

Wednesday, February 3, 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 3rd February 1864.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honor 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 Sir C. E. Trevelyan, K. C. B.

The Hon'ble W. Grey.

The Hon'ble A. A. Roberts, C. B.

The Hon'ble H. L. Anderson.

The Hon'ble C. H. Brown.

The Hon'ble J. N. Bullen.

The Hon'ble Maharaja Vezaram Guzzepetty Raj Bahadoor, of Vizianagram

The Hon'ble Mr. Bullen, took the oath of Allegiance, and the oath that he would faithfully discharge the duties of his Office.

The Hon'ble Maharaja of Vizianagram made a solemn declaration of Allegiance, and that he would faithfully fulfil the duties of his Office.

EMIGRATION (CONSOLIDATION) BILL.

The Hon'ble MR. MAINE, in moving that the Bill to consolidate and amend the laws relating to the emigration of Native laborers should be referred to a Select Committee and report on in three weeks, said that the was one of the Bills which was introduced under the 19th Rule for the conduct of business, which rule empowered the Viceroy to give permission for a Bill to be brought in without the consent of the Council being first obtained. The rule was rather sharply criticised out of doors at the time of its promulgation, but Lord Elgin defended it, and experience had shown the advantages arising from it. It enable the framer of a Bill to bring his measure before the public, not only much earlier than would otherwise be possible, but at a time when public attention was not distracted by a multiplicity of legislative business; and for his own part he (Mr. Maine) gladly testified to its wisdom for he could not overrate the advantages of the criticism on the Bills bear-

ing his name, which had reached him not only from the Press, but also from numerous private persons. The subject of the Bill had been long under the consideration of the Government, and how urgently the consolidation of the Emigration Laws was needed would be seen by the Members of Council if they would look at the 2nd Section, which as the Bill stood was the repealing Section. They would find that the law relating to Native laborers had at present to be collected from 17 Acts, not to speak of Acts sanctioning French Treaties—which Acts the Council was not at liberty to repeal—and rules of general law which had an incidental bearing on the subject.

So far as the Bill was a consolidating Bill, there were only two points of which the Council should be specially invited to notice. One was that the previous legislation on the subject had been frequently modified as it proceeded, and that the present Bill embodied the latest and most improved stage of legislation. The second was that the Bill contained much that, though not found in any Act, was still old law. Through the exercise of the power given to the Governor General in Council to regulate the subsidiary parts of the machinery of emigration, a code of rules had been formed with regard to the Protectors of Emigrants which was as much permanent law as if it had proceeded from direct legislation, and these rules would be found in the Bill. Again, regarding the Bill as an amending Bill, there was no doubt that the law of India in relation to the emigration of Native laborers did require change, at least if he (Mr. Maine) might judge from the enormous mass of papers that had reached him when he first addressed himself to the subject—papers containing suggestions and complaints from the Secretary of State, from local Governments, from foreign Powers, and perhaps more than all from benevolent persons interested in the emigration of coolies. The Bill, founded on these communications, proposed a great variety of alterations in the existing law, but most of them were better fitted for discussion in Committee than in the full Council. However, there was one class of amendments to which he would invite attention, because the reforms which they carried with them amounted to a total change of system. Every one present had probably a general idea of the present mode [of recruiting laborers in India for foreign parts—they were collected over large areas of the country by recruiters who were paid a percentage at the expense of the Colony or foreign Power seeking to enlarge its labour market. They were then brought in bodies or gangs to the port of embarkation, which was always a Presidency town, and then came into play an elaborate system of checks and precautions, designed—and often successfully designed—to make provision for the emigrant's proper treatment during the voyage, to ascertain his state of health and to establish his full comprehension of the contract into which he had entered. The weak point of the system was the stage of recruiting at which the laborer came into contact with it. The coolie when he reached the sea-board was already committed—he was embarked

