

Friday, February 23, 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 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd February 1866.

PRESENT :

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

The Hon'ble H. Summer Maine.

The Hon'ble W. Grey

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

The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyal Bahadur.

The Hon'ble W. Muir.

The Hon'ble Mahárájá Dh'raj Mahtab Chand Bahádur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

The Hon'ble Stewart St. John Gordon.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE BILL.

The Hon'ble MR. MAINE moved that the report of the Select Committee on the Bill to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India be taken into consideration. He said that the amendments which the Select Committee proposed to introduce in the Bill were, he hoped, of some value, and one was of some importance. The first change which the Select Committee proposed was the substitution in Section 3 of "seven days" for "twelve days." Twelve days was the time mentioned in the English Act. But it had been observed to the Select Committee that the minimum time within which a decree might be obtained under the Code of Civil Procedure was eight days. Now, no doubt a plaintiff in a suit upon a Bill of Exchange did not always obtain his decree in the minimum time. Indeed in some simple cases, as Mr. MAINE had explained on a former occasion, he was often inordinately delayed. But still there was some anomaly in having a shorter period named for the summary than for the ordinary procedure. Further it was inexpedient to give the plaintiff any temptation to prefer the ordinary to the summary procedure, because he might thereby inflict on the defendant unnecessary costs. The Committee thought that the justice of the case would be met by substituting "seven days" for "twelve days."

In the same Section, Mr. MAINE proposed, with His Excellency's leave, in accordance with a suggestion of the British Indian Association, to move the substitution in line 1 of the word "shall" for "may." So long as the procedure was confined to the High Court, he had no objection to give a discretion to the Judges. But by the Section which followed (Section 8), the Local Government was empowered to extend the procedure to the Mofussil Courts, and in the case, of those Courts it would, on the whole, perhaps, be better that the direction should be imperative. The British Indian Association had in fact expressed doubts whether the summary procedure should be extended at all to the Mofussil. MR. MAINE agreed in this to the extent of thinking that the Local Government should exercise great caution in extending the procedure, and should be satisfied that the duty of superintending and carrying it out was lodged with Officers capable of exercising the powers confided to them.

With regard to the whole of these Sections providing a summary procedure the Bombay Chamber of Commerce had represented, in a petition which had been received after the Select Committee had closed its sittings, that not only should the decree be expedite but that execution of the decree should be summary also. Now the Bombay Chamber had so greatly assisted the Government by its intelligent discussion of the Bills submitted to it that he would be most willing to comply with its wishes, but he really believed that was impossible to do so. The state of the case was that, under the ordinary Common-Law procedure in England, it might be that a considerable interval elapsed between judgment and execution; and therefore there was good reason in England for rendering the procedure on Bills of Exchange more summary. It appeared, however, that the improved procedure at home and the procedure of the Code in India with respect to execution were exactly identical. In both cases execution might be had at once. The real grievances of the Bombay Chamber, as appeared from the sequel of their petition, were not of a kind to be remedied by any legislation. The Chamber complained in fact of delays in the Registrar's and Taxing Master's Offices. As respects most of the matters complained of, it was for the Local Government or the High Court to afford relief. But MR. MAINE would observe that in respect of the taxation of costs, the costs under the new procedure would generally be fixed costs, and in the very few cases in which they would be taxed, it was competent for the plaintiff under a later Act (XX of 1862) to at once ask for execution of the decree on the sum awarded to him before the costs were ascertained by taxation, and to postpone to a later period execution as to costs. On the whole, MR. MAINE did not think it possible to introduce any new Section, Section 11 which provided that the acceptance of a Bill, whether inland, or foreign should be in writing, had been a good deal considered by the Select Committee,

who thought that it should remain as it stood. Mr. MAINE had explained to the Council that, as regarded inland Bills, it stated what had been the law of England for a century, while as regarded foreign Bills, it agreed with what had been the English law for the last six or seven years. The Section would not interfere with Native usages. The Committee had had the benefit of Rájá Shahib Dyal's assistance, and had ascertained from him that the Native usage was to accept hundís in writing, unless in cases where they were drawn after date.

Section 13 put all inland Bills on a level with foreign Bills, and would, if adopted, give a legislative sanction to the present custom of merchants in India. It provided that protest of a Bill of Exchange, whether inland or foreign, when purporting to be made by a Notary Public, should be *primâ facie* evidence that the Bill had been dishonoured.

As regarded Section 14, which gave power to sue on lost negotiable instruments, Mr. MAINE could not add anything to what the Select Committee had observed with reference to the question whether the silence of the existing Code of Civil Procedure, which merely provided that when a suit was founded on a document, such document should be produced in Court when the plaint was presented, took away the general power of Indian Courts, which were at once Courts of Law and Equity, to grant relief upon a lost instrument on proper indemnity being given by the plaintiff against the claims of any other person on the instrument. Mr. MAINE agreed in the decision at which the Select Committee had arrived, that for the present, and until the whole matter was made clear by the amended Code of Civil Procedure, all doubt in the case of documents so important as Bills of Exchange and Promissory Notes should be removed by the retention of Section 14.

A very important change which the Committee had made was as regarded Section 15, which provided that "every assignee, by endorsement or otherwise, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself." At the discussion which occurred in Council when the Bill was referred to a Select Committee, Mr. Bullen had expressed a wish that the principle of the Bills of Lading Act (No. IX of 1856) should be extended to policies of assurance, and the Council had since had a communication from the Calcutta Chamber of Commerce expressing the same desire. The anomaly to be remedied was this. If a Bill of Lading were endorsed, the endorsee, to whom the property in the goods therein mentioned passed, had transferred to and vested in him all rights of suit in

respect of the goods, as if the contract contained in the Bill of Lading had been made with himself. But if the same goods were insured, and the policy of insurance had been endorsed over to him, the assignee of the goods could only sue in the name of the person insured, or the agent or insurance broker who nominally effected the insurance. So in the case of fire policies, the right and property in the goods might have passed to the vendee; but, under the present state of the law, if the goods had been insured and the policy assigned over to him, he could only sue in the name of the person effecting the insurance.

It had been objected that if the Indian Courts, which were at once Courts of Law and Equity, were to do their duty, they would put an end to those anomalies and subtleties which now prevailed. But so far as MR. MAINE could see, they had not as yet done anything towards this object. The Committee had not included life-policies, because there might be circumstances which would render it dangerous to allow assignees of such policies to sue in their own names.

He had only one further remark to make. All bodies to which the Bill had been referred—the Chamber of Commerce, the Landholder's and Commercial Association, and the British Indian Association while reserving those few points to which MR. MAINE had referred, had expressed their strong approval of the Bill, and their wish that it should be passed without delay.

The motion was put and agreed to.

The Hon'ble MR. MAINE then, with the permission of His Excellency the President, moved the substitution in line 1 of Section 3, of the word "shall" for the word "may".

The motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended by the Select Committee, with the substitution just accepted by the Council, be passed.

The motion was put and agreed to.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.

EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to extend Act No. 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).

CRIMINAL PROCEDURE ACT AMENDMENT BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to amend Act No. XXV of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter).

The Council adjourned till the 2nd March.

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

CALCUTTA ;
The 23rd February, 1866. }