

Wednesday, June 26, 1867

**COUNCIL OF 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 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 26th June 1867.

P R E S E N T :

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

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble H. Sumner Maine.

The Hon'ble G. Noble Taylor.

The Right Hon'ble W. N. Massey.

The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble Sir George Yule, C. B., K. C. S. I.

The Hon'ble John Strachey.

RAILWAY SERVANTS' BILL.

The Hon'ble MR. TAYLOR moved that the Report of the Select Committee on the Bill to render penal certain offences committed by Railway servants be taken into consideration. He said that the Committee had made only one alteration in the Bill. Section 161 of the Indian Penal Code, within the meaning of which Railway officials were to be deemed public servants, defined "legal remuneration" to include all remuneration which a public servant was permitted to accept by the Government he served. Now as it could not be strictly said that Railway officials served the Government (for their salaries were fixed and paid by the Company), it became necessary to extend the definition so as to make the word "Government," for the purposes of the proposed Act, include a Railway Company. This the Committee had done by introducing a short Section, and, with this addition, he hoped and believed that if the Bill became law, it would attain the object for which it had been framed.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the Bill be passed.

The Hon'ble MR. MAINE said, that he thought the Council would regard his Hon'ble friend's Bill as one of those which might be passed at a meeting like the present. It was a simple, but at the same time an urgent, matter.

The Bill had originally formed one Section of the large measure for consolidating and amending the law relating to Indian Railways. That Bill had been nearly three years before the legislature, the delay having been occasioned by the precautions taken by the Committee in referring the Bill and Report to the several Railway Boards in England, through the Secretary of State. The opinions of the Boards had only been received just before the last regular legislative sittings ended, and it was found that, though there was difference of opinion on several points, there was none on the policy of this particular Section. It was no doubt a pity to dismember a consolidation measure; but it was urgently necessary that the malpractices, against which the Bill was directed and which disturbed the trade of the whole country, should be suppressed. The great current of goods traffic down the Railways would begin to flow in September and October, and it was most desirable that, before it commenced, Railway servants should have ample notice of the new position in which they were placed.

MR. MAINE desired, not for the information of the Council, but for the purpose of correcting or preventing misapprehensions which might exist elsewhere, to add a few words as to the reasons for passing urgent measures at meetings like the present. All his Hon'ble colleagues well knew that it was simply impossible to keep the Council for making Laws and Regulations together at any one place whatsoever in India for more than a few months. The organization given to the Council by the Indian Councils' Act, and the instructions simultaneously issued by Her Majesty's Government, which were binding on the Government of India, rendered this result inevitable. It was a consequence, not solely of the fact that the Native non-official members could not be kept from their homes for more than a limited time, nor again solely of the converse fact that the European non-official members could not practically attend at places which Native chiefs and gentlemen of rank visited with less reluctance than they did Calcutta—it was a consequence chiefly of the fundamental rule which distinguished the present legislature from the former Legislative Council, the rule that the official additional members, who naturally bore most of the burden of legislative work, should not be persons appointed and salaried to do nothing but legislate, but should continue to make their ordinary executive or judicial functions their principal occupation. It was doubtless with a view to the consequences of the fundamental distinction which it was intended to create that the Indian Councils' Act for the first time conferred on the Governor General a new power of legislating in emergent cases by Ordinance, without the advice of any Council—executive or legislative. But MR. MAINE apprehended that when a quorum (though even a

bare quorum) of the Council could be obtained, the Governor General would often prefer, and that His Excellency personally preferred, submitting to it urgent legislative measures, on account of the greater opportunities of discussion and of explaining the grounds of action which were afforded by a meeting at which even a limited number of members were present. Apart, however, from emergent measures which were submitted to the Council as an alternative selected by the Governor-General in preference to legislation by Ordinance, MR. MAINE considered (and he felt sure the whole Council would agree with him) that it would be very wrong to proceed, at meetings at which it was difficult or impossible for most of the additional members to be present, with any business of importance or on which material difference of opinion might arise. There were two classes of measures only (independently of urgent measures) which MR. MAINE considered legitimately submitted to the Council when it was not full. These were trifling measures, of course and of routine, and measures on which every body entitled to speak with authority had spoken. Measures of this last description constituted a not inconsiderable part of the Council's business, and they were always passed by the Council, even when full, more on the responsibility of the authorities recommending them than on that of the Council itself. Certainly, at the present sittings, the Legislative Department had no intention of asking the Council to consider any measure which did not belong to the classes specified.

The Hon'ble MR. TAYLOR expressed his concurrence in Mr. Maine's observations, and said that this Bill came within the second category of measures mentioned by his Hon'ble and learned friend.

The Motion was put and agreed to.

CHIEF COMMISSIONERS' POWERS BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to enable the Governor General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council. He said that the necessity for this Bill arose from the technical distinction between Lieutenant Governorships and Chief Commissionerships. A Lieutenant Governor was the Local Government, but theoretically the Governor General in Council, and not the Chief Commissioner, was the Local Government of the territories forming a Chief Commissionership. Several Acts of the Legislative Council had, from time to time, conferred powers on the Local Governments *eo nomine*. These powers might just as well be exercisable by a Chief Commissioner in respect of the territories under his administration as by the Governor General in Council; and the enabling

the Governor General in Council to delegate these powers to Chief Commissioners would not only relieve those officers from making numerous references, but would also do away with much work now needlessly performed by the Supreme Government. The Bill, if it became law, would also enable the Council in future to shorten their enactments by omitting the clause which was now usually inserted providing that the term "Local Government" should be deemed to include a Chief Commissioner.

The Motion was put and agreed to.

SALTPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of salt educed in the refinement thereof). He said that this Bill came within the first of the categories mentioned by his Hon'ble friend (Mr. Maine). It was one of comparatively small importance. It proposed merely to rectify an obvious oversight in the drafting of Section 6 of the Saltpetre Act. That Section provided, that any offender against the Act should be liable "to a fine of rupees 500, and on non-payment thereof to imprisonment." On this the High Court at Agra had ruled—with perfect propriety, if he, MR. MASSEY, might say so—that the convicting Magistrate could not impose a less penalty under that Section. This limitation of the Magistrate's power was obviously inexpedient, as cases might easily be imagined in which such a fine would be out of all proportion to the magnitude of the offence. The Bill, therefore, proposed to make the fine a maximum only, and this it did by simply substituting the words "fine not exceeding rupees 500," for "fine of rupees 500." The Bill, he might observe, had been framed at the desire of the Lieutenant Governor of the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till the 3rd July 1867.

SIMLA,
The 26th June 1867. }

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).