes suggested itself to people in England of appointing a Trustee with perpetual succession—a public functionary with an office under him, the trusts descending from one officer to his successor in the office. Such a functionary, however, had never been appointed partly on account of the dislike of the English nation to the multiplication of public offices, and partly on account of the existence of the Court of Chancery, which was supposed to have the general care of the interests of persons interested in Trust Funds. Joint Stock Companies too had been launched more than once, whose business it should be to undertake Trusts, but such schemes had always broken down through the operation of the principle of English law, which would in no case allow a Trustee to receive for his services any remuneration beyond his costs out of pocket. The theory of the English law seemed to be that a man is remunerated for becoming a Trustee, not by a payment in money, but by the claim he creates on his friends and fellow citizens to undertake trusts for his benefit in return. But here in India European society was so unstable and changing, that there was but little probability of deriving reciprocal advantages from serving as Trustee, while stability and regularity, the primary objects of a trust, were constantly sacrificed by the departures of Trustees to Europe. On the whole he thought that a sufficient case was made out both for having a public office of Trustee in India, and also for departing from the principle of non-remuneration. An Official Trustee had in fact been already appointed, and the principle of the Bill now introduced had been already recognized in Act XVII of 1843, which enabled the Supreme Court to vest Trust Funds in one of its own Officers who was to be remunerated by a percentage. That Act, however, was very brief. It did not create an office of Official Trustee and it applied only to the case of a trust once established, and likely to fail from the Trustee having departed from the jurisdiction of the Court. It moreover did not provide sufficiently for the security of the Trust Funds; and in Madras a sad case of defalcation of an Official Trustee had recently occurred. In framing the present Bill, he (Mr. Maine) had followed somewhat the Administrator General's Act. Since the Bill was published, the opinions of several of the local Governments and of the High Courts had been taken: those opinions were very generally favourable but there was a difference of opinion as to the rate of remuneration proper for the

Official Trustee. When preparing the Bill, he had consulted various mercantile men, solicitors, and other persons likely to be best informed on the subject ; and from what he learnt from them, he had thought that the remuneration provided for in the Bill would be sufficient. That was a fit subject for discussion in Committee and he doubted not that if those Members of the Council who were best acquainted with commercial matters would allow themselves to be put upon the Select Committee, a satisfactory solution of the question would be arrived at.

The Motion was put and agreed to.

#### ACT XXI OF 1856 EXTENSION BILL.

The Hon'ble MR. HARRINGTON moved for leave to introduce a Bill to extend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal). He said that the necessity for the Bill arose out of the state of the law in the Central Provinces, or rather from the want of law in those Provinces to regulate the proceedings of the local Officers in respect of the matters to which the Bill related. Since the Central Provinces came under British rule, the spirit of the Abkaree Laws in force in the Presidency of Bengal had, he believed been generally observed in them, though, as regarded some parts of the Provinces, it was doubtful whether what had been done in this respect rested on any legal foundation. It was not proposed to confine the operation of the Bill to the Central Provinces. It was possible that there were other parts of the country under the immediate administration of the Governor-General of India in Council in which there might be the same absence of any specific law in respect to the Abkaree Department as had been found to be the case in the Central Provinces. In order therefore to obviate the necessity of future legislation in respect to any such place the Bill gave the Governor-General of India in Council a general power to extend the provisions of Act XXI of 1856 to any province or place under the immediate administration of the Government of India in which the Act was not now in force : a section was added which provided that, when so extended, the Governor-General should declare the authorities by whom the Act should be administered in such province or place. This Section was rendered necessary by the different character of the Executive or Government agency employed in the Central Provinces and other Non-Regulation Territories and the Presidency of Bengal for which Act XXI of 1856 was framed.

The Motion was put and agreed to.

#### MILITARY CANTONMENTS BILL.

The Hon'ble MR. MAINE introduced the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy

within the limits of Military Cantonments, and in moving that it be referred to a Select Committee with instructions to report in three weeks, said that this Bill originated in a legal difficulty. A Cantonment Joint Magistrate was a Joint Magistrate whose jurisdiction was localized in a Cantonment, but he was ordinarily a Commissioned Officer, and hence it was argued that the office was illegally constituted, as being one of those which could only be filled by a Member of the Civil Service. He would not enter into that question, which the Bill would conclusively settle, but would only say that the early history of the office of Joint Magistrate was exceedingly obscure, and that though an office might be irregularly filled, it by no means followed, as a necessary legal consequence, that it was illegally constituted. Under the present Bill, the Cantonment Joint Magistrate would become a Cantonment Magistrate—a functionary of a new kind, whose office would fall within the proviso in the Civil Service Act, which declared that no new office created in India was necessarily to be filled by a Civilian. Advantage had been taken of the opportunity to consolidate and elucidate the law relating to Civil and Criminal Justice, as administered in Cantonments. But little, however, of the Bill was substantially new law, the provisions of two Sections excepted. One of these was Section X, which enabled the local Governments to make rules for a variety of purposes; he would read the clauses of it:

1st.—For regulating in cases in which the land within the limits of the Cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed,

2nd.—For maintaining proper registers of property within the limits of the Cantonment and for providing for the registration of transfers of such property.

3rd.—For regulating the manner in which houses within the limits of the Cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of Military Officers.

