

Friday, January 25, 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 Government House on Friday, the 25th January, 1867.

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 G. Noble Taylor.

The Right Hon'ble W. N. Massey.

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

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

The Hon'ble H. B. Riddell.

The Hon'ble J. E. L. Brandreth.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble C. P. Hobhouse.

The Hon'ble J. Skinner.

The Hon'ble D. Cowie.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that the tax had been levied under one form or another for many generations in the Districts of the Nagpore country. When he moved for leave to introduce the Bill, he proposed, if the Council should have no objection, that the Bill should be passed through its ulterior stages on the present occasion. But subsequently, on advising with His Excellency the Viceroy and other Members of the Council, it seemed to him that the Bill might be materially improved by being subjected to detailed examination at the hands of a Select Committee. It might, for instance, be worthy of consideration whether the

assessment should not be more strictly defined, and whether Europeans should not be included within the operation of the proposed measure. But that point with others would be more carefully considered in Committee. He therefore proposed to withdraw that part of his motion which referred to the passage of the Bill at once, and to substitute the regular course of moving that the Bill be referred to a Select Committee with instructions to report in a fortnight.

The Motion was put and agreed to.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for the more effectual punishment of persons resisting lawful apprehension and for other purposes.

INDIAN PENAL CODE EXTENSION (STRAITS SETTLEMENT) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to extend the Indian Penal Code to the Straits' Settlement.

ALTERATION OF DISTRICTS (PANJÁB) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to empower the Lieutenant Governor of the Panjab to create new and to alter the limits of existing districts in the territories under his government.

REMOVAL OF PRISONERS' BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to make further provision for the removal of prisoners be taken into consideration. He said that on this Bill the Select Committee had no observations to offer. In point of fact the Bill was solely composed of old material, although in form that material had undergone some alteration. The first Section proposed to authorize the Local Government to remove any European prisoner from the jail in which he might be confined to any other jail under the same Government. As the law stood, such removal could only be effected by permission of the Governor General in Council, a requirement which had been found to cause injurious delays; The second Section authorized the Local Governments to remove to asylums criminal lunatics sentenced by the High Courts; a power which had been lost by the repeal of Act IV of 1849. The Section was almost literally copied from Section 396 of the Code of Criminal Procedure. The third Section of the Bill empowered the

Governor General in Council to remove any prisoners, whether European, American or Native, from the jail in which they were confined to any other jail in British India. This was a mere extension of the power which he possessed at present, of removing State prisoners and Europeans and Americans sentenced to penal servitude, and which in the case of the latter class of offenders was occasionally exercised for the purpose of removing them from Bengal to the jail established on the Nilgiri Hills.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PUBLIC GAMBLING BILL.

The Hon'ble MR. RIDDELL moved that the Report of the Select Committee on the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Panjab, Cudh, the Central Provinces, and British Burmah, be taken into consideration. He said that the alterations which the Committee had made were detailed in the report which had been laid before the Council on Friday week. As the Bill was originally drafted, its provisions were confined to towns containing not less than five thousand inhabitants. Had this restriction been maintained, the Act would have been inoperative in many places to which it was of importance that it should extend. Where a large proportion of the population consisted of domestic servants—such as Nynce Tal, Murree, and La'houses, where it was doubtful whether the number of inhabitants amounted to five thousand, but where there could be no doubt that gaming-houses should, if possible, be suppressed—the limitation was not recommended by any local authority. The Committee had amended the Bill by striking out the restrictive words, and by authorizing the Local Governments to extend the Act by public notification to any city, town or suburb, and also to any Railway station or place within three miles of a Railway station. The necessity for this latter provision was shown in the discussion which took place when the Bombay Act for the suppression of gambling was passed, and it was included in that Act.

The person who might be authorized to enter a gaming-house would, under Section 5, be an Officer of Police not below such rank as the Local Government might appoint. In the Bill as referred to the Committee, the words "below the

rank of Inspector " were used, but as the denominations of Police Officers varied in the different territories to which the Bill extended, it had been thought advisable to authorize the Local Governments to declare by what rank of Police Officers warrants issued under the Act should be executed.