in the adventure—he had accomplished what was probably the most troublesome stage of the journey, and he was not likely to listen to advise or dissuasion at that time. It was moreover said that the Protector of Emigrants sometimes failed to make himself understood by the intending emigrants, swept together as they were from the multitudinous races of India, not so much from ignorance of their language as from ignorance of their habits; for he (Mr. Maine) had heard—though it was a point on which he could have no personal knowledge—that to make oneself comprehended by the ruder Natives of this country, it was sometimes quite as necessary to understand their usage of address as their tongue. At all events, it was obvious that the greater part of the complaints and suggestions which he had described applied to one or other of the consequences of this system. It was not easy to meet all the difficulties, but the task had been greatly facilitated by the preparation and enactment in the Council of his Hon'ble friend the Lieutenant Governor of a most carefully matured and thoroughly considered measure, relating to the recruitment of laborers for Assam and the tea districts. His (Mr. Maine's) Bill would follow closely the Bill of Bengal, with so much alteration as would effect its application to recruiting for foreign parts. The principle of it was simply the production by the recruiter of intending emigrants with as little delay as possible before the Magistrate of the district, who would interrogate them as to their comprehension of the engagement, and give them every information and advice. He imagined it might fairly be said that the Magistrate stood in a sort of patriarchal relation to the people. He would thoroughly understand their language and customs, and, more than most people, he would be able to detect false pretences on the part of the recruiter, and to discover whether any man intended to emigrate from a bad or an illegal motive as for instance the desertion of his family. If it was clear that the laborer wished to emigrate, the Magistrate would register him, and permit his removal to the sea-board; if, after so thorough an enquiry, the laborer still retained his intention of going over-sea, he (Mr. Maine) conceived that no Government on earth had a right to prevent him. One advantage of the new plan was that it enabled him (Mr. Maine) greatly to simplify the machinery which was under the superintendence of the Protector of Emigrants at the Presidency Towns: for, the free will of the laborer having been placed beyond doubt up-country, all that remained was to ascertain the state of his health and to make provision for his comfort during his passage to his destination. These last-mentioned points were regulated by many Sections of the Bill. There was only one other amendment to which he would call the attention of the Council. Section V, after reciting the places to which emigration was now lawful, provided that the Governor General in Executive Council might declare to what other places it should be legalized. The present rule is that emigration is unlawful by Statute; but this prohibition is systematically relaxed when any Colony or dependency of a

foreign Power establishes that it has made proper arrangements for the reception of coolies. It was now proposed that when this Bill had once placed emigration on a satisfactory footing, the Governor General in Executive Council should decide to what new places it should be permitted. He (Mr. Maine,) admitted that words ought to be inserted in Committee throwing a positive legal obligation on the Executive Government to see that places seeking to obtain Indian laborers prepared for their safety and comfort by proper laws and arrangements, but with that exception he thought there were urgent reasons for leaving the Section in its present form. First, there were technical reasons. According to the practice of the British Parliament, whenever a number of laws were consolidated into a single Statute, they were always so consolidated as not to leave room for further legislation: any discretion as to carrying out or extending the Act was invariably confided to Her Majesty, in Council and never reserved to the legislature. The Committees of the Privy Council, and in particular that great Committee known as the Board of Trade, might be said to exist for the purpose of putting into execution the various important consolidation Acts which had been passed of late years, and of gradually bringing fresh cases within their sphere of operation. The reason he thought obvious: legislation was not a good in itself, it was only a good as leading up to good Executive Government, and it seemed to him a miscarriage of legislative art to frame a Statute purporting and pretending to contain the whole law, which should yet contain a provision for future legislation. After citing various Acts, Mr. Maine instanced 16 and 17 Vic., C. 107 (the Customs Consolidation Act), which he said by Sections 324 and 325 empowered the Executive Government of England, on ascertaining certain facts as to the laws of foreign countries, to overturn, *pro tanto*, the very principle and basis of our commercial policy. This was an illustration something more than in point, because his (Mr. Maine's) provision only empowered the Executive Government of India to carry further, under restrictions, principles which the Indian legislature had sanctioned in twenty Statutes. But he should be sorry the Council should think he had merely technical reasons for framing the Section in this form. There were reasons of substance and most urgent reasons. The debate of last year on the St. Croix Bill showed that the whole Council was alive to one danger which threatened India. To the old and false belief that India was a country overflowing with wealth, had succeeded the new and equally false theory that it was a country teeming with men, and whenever benovolent Statesmen in Europe were shocked by a revival of Negro Slavery in any part of the world, it was obvious that their first thought was to replace the demand for Negroes by a draft on the population of this country. Now India lay outside the circle of European diplomacy, and let the Council suppose Her Majesty to be advised at some future time to agree to a Treaty containing laxer and looser stipulations than those of the Bill. It would become the duty of the Executive Government to submit a Bill carrying out the Treaty, to the

