

Friday, January 11, 1867

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

VOL . 6

4 JAN. - 20 DEC.

1867

P . L .

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 11th 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.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble G. Noble Taylor.

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

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

The Hon'ble H. B. Riddell.

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

The Hon'ble M. J. Shaw Stewart.

His Highness Nawáb Muhammad Qalb Alí Khán Bahádúr, Nawáb of Rámpúr.

The Hon'ble C. P. Hobhouse.

The Hon'ble J. Skinner.

The Hon'ble D. Cowie.

His Highness NAWÁB MUHAMMAD QALB ALI KHAN BAHADUR, Nawáb of Rámpúr, made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris, said that this was a Bill which he thought the Council would consider it equitable to pass, and, if necessary, to pass under a suspension of the Rules for the Conduct of Business. The French Bank, called the Comptoir D'Escompte, under the existing law, was suable and might sue in the name of the chief manager of its Indian agencies. It appeared, however, that recently at Bombay, when a suit was brought against the Bank, the local manager of

the agency pleaded that he was not the proper defendant, and stated that, while there had been a chief manager, and indeed while there still was such a functionary, he no longer resided in India. MR. MAINE did not blame the Bank for putting in such a plea: its arrangements and organisation had probably been altered; and the defence advanced in its name had probably been put in by an over-astute legal adviser; because, not to speak of the want of equity in such a defence, any liability which the Bank would get rid of by relying on it, would be more than compensated by the Bank's losing the power of suing other persons. MR. MAINE proposed, in a Bill of a few lines, to provide that in suits by or against the Comptoir D'Escompte, the nominal plaintiff or defendant should be the manager or acting manager of the agency at the place where the cause of action arose.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE (DARJILING) BILL.

His Honour THE LIEUTENANT GOVERNOR of Bengal introduced the Bill to make further provision for the administration of Justice in the District of Darjiling, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that on the last day of meeting he had sufficiently stated the reasons for the Bill, and it was therefore unnecessary for him now to trouble the Council with any further remarks.

The Motion was put and agreed to.

MOFUSSIL SMALL CAUSE COURTS REFERENCES' BILL.

The Hon'ble MR. MAINE introduced the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that Section 22 of the Mofussil Small Cause Courts' Act now in force, which Section was copied from an analogous Section in the earlier Act of 1860, ran as follows:—

“If in the trial of any suit under this Act any question of law, or usage having the force of law, or any question as to the construction of a document, which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred Rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five Rupees shall, draw up a statement of the case and refer it, with the Court's own opinion, for the decision of the High Court.”

It had been doubted whether, under that Section, questions arising in the execution of decrees could be referred for the opinion of the High Court. That

doubt, whether well founded or not, ought to be set at rest, and MR. MAINE would propose, in a short Bill, to enact that such questions should be capable of reference. The more cases that were stated for the opinion of the High Court the better. The further suggestion had been made that points arising in the preliminary proceedings should also be brought under the Section. That was a point for the Committee.

The Hon'ble MR. HOBHOUSE said that the few remarks he should make on this Bill would be entirely in its favour, because he thought that the questions which arose in execution were some of the most difficult questions with which the Small Cause Courts had to deal.

In matters which principally came before those Courts, *i. e.* bond cases, the question of fact was an easy one, and in the great majority of cases or at any rate in a very large number, judgment was confessed, and it was not until after execution was taken out that any real question arose. For instance, a person might in the interim, *benámi*, as it was called, make over his property to some member of his family, and then questions would arise whether the transfer was *benámi* and so on, and these were often questions of great difficulty.

He should be inclined, as a matter of principle, to go farther than this Bill proposed to do, and make it apply, not only to references of questions arising in execution, but also generally to references from Judges of the Small Cause Courts, of all questions of law and custom having the force of law, to the High Court. His own opinion was that all such questions, whether they were questions involving property to the extent of 5 Rupees or 1,000 Rupees, should be referred to the High Court. Whether the property involved was valued at 5 Rupees or 500 Rupees was of no real consequence. The question was, whether the Judges should not refer those questions, whenever they arose, to a Court competent to deal with them.

Of course, the point which he had raised would be much better considered in Committee. He only threw it out now for the consideration of the Hon'ble Mover of the Bill.

There was another matter on which he wished to say a few words. He observed that, under Act XI of 1865, the Registrars of the Small Cause Courts might have the same powers as the Judges, and they might refer questions of law and custom having the force of law to the Judges. He thought that they ought to be obliged to refer questions arising in cases of execution.

The Hon'ble MR. MAINE said that his Hon'ble friend Mr. Hobhouse had had very considerable experience in the Mofussil, and he accepted his support for the Bill as it stood with much satisfaction. But MR. MAINE entertained grave doubts whether it would be proper for the Committee to introduce the further changes which commended themselves to his Hon'ble friend. Mr. Hobhouse's proposal that the Small Cause Court Judges should compulsorily refer all questions of law or usage arising in suits for amounts below 500 Rupees went to the root of the Small Cause Court system; and any provision for making a change so fundamental should be embodied in a substantive measure. MR. MAINE was very averse to introducing changes of importance, or changes which went to principle, in Committee—if only because it was difficult to give sufficient notice of them to the public. So far as the Bill went, he was glad it had his Hon'ble friend's support.

