

Friday, February 2, 1866

**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.*

The Council met at Government House on Friday, the 2nd February 1860.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble Colonel H. M. Durand, c.n.

The Hon'ble Mahārājā Vijayarūna Gajapati Rāj Bahādur of Vizianagram

The Hon'ble Rājā Sāhib Dyāl Bahādur.

The Hon'ble W. Muir.

The Hon'ble Mahārājā Dhīraj Mahtab Chand Bahādur, Mahārājā of Burdwan.

The Hon'ble D. Cowie.

The Hon'ble Stewart St. John Gordon.

The Hon'ble George Ross.

The Hon'ble Mr. Ross took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

ASSAM COMPANY'S BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company), said that the necessity for passing this Bill, which he hoped the Council would regard simply as a formal matter, had been imposed on them by the British Parliament. The Assam Tea Company was originally incorporated by an Act of the Indian Legislature, Act IV of 1855. But in the last Session of Parliament, in consequence, as Mr. Maine supposed, of the shares of the Company being now largely held in England, the Company applied to the English Parliament for an Act of incorporation, which contained this Clause:—

“This Act shall commence and have effect on and after the expiration of two months next after the day of the passing by the Legislative Council of the Governor-General of India of an Act repealing the Society's Act.”

He did not suppose that the Council would have any objection to repeal the old Act, which was now quite useless. But the meaning of the Clause in the Act of Parliament was rather ambiguous. Mr. Maine thought it could hardly have been meant that the Company was to be left for two months without any organization, and he imagined he would best carry out the intention of Parliament by repealing the existing Act, but declaring that the incorporation, powers, rights and liabilities of the Company should continue for a period of two months after the passing of this Act as if the repealing Act had not been passed.

The Motion was put and agreed to.

#### OUDE LIMITATION BILL.

The Hon'ble MR. MUIR, in moving for leave to introduce a Bill to exempt certain suits in Oude from the operation of the rules of limitation in force in that Province, said that he would state briefly the necessity for the Bill, and the nature of the rules it was proposed to enact.

The rules for limitation now in force in the Revenue Courts of Oude, were the same as those in force in the Presidency of Bengal at the time the Province was annexed. In other words, it was the old Regulation Law, under which, in ordinary suits for land, the limitation was twelve years; under certain circumstances of fraud and force, the limitation was sixty years; and for suits to redeem land in possession of the mortgagee, there was no limit whatever.

The first part of the Bill related to ordinary suits for land. In these, as before explained, the existing limitation was twelve years from the date of institution of the suit. But, referring to the events which had of late occurred in Oude, he would show that the period of twelve years from the date of institution was of an entirely exceptional character, and was daily becoming more so. For a suit instituted in the present year, twelve years would take us back to 1854, that is, nearly to the close of the Native administration. In 1856, on our annexation of the Province, a summary settlement was made with the village zemindars; then followed 1857 and 1858 when possession was rudely disturbed by rebellion and anarchy; and on our re-assumption of the Province, a summary settlement was, in 1858, made on principles widely different from the previous settlement of 1856. Claimants disputing the title of persons admitted to the last summary settlement, have ordinarily been referred to the regular settlement which is now in progress.

Such being the exceptional character of the last thirteen years, it was proposed to make the period of limitation count back twelve years from the annex-

ation of the Province, that was, it would run back to the 13th February 1844. No suit would be barred on the plea of limitation if the cause of action arose subsequent to that date. This was the same limitation as that provided in Act XVI of 1805 for claims relating to sub-tenures; and there was an advantage in having the rule uniform.

The second change proposed to be made in the law related to the redemption of mortgages. As the law now stood, there was, as he had before stated, absolutely no limitation, whatever period might have elapsed since the mortgage was executed, however long the mortgagee might have been in possession, or whatever changes might have occurred in the meantime. Mr. Wingfield had long ago pointed out that this state of the law was entirely inapplicable to Oude, where the frequent change of possession, and the insecurity of property, and the confusion of the times, rendered it difficult to prove any mortgage that was not of recent date. The Chief Commissioner had accordingly, in 1860, reduced the period of limitation to twelve years; but his circular order to that effect not having been confirmed by the Supreme Government at the time of the passing of the Councils' Act, was now found to possess no force of law.

