

Friday, February 10, 1865

**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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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 under the  
provisions of the Act of Parliament 24 and 25 Vic., cap. 67.*

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The Council met at Government House on Friday, the 10th February 1865.

P R E S E N T:

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. Harrington.  
The Hon'ble H. Sumner Maine.  
The Hon'ble W. Grey.  
The Hon'ble H. L. Anderson.  
The Hon'ble J. N. Bullen.  
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.  
The Hon'ble Rájá Sáhib Dyál Bahádur.  
The Hon'ble G. Noble Taylor.  
The Hon'ble W. Muir.  
The Hon'ble R. N. Cust.  
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.  
The Hon'ble D. Cowie.

CIVIL AND CRIMINAL COURTS (PUNJAB) BILL.

The Hon'ble Mr. Cust introduced the Bill to define the jurisdiction of the Courts of Judicature in the Punjab and its Dependencies, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He stated that a copy of the Bill had been forwarded to the Punjab Government, and that any suggestion received would be carefully considered in Committee.

The Bill was simply declaratory of the existing machinery. As on the occasion of asking leave to introduce the Bill he had stated the object of the Bill, he would not on this occasion trespass further on the time of the Council.

The Motion was put and agreed to.

INSURANCE COMPANIES' LIMITED LIABILITY BILL.

The Hon'ble Mr. MAINE introduced the Bill to enable Insurance Companies to be formed on the principle of Limited Liability, and moved that it be referred to a Select Committee with instructions to report in four weeks. He

said that he had placed the next motion on the paper, not for the purpose of pressing it, but in order to say that the state and probable progress of business before the Council and its Committees could now be more clearly ascertained than was possible three weeks since, and, on a review of the business, he had come to the conclusion that it was doubtful whether this Bill could pass during the present sittings. He had come to that conclusion with some reluctance, as he could not himself discern a vestige of a reason why these gentlemen who had applied for the Bill should not be placed in this particular in the same position as any seven British subjects at home, and also because he could not help seeing that they had already in India the limited liability of Insurance Companies in a most questionable shape, the limited liability of companies trading on English register, six thousand miles from the Office of the Registrar of Joint Stock Companies, and therefore, according to his (Mr. Maine's) ideas, not presenting many of those securities which were essential to the proper application of the principle of limitation. Considering, however, that, in view of the discussions proceeding in Committee and impending in Council, the Bill could scarcely pass during the period for which the additional Members could reasonably be detained in Calcutta, Mr. Maine thought it would on the whole be more convenient to wait for the measure consolidating the whole law of Joint Stock Companies, which, as he had announced, was contemplated by the Legislative Department. When that measure passed into law, Mr. Maine trusted it would enunciate the general principle with the breadth with which it was enunciated in the English Statute of 1862, that "where any seven persons associated themselves for a lawful purpose, they might form a Company with limited liability."

There was one other point in which he wished to say a few words. He was told that it was supposed that he had announced to the Council a proposition to legalize at once and on his own responsibility commanditarian partnership. He was sure that no Member who was present could for a moment have thought that he spoke in that sense. What he said was that the debates in Parliament had produced a strong impression on his mind that the English Legislature was about to legalize that form of partnership which was called commanditarian partnership; and that the Bill submitted to the House of Commons had been postponed, not because there was serious opposition to it, but because the subject, being somewhat unfamiliar even to the mercantile world at home, required more discussion and ventilation out-of-doors. Mr. Maine had suggested that the same process of external discussion should be followed here, and he had assigned some reasons why this mixture of limited and unlimited liability was in his judgment even more suited to India than to England. Of course the mere legislation on a matter of this kind was the least

part of what was required to be done; indeed, the best thing to do would be virtually to transcribe the excellently drawn Bill which had been brought into the British Parliament. But the true question for consideration was the question of principle—whether it was desirable that sleeping partners with limited liability should be allowed to join acting and managing partners with unlimited liability on the condition that the former should register the amount of their advances, and carefully abstain from interfering with the conduct of the business. The general sense and experience of the commercial world ought to decide the point. As, therefore, the Committee, even if named, would probably merge in the Committee on the consolidating Bill, he requested His Excellency to consider the motion as withdrawn.

The Motion was withdrawn.

#### COMMON CARRIERS' BILL.

The Hon'ble Mr. MAINE also moved that the Report of the Select Committee on the Bill relating to the rights and liabilities of Common Carriers, be taken into consideration. He said that in this Bill, which he trusted would be a measure of some value to the mercantile and general community, and which certainly seemed to be required by the extension of the business of private carrying, the Select Committee had suggested only two alterations of any importance. The first was in Section 6. When the Bill was last before the Council, he had described the system of the bill, which was that of the English law, as follows:—

If the goods for conveyance consisted of any of the articles enumerated in the Schedule, that is, were unusually valuable or unusually perishable, such as gold, jewels, paintings, engravings, or title deeds, the customer, when committing them to the carrier, must give a special description of their character and value, otherwise the carrier would be relieved from liability. On the other hand, the carrier was allowed to charge an additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable nor unusually destructible, the carrier would not be allowed to acquit himself of his obligations merely by putting up a table or board.