The Motion was put and agreed to.

PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY introduced the Bill for the levy of enhanced port dues in the ports of Moulmein and Bassein, and to provide for the establishment and maintenance of coast lights in the eastern part of the Bay of Bengal, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that the objects of this measure were to provide for the levy of light dues, first, on account of port lights, from vessels entering certain ports in British Burma; and secondly, on account of coast lights, from vessels making voyages in the Bay of Bengal to and from certain ports. The Council were no doubt aware that Government had for some years past been engaged, and was still engaged, in constructing a series of light-houses on the coast of Burmah and the adjacent islands, for the benefit and protection of ships navigating that part of the Bay of Bengal. Three of these had been completed, *viz.*, the Double Island light-house at the entrance to Moulmein; the light-house on the Alguada Reef, and the light-house on the Cocos. The light-house on the Alguada Reef was, he believed, one of the finest works of the kind, and had cost upwards of £100,000. There were two other coast light-houses projected; one on the Oyster Reef outside Akyab; the other either on the Barugna Shoal or the Krishna Shoal.

For the first object, *viz.*, the levying of light dues on account of new port lights, it was proposed to increase the port dues now levied at Moulmein and Bassein. Rangoon and Akyab had for some time past been provided with port lights, and the existing scale of port dues in those ports was held to include

light dues. At the entrance to Moulmein a new light-house had been erected, and it was therefore proposed to levy a special addition to the port dues of that port on account of the light. With regard to Bassein, there was no special port light, but the Alguada light, though primarily and chiefly a coast light, was, in some measure, a guiding light for ships entering Bassein, and therefore it was reasonable to levy a small light due on such vessels. With regard to the dues for coast lights, they were provided for by the third section of the Bill, the voyages on which they would be payable being fully described, and he did not know that there was anything in that section which required remark.

The only question which might possibly give rise to discussion was as to the rate of toll, which it was proposed to fix at one anna a ton. That rate, he believed, had been fixed by the Chief Commissioner in consultation with the local mercantile communities in British Burmah, and no communication on the point had been received from them, or from any other quarter. The rate was barely sufficient, he might remark, to pay the cost of the necessary establishments.

The Motion was put and agreed to.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND introduced the Bill to reduce the pecuniary penalty for purchasing from soldiers, arms, ammunition, clothes, and other articles, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that he had nothing to add to the remarks which he made when he asked for leave to introduce the Bill. It was an exceedingly simple measure, and was only intended to reduce penalties which were disproportioned to the means of the Natives of this country.

The Motion was put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to make better provision for the appointment of Municipal Committees in the Panjáb and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in a month. He said that since he obtained leave to introduce this Bill, some suggestions on the subject had been received by him from the Panjáb. One suggestion was that, besides the taxes recognized by this Bill, a license tax should be taken on trades and professions, and that this should be added

to the list. In some of the towns of the Panjáb, a tax of this nature was already taken from persons of the artisan class and credited to the municipal fund, and it certainly did seem desirable and only reasonable that this kind of taxation should be extended to the richer class, such as shop-keepers and money-lenders.

Another suggestion was that a portion of the municipal funds should be credited to a provincial fund, out of which the cost of more general sanitary measures, and public improvements of a wider application, than those in which a single town was concerned, should be defrayed. He thought, however, that any scheme for raising additional revenues for the whole Province should form the subject, if approved of, of a separate Bill.

Other suggestions were that there should be a tax on carriages, horses, and other animals; that the municipal system for sanitary purposes should be extended to parganas and districts; and that, in the event of any Committee declining to raise funds for necessary works, the Lieutenant-Governor should have the power to levy a tax not exceeding one per cent. on the land tax from agriculturists, and one anna per house from non-agriculturists.

These suggestions would no doubt receive consideration, and this consideration would best be given in Select Committee. In his opinion, the principles by which the Bill should be governed were, that the rules hitherto made, so far as they had proved satisfactory, should receive the sanction of law; that a good deal, within certain limits, should still be left to the Lieutenant-Governor, and that where we legislated for any matters beyond those limits, that should only be as regarded matters upon which we were clear, and not that we should legislate on uncertain grounds with the chance of being useful. We should not sanction taxes unless we were satisfied that they were the most suitable taxes that could be proposed. He admitted that this Bill, owing to the limited experience we had had of the working of municipal institutions in the Panjáb, must be an imperfect one. We were only feeling our way, and he had no doubt that before long a supplementary Bill, to supply deficiencies in the present Bill, might very possibly be asked for.

The Hon'ble MR. RIDDELL said that he had no objection to raise to the principle of this Bill, but he hoped that the Council would seriously consider whether powers of the unusual and extensive character proposed by the Bill should be given to the Lieutenant-