Under these circumstances it had been deemed expedient to apply the same limitation to suits for redemption of mortgage as had been proposed for ordinary suits; and the Bill would accordingly provide that no suit would lie for redemption of any mortgage executed before the 13th February 1844. Thus the term of limitation would be uniform in all suits in the Revenue Courts relating to land, which he thought would be admitted to be a suitable arrangement.

Before the Bill was introduced, it would be forwarded to the Chief Commissioner in order that the Council might have the benefit of his opinion on its provisions.

The Motion was put and agreed to.

#### EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE moved that the Select Committee on the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil) be reconstituted. He said that the notice of motion hardly gave a proper idea of what the Bill was. It really was a Bill to enable the execution of the process of the Courts of Burmah to be effected in the Straits' Settlement. It was an old Bill, originally introduced by the Hon'ble Mr. Forbes. It had lain over like many other Bills relating to the Straits' Settle-

ment, because the disannexation of the Settlement seemed to be close at hand. The Government of the Settlement now wished the Bill to be passed. At present, no Member of the Council of the Governor-General, except himself, was on the Committee, and it was therefore necessary to reconstitute it.

The Motion was put and agreed to.

#### SUNDRY BILLS.

The Hon'ble Mr. MAINE also moved that the Hon'ble Mr. Ross be added to the Select Committees on the following Bills:—

For consolidating and amending the laws relating to the Procedure of the Courts of Civil Judicature in British India.

For the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office.

To amend Act No. XVIII of 1854 (relating to Railways in India).

To amend the law of Partnership in India.

For the incorporation, regulation, and winding up of Trading Companies and other Associations.

To provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial law of British India.

With regard to the first of these Committees, Mr. MAINE observed that it was a Committee on Mr. Harington's amended Code of Civil Procedure. The Committee had already presented its Report. But the Secretary of State had requested that the Council should not proceed further with the Bill until he and the Members of the Indian Law Commission should have had time fully to consider the proposed measure.

The Hon'ble Mr. GREY said that he would take the opportunity of this motion to mention that it was improbable that the Select Committee on the Post Office Bill would be in a position to submit their report within the period mentioned in the order directing the reference of the Bill to the Committee. The reason was that the Governor-General had considered it desirable to call for information on a point which had been raised since the publication of the Bill. He referred to the proposal emanating originally from the Trades' Association, to reduce by one-half the postage on all letters exceeding a quarter tolah in weight. There was no doubt that such a measure would involve a considerable immediate loss of revenue, and therefore the question necessarily arose whether the measure

was one which, in the general interests of the people of India, the Government ought to adopt, notwithstanding the immediate loss of revenue which it entailed. This question turned mainly on the point whether the measure would be likely to lead to considerable extension of correspondence, and thus, to the great benefit of the people, enlarge the area of postal usefulness. The Director General of the Post Office, an Officer of very great experience, was of opinion that the measure would not have such an effect, because he held—and no doubt as a general proposition rightly held—that the extension of correspondence depended mainly on the minimum rate of charge for which a letter could be carried from one place to another.

He might mention too that the Post Office Commissioners, on whose elaborate report the present postal system was established, had expressed a clear opinion that the quarter tola unit of weight, which was originally adopted, he might observe, as far back as 1839, was quite sufficient to meet the wants of the Native public. It was, however, now stated in some quarters that this low unit of weight did practically affect the extent of Native correspondence, because (it was said) there was no means out of large towns of obtaining the description of paper which was rendered necessary by that unit. This was a statement which merited the most careful consideration and enquiry, and His Excellency had accordingly directed that information on the point should be collected.

As the general provisions of the Bill were not of an urgent character (the main object of the Bill which was prepared by the head of the Post Office Department having been, he might remark, simply to re-enact the existing law, adapting its provisions to the circumstances of the present time with some re-arrangement of details, and with the addition of one or two provisions which the Director General considered it desirable to introduce for the better practical working of the Department and for the greater security of the public), it might perhaps be as well that the Bill should lie over until a decision could be come to on the really important point that had been raised since the Bill was placed before the public.

Mr. GREY added that the Government was also in correspondence with the Director General of the Post Office regarding certain proposals made by that Officer affecting the rates of postage and the scales of weight for newspapers, books and parcels.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil)—The Hon'ble Colonel Durand, the Hon'ble Messrs. Muir and Gordon and the Mover.

The Council adjourned till the 9th February.

WHITLEY STOKES,

*Asst. Secy. to the Govt. of India,  
Home Dept. (Legislative.)*

CALCUTTA,

*The 2nd February 1886.*

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