Mr. Justice Levinge, however, had called the attention of the Select Committee to an evasion of the rule which was not uncommon in England, and had suggested that the carrier might perhaps cause the coolie who brought the article for carriage to sign or put his mark to some paper, and that would constitute a special contract. Mr. Justice Levinge had, therefore, sug-

gested, and the Select Committee had accepted the suggestion, that, when a special contract limiting the liability of the carrier was signed, the agent signing should be always an agent expressly authorized to bind the customer.

The other amendment was in Section 9, and was not absolutely required, but was adopted for the sake of clearness. It provided that, when a customer was suing a common carrier, the customer should only be bound to prove a contract or delivery, and the non-delivery of the goods at their destination, and then it would be for the carrier to prove that the loss or damage took place under such circumstances as would relieve the carrier from responsibility.

The only other alterations were the insertion of a few words in the Preamble to exclude the Government from the operation of the Bill, and the addition of a Section saving the provisions of the ninth, tenth and eleventh Sections of Act No. XVIII of 1854 (*relating to Railways in India*).

He begged to move that the report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

The Hon'ble RÁJÁ SAHÍB DYÁL BAHÁDUR proposed the addition of the following words to the third Section : " and the carrier or his Agent shall thereupon himself personally have such property examined ; or if that be impossible, shall have it inspected and the seal affixed to the box or parcel in which such property is contained, and shall on delivery thereof show such seal to be intact."

The custom now prevailing in the country was that jewels and similar valuable property were either shown to the insurer when delivered over to him, and by him when he delivered them over in his turn, or that the seal was affixed to the box in which such valuables were contained, was pointed out to him, and was by him shown to the party receiving delivery from him to be intact. For instance, shawls and such valuable cloths were either packed in the presence of the insurer, or, if given over to him already packed, were sealed, in which case, the Rájá said, the seal's remaining intact absolved the insurer from responsibility.

The Hon'ble MR. MAINE thought that the Hon'ble Member had overlooked the fact that the particular Section referred to was one protecting the carrier, and enabling him to compensate himself for increased risk by an enhanced rate of charge. A fraudulent declaration of value under the Section by the consignor would in no way bind the carrier.

The Hon'ble the MAHARÁJA OF VIZIANAGRAM moved as an amendment that the words "Cloths and tissues embroidered with the precious metals or of

which such metals formed part" and "Articles of ivory, ebony or sandal-wood" should be added to the Schedule.

The amendment was agreed to.

The Hon'ble Mr. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### GOVERNMENT FORESTS' BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill to give effect to Rules for the management and preservation of Government Forests.

#### CIVIL JUSTICE BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill for the improvement of the Administration of Civil Justice in respect of Suits of small value.

#### REGISTRATION ACT AMENDMENT BILL.

The Hon'ble Mr. TAYLOR, in moving for leave to introduce a Bill to amend Act XVI of 1864 (to provide for the Registration of Assurances), said that only two amendments on the present law were proposed. The first had reference to Section 40 of the Act, which provided that an abstract of every original instrument affecting immoveable property registered in the Office of the Deputy Registrar, should be sent in duplicate to the District Registrar. This Section of the Act as it now stood was so far defective that, while it prescribed the course to be followed by the District Registrar in respect of one of the duplicate abstracts sent to him, it omitted to say what he was to do with the other. A Section of the Draft Bill supplied this omission. But the main object of the Bill was to provide for the appointment of a Deputy Registrar General to perform the duties of the Registrar General during his absence on duty from the place where the General Registry Office was established. This provision was required to enable the Registrar General to leave his head-quarters and occasionally visit the Offices in the Mofussil, without causing inconvenience to that section of the public who might prefer to register in the General Office rather than in the Office of the District Registrar.

The obvious benefit that would result from the personal visits of the Chief of the Department to his subordinates in the interior could not be better described than in the words of the Registrar General himself, who, after the experience he had already gained of the working of the Act, wrote, "I am convinced, from

seeing the Offices near Calcutta, that an hour's talk with the registering Officer does more good in correcting errors that might otherwise become inveterate, and explaining some of the difficult points of the system, than can be done by any amount of correspondence."

This desirable object would be attained if the Draft Bill became law.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to define the jurisdiction of the Courts of Judicature in the Punjab and its Dependencies—The Hon'ble Messrs. Harington, Maine, Muir, and Cust.

The Council then adjourned.

WHITLEY STOKES,

*Offg. Asst. Secy. to the Govt. of India,  
Home Dept. (Legislative).*  
CALCUTTA, }  
*The 10th February 1861.* }