legislature—that was inevitable. What would that Council do? Insist on modifications of the Treaty? That was improbable. On the whole and in the long run, it would turn out to be under the influence of the same feelings which actuated the English Parliament, and produced in it so strong a repugnance to interfering with the personal acts of the Sovereign, that the instances where even Parliament had refused to carry out the obligations of a Treaty might almost be counted on one hand. He believed, therefore, that that Council would greatly strengthen the hands of the Executive if it enabled it to say to foreign Powers—“these are our conditions. If you wish to have Emigrants, you must have them on our terms. It is not a matter for legislation at all; this is the fixed law of India which is antecedent to, and presupposed in, every international engagement.” He did not suppose that though the Sections which remained were doubtless susceptible of considerable improvement in Committee, any Member of the Council would entertain objections to them of principle. He thought that the Bill would be found to be a fair compromise between the opposing sets of considerations which must make themselves felt by everybody who addressed himself to the subject of emigration. On the one hand, he could not conceive that any body would deny the right—what some persons would call the natural right—of every Native of India to go where he pleased for the sake of bettering his condition. Even if he thought that proposition disputable, he considered that the English in India were estopped from denying it. That we, who were thousands of miles from our home, who had come over half the world to embark our fortunes in India, should proceed to deny to the Natives of India the right to go where they pleased to procure better remuneration for their labour, would be conduct which the world at large would regard, to put it gently, as the most extraordinary of English eccentricities. But on the other hand nobody would really wish that the Natives of India should emigrate in large numbers, though he might not feel himself at liberty to refuse them the liberty of emigrating. We know how ignorant and helpless they are—how readily they are deceived, and how easily oppressed. And we might not unnaturally suspect that those who were intended to be the successors of the Negroes might come in for more of the inheritance than was quite desirable. Moreover, we know that in the existing state of India, there is, or soon will be, room enough and work enough for every pair of arms which the country contains. If the Bill erred at all, it erred in giving effect to these last-mentioned views; it erred on the side of stringency; but on the whole, considering the character of the Natives of those parts of India which were the theatre of recruiting operations, he did not think that it unduly shackled their liberty of action.

The motion was put and agreed to.

COURT OF SMALL CAUSES (KURRACHEE) BILL.

The Hon'ble Mr. ANDERSON, in moving for leave to introduce a Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee, said that the circumstances under which it became his duty to move for leave to introduce that Bill were as follows:—The Government of Bombay being fully satisfied with the success of the different Small Cause Courts established in that Presidency under Act XLII of 1860, resolved to establish a Court of the same description at Kurrachee in the Province of Sinde; they did accordingly establish a Court there in July 1861, but omitted to obtain the sanction of the Governor General of India in Council, which, according to the requisitions of the Act, they ought to have first obtained. This objection to the legality of the constitution of the Court was not discovered until after the Court had worked for some time. The Government of Bombay then applied to the Government of India for the required sanction to the constitution of the Court, and asked that the sanction might have a retrospective effect from the date on which the Court was first opened. The Government of India, however, while sanctioning the establishment of the Court replied that no sanction given then could have a retrospective effect, and that a legislative enactment was necessary in order to give validity to the proceedings of the Court before the date of sanction. Under these circumstances, the present Bill had been prepared with the one object of giving validity to every thing done by the Court from the time it was established up to the date of the sanction of the Governor General of India in Council.

The Motion was put and agreed to.

CIVIL PROCEDURE (SINDE) BILL.