Sections 7, 10 and 15 had been added by the Committee. The two first were taken from the Act of Parliament 17 & 18 Vic., cap. 38. Section 7 imposed a penalty on persons found in a gaming-house who might give false names or addresses. Section 10 authorized a Magistrate to require any person found in a gaming-house to give evidence, and declared that no person so required to be examined should be excused from answering, on the ground that his evidence might criminate himself. By a subsequent Section, such a witness was protected from prosecution under the Act if he made true and faithful discovery, to the best of his knowledge and belief, of all things as to which he should be examined. The complete success which attended the passing of the Act of Parliament from which these Sections were taken, was, he (MR. RIDDELL) believed, mainly due to their provisions. He could not hope that they would be equally successful in India, but they certainly would materially aid and strengthen the power of the law, without opening a door to Police corruption and oppression.

Section 15 provided that an offence under Sections 3 and 4, if committed more than once, should be liable to enhanced punishment within the limits of the proviso.

The Bill did not do what, he believed, was desired by every Hindú or Muhammadan of respectability in India. It did not restore the former law, under which gambling was an offence, but it would, he hoped and believed, have a beneficial effect in checking and punishing the practices of those who made a trade of gambling, and he therefore commended it to the Council.

The Hon'ble MR. MAINE said he had only one remark to make on the Bill, of which he entirely approved. He had received a paper signed by four or five Native gentlemen and one European gentleman in Lucknow, which could hardly be called a legislative paper (for it took the form of a private letter addressed to himself), but which he had read to the Select Committee. The writers strongly approved of the Bill as a whole, but objected to its supposed application to cock-fighting, and suggested that cock-fighting should be placed on the same footing as horse-racing was placed upon by another Bill before the Council. MR. MAINE was not sure that he could accept the proposition with which these gentlemen started, that there was no difference in principle between cock-fighting and

horse-racing, for he understood that, to the animal principally concerned and interested, there was considerable difference, inasmuch as MR. MAINE was told that the cock was invariably killed. But what he wished to point out (and this was his reason for mentioning the letter) was that the writers were under a complete misapprehension. His Hon'ble friend's Bill was in the main a Bill to put down common gambling-houses kept for profit. The only part of the measure which applied to cock or quail-fighting was the 13th Section, which prohibited such sports in a public street or thoroughfare. Cock-fighting in a private house or ground would remain on the same legal footing as it stood before the passing of the Bill ; and the law on the subject was considerably less stringent in India than in England. The provision of the Bill was in short a simple measure of police. Whatever might be MR. MAINE's opinion of cock-fighting, he thought that, in the present state of the country and people, it would be premature for the legislature to attempt to put it down so long as it was confined to private houses. MR. MAINE believed that it had been the intention of His Highness the Nawab of Rampur to address to the Council some observations on the Bill. The Nawab was, however, indisposed, and MR. MAINE referred to His Highness' intention for the purpose of suggesting that the Secretary should read to the Council the manuscript which had been received.

The Secretary then read a paper to the effect following :—

His HIGHNESS the NAWAB of RAMPUR “had carefully perused the Bill and gave it his unreserved support. The advantages it would bestow on the community were many and important ; but as he wished to be as brief as possible, and their enumeration would take up much time, he would only remark that last year he had abolished gambling in the territory of Rampur with the most beneficial results, theft and crime generally having since sensibly diminished ; this was well known to the authorities in Rohilkand, and they highly approved of the action taken by him. Finally, he would beg to observe that the proposed measure showed how careful was the present head of the Government of the best interests and welfare of the people.”

The Hon'ble MR. BRANDRETH said that the principal amendment which had been made in the Bill was, as stated by the Hon'ble Mr. Riddell, that by which the clause restricting the application of the Bill to towns containing more than 5,000 inhabitants was struck out. As a member of the Select Committee, he agreed in the amendment so far as it went, though he would have wished that it had been carried further. By Section 2, the Lieutenant Governor or the Chief

Commissioner, as the case might be, was authorized to extend the provisions of the Act to any city, town, suburb, or railway station-house. He (MR. BRANDRETH) did not see why the Lieutenant Governor was restricted to cities, towns, suburbs, and station-houses. Why should he not be allowed to extend the Act to any village or other place to which he might see fit to do so? Supposing a public gaming-house had been closed in any town, the Bill as it stood, from its containing no prohibition to that effect, would virtually encourage the person who kept the gaming-house to remove it to some village close by. For the purposes of municipal taxation, it had sometimes been found necessary to group one or more villages with a town, and he did not see how the suppression of public gambling could be effectually carried out without a similar provision. By the same Section, the Act might be extended to any place not more than three miles from a railway station-house, but no provision was made for enforcing the Act in a village adjoining any town. In the papers received from Kumaon, the hill villages were described as places where gaming prevailed to a very great extent and much crime resulted. If the Lieutenant Governor did not consider it sufficient to extend the Act to any particular towns or villages by name, he should be allowed to group any number of them together and to extend the Act to any district, parganna or other portion of a district as he might see fit. The rules formerly in force in the Panjáb, and which were said to have worked satisfactorily, contained no restriction such as that in the Bill. MR. BRANDRETH did not know, therefore, why the benefit derived from these rules should be curtailed by such a restriction as that to which he had referred. He was aware that the other Members of the Select Committee did not agree to give the Bill such a wide application as he desired. As however, he held a different opinion, he thought it due to himself to state it; but he did not intend to press the matter in opposition to the opinion of the other Members.