4th.—For regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the Cantonment, or for carrying out any Rules and Regulations passed under this Section and the appointment of the necessary servants and establishments.

5th.—For the definition and prohibition of public nuisances.

6th.—For the maintenance generally of the Cantonment in a proper sanitary condition; for the prevention and cure of disease; for the management and regulation of the public roads of conservancy and drainage; for the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited; of slaughter-houses, public markets, houses of ill-fame, burial and burning grounds, and of all offensive or dangerous trades and occupations.

7th.—For the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use.

8th.—For the execution and promotion of works of public utility and convenience.

9th.—For the registration of deaths, and for making and recording observations and facts important for the public health and interests.

10th.—For the imposition of penalties on persons convicted of the breach of any Rule or Regulation passed under this Section, and for prescribing the manner in which offences under such Rules and Regulations shall be inquired into or be cognizable by any public servant. Provided that no such penalty shall exceed a fine of fifty Rupees or imprisonment exceeding eight days.

The earlier clauses of the Section embraced matters which were notoriously sources of heart-burning and discontent in Cantonments. The later clauses covered the great causes of those glaring sanitary defects in Cantonments which had recently attracted so much attention. It was much better that the local Government should make rules on the subjects than that they should be regulated by any general enactment, for the circumstances of one Cantonment differed widely from those of another. He thought the list of subjects might properly be lengthened in Select Committee. His Excellency in Executive Council had recently appointed a Commission collect and disseminate information as to the application of sanitary art to India, and if the Commission were placed in contact with the local Governments, they might usefully be left to exercise a wide discretion in framing rules, and might thus be able to combat sources of disease yet more prolific than any now specified in the Section. The other Section which exhibited a novelty in law was Section VI, and with regard to that a perfect stream of communications had flowed in upon him. That Section was as follows:—

“ The Cantonment Magistrate shall, within the limits of the Cantonment to which he is appointed, exercise, in subordination to the Inspector-General of Police appointed under Act V of 1861 (*for the regulation of Police*), all the powers which are vested by the said Act in a District Superintendent of Police, and shall in all Police proceedings be subject to the general control and direction of the Commanding Officer of such Cantonment, in like manner as the District Superintendent is, under Section IV of the said Act, subject to the general control and direction of the Magistrate of the District.”

He spoke with much hesitation on the point, for he (Mr. Maine) had but little acquaintance with the conditions of Indian society in the Mofussil, but he thought that the opinions which had reached him might be classed as follows. First, there were two extreme views, which he might call the ultra-Military view and the ultra-Civil view. The ultra-Military view, which, he should say, was rather hinted at than expressed, was that all persons of whatsoever description within a Military Cantonment should be subject to Military Law exclusively. The ultra-Civil view was much more plausible, and had much more to recommend it; it was, that every Cantonment should be part of the Civil district, and that the Magistrate of the district should have the same power within the Cantonment as he had without it. This view might possibly be tenable in Bengal Proper: but as concerned Upper India, it was vain to deny that it was a country military held, and it would be

mischievous to impair in any way the prestige and authority of Commanding Officers. An even greater evil of the arrangement proposed was that it might tempt the Commanding Officer to use his soldiers for the suppression of civil crime, and if any one thing was settled by experience, it was that soldiers made the worst of Policemen. Other opinions which prevailed amounted to a compromise between these extremes, and one of these compromises was reflected in the Section as drawn. It was, however, open to the objection that it set aside the principle of the new Police Act, which deprived the Magistrate of direct power over the Police, and on the whole, if the Select Committee to whom the Bill would be referred should consent, he would prefer an arrangement, also in the nature of a compromise, which had been suggested to him by Colonel Barrow, the Commissioner of Lucknow, who had had much experience as a Cantonment Joint Magistrate. The new Section, to which he was prepared to assent in Committee, would run as follows :

The District Superintendent of Police shall within the limits of the Cantonment, in subordination to the Inspector-General of Police under Act V 1861 (or the regulation of Police), exercise the powers of Police Officer, and shall in the administration of the Police in subject to the general control and direction of the Commanding officer of such Cantonment, in like manner as under Section IV of said Act he is subject to the Magistrate of the District.

The residue of the Bill seemed to be generally approved of, although some valuable suggestions had reached him applying to points of detail.

The Motion was put and agreed to.

#### FRENCH BANK BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to enable the "Comptoir D'Escompete of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company.

#### ALIMENTARY SALT (CENTRAL PROVINCES) BILL.

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee of the Bill for regulating the importation and manufacture of Alimentary Salt in the territories administered by the Chief Comisioner of the Central Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah)—The Hon'ble Messrs. Harington, Maine, Ellis and Bullen.

On the Bill to constitute an Office of Official Trustee—The Hon'ble Messrs. Harington, Maine, Ellis, Roberts Anderson, Brown and Bullen.

On the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy within the limits of Military Cantonments.—The Hon'ble the Lieutenant-Governor of Bengal, the Hon'ble Sir R. Napier, and the Hon'ble Messrs. Harington, Maine, Grey, Ellis, Roberts and Anderson.

The Council adjourned.

CALCUTTA,  
*The 24th February 1864.*

A. G. MACPHERSON,  
*Offg. Depy. Secy. to the Govt. of India,*  
*Home Dept.*