The Hon'ble Mr. ANDERSON, in moving for leave to introduce a Bill to give validity to the extension of the Code of Civil Procedure to the Province of Sinde from the 1st day of January 1862, said that in this case an error had been committed by the Government of Bombay, with reference to the extension of the Civil Procedure Code to Sinde, precisely similar to that which had been committed by it with reference to the Small Cause Court of Kurrachee. If no restriction or modification had been made in the extension of the Code, the Government of Bombay might itself have legally introduced it into Sinde. But the Government of Bombay introduced it as from the 1st of January 1862, subject to certain restrictions and modifications, and such an extension required, under the provisions of Section 39 of Act XXIII of 1861, the previous sanction of the Governor General in Council. The Governor General in Council having lately given the required sanction to the extension of the Code to Sinde, the present Bill had been prepared merely in order to declare that that sanction should have the same effect as if it had been given before the 1st of January 1862.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS' BILL.

The Hon'ble Mr. ROBERTS postponed the introduction of the Bill to repeal the laws relating to the Offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazeo-ool-Cozaat and of Cazeo, and to abolish the former offices.

FRENCH BANK BILL.

The Hon'ble Mr. MAINE, in introducing the Bill to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company, and moving that it be referred to a Select Committee with instructions to report in three weeks, said that the Bill had been prepared in consequence of an application having been made to the Government of India for such an enactment as should give effect to a Treaty entered into between Her Majesty and the Emperor of the French, which contained the following Article: "1st.—The High contracting parties declare that they mutually grant to all Companies and other Associations, commercial, industrial, or financial, constituted and authorized in conformity with the laws, in force in either of the two countries, the power of exercising all their rights, and of appearing before the Tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other Power, subject to the sole condition of conforming to the laws of such dominions and possessions." The introduction of the Bill had been somewhat postponed, in order that it might be seen whether any measure for a somewhat similar purpose would be introduced into the British Parliament, as such a measure if introduced there would have been useful as a guide for legislation here. Meanwhile the Comptoir D'Escompte had established branches in this country, and found it essential, in order to conduct their business properly, that they should have a right to sue and be sued in the name of their Manager. To this right they were clearly entitled under the Treaty, and the Bill now introduced gave it to them fully, providing that they should have some one person who should be the Chief Manager of all the Bank's Agencies in India, and who should sue and be sued in behalf of the Bank. For the protection of those who had dealings with the Comptoir D'Escompte, the Bill provided that the Manager should from time to time file memorials containing certain particulars. Since the Bill was published, a petition had been received from the Bank, stating that there was no Chief Manager of the Agencies in India, and praying that each local Agent might sue and be sued in respect of the transactions of or connected with that Agency. But there were many conveniences in the way of having one Chief Manager, who alone was to sue and be used, and the difficulties created by the Government requiring that there should be such an Officer were scarcely more than nominal. Under the circumstances, it did not

appear too much to require that the Comptoir D'Escompte should appoint some one to be called Chief Manager of its Indian Agencies.

The Motion was put and agreed to.

POORWAH AND KHUDEE BILL.

The Hon'ble MR. HARRINGTON presented the Report of the Select Committee on the Bill to bring the Jagheers of Poorwah and Khuddee, in the District of Banda, under the operation of the General Regulations.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the administration of Civil and Criminal Justice at Aden.

WHIPPING BILL.

The Hon'ble MR. ROBERTS presented the Report of the Select Committee on the Bill to authorize the punishment of whipping in certain cases.

FOREIGNERS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give the Government certain power with respect to Foreigners.

The following Select Committees were named :—

On the Bill to consolidate and amend the Laws relating to the Emigration of Native laborers—The Hon'ble Sir R. Napier, and the Hon'ble Messrs. Harrington, Maine, Ellis, Roberts, Anderson, Brown, and Bullen.

On the Bill to enable the " Comptoir D' Escompte of Paris " to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company—the Hon'ble Messrs. Maine, Harrington, Ellis, Anderson, and Bullen.

The Council adjourned.

CALCUTTA :
The 3rd February 1864. }

A. G. MACPHERSON,
Offg. Dpy. Secy. to Govt. of India,
Home Dept.