He had one or two other remarks to make in regard to the Bill. In the Statement of Objects and Reasons, they were told that certain executive orders having the force of law were for some years in force in Oudh, the Central Provinces, and the Panjáb; but that did not give quite a clear account of the facts. Gaming was certainly prohibited long before the passing of the Calcutta and Howrah Police and Conservancy Acts, the Sections of which were in force in Oudh, the Central Provinces, and the Panjáb. Gaming was prohibited under what was called the General Regulation. By that Regulation all things which were offences under the Muhammadan law were punishable by the Magistrate with six months' imprisonment besides fine. They were further told that, as the law

at present stood, persons could not be prosecuted for keeping gaming-houses. It was not to be supposed that the framers of the Indian Penal Code intended to abolish the law which formally existed on the subject : the Bill therefore remedied a palpable defect in the Code. He questioned whether the Bill would have much effect in preventing gaming as a cause of crime. From the papers before the Select Committee, it appeared that it was with a view to prohibit gaming, because it led to such crimes as theft and even murder, that legislation was desired. He thought that it would be found that private gaming, which was much more resorted to than public gaming, was, in the great majority of cases, the cause of such crimes as were attributed to gaming generally. In Kumaon it did not seem likely that public gaming could prevail to any great extent. In Burmah, though public gaming-houses were also mentioned, yet the people there were determinedly addicted to the vice of private gambling. In the Panjáb it was not that there was much public gaming, but certain bad characters met together for the purpose of gaming in some secret place, probably a house or jungle in a secluded spot ; and they were driven to crime to repair their losses. Gaming was prohibited by the Muhammadan law ; and he thought that if some law to prohibit gaming generally were well devised, it would meet with the approval of the better classes of the people of the country. He saw great difficulties, however, in the way of any attempt to put down gambling of any other description than that contemplated by the present Bill. He would merely state his opinion that those officers who wished to put down gaming as a cause of crime would hardly attain their object under the provisions contained in the Bill.

The Hon'ble MR. RIDDELL entirely agreed with the Hon'ble Mr. Brandreth as to the desirability of discouraging gambling of every description. But he understood that it was the desire of Government to confine the interference of the Police to public gaming. It was thought inexpedient to give the Police the power to arrest persons gambling in private houses : he therefore considered himself debarred from framing a Bill for the general suppression of gaming. He would have been exceedingly glad if they could provide, as in the Muhammadan Law, for the entire prohibition of gaming, but as that was not to be done, the Bill had been framed to meet the evil so far as they could.

The Hon'ble MR. MAINE said that no doubt the opinion of the Local Governments who had asked for the Bill was exactly that which his Hon'ble friend (Mr. Riddell) had just indicated, namely, that the interference of the Bill for the prevention of gambling beyond the limits of towns might prove vexatious and oppressive. For that reason the Bill had been limited as proposed.

Whenever the Penal Code came before the Council for revision, the general question might with propriety be discussed ; but on the question whether gambling ought to be condemned in India, as a thing *per se* evil, many considerations, to which it was not necessary now to refer, would have to be entertained. Nobody denied that the Bill so far as it went was desirable.

The Motion was put and agreed to.

The Hon'ble MR. RIDDELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE asked leave to postpone his motion that the Report of the Select Committee on the Bill to legalize horse-racing in India be taken into consideration.

Leave was granted.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND presented the Report of the Select Committee on the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes, and other articles.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris.

Leave was granted.

The following Select Committee was named—

On the Bill to provide for the re-assessment of the Pandhari tax in certain parts of the Central Provinces—The Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Messrs. Riddell, Brandreth, Hobhouse and the Mover.

The Council adjourned till the 1st February, 1867.

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

CALCUTTA,
The 25th January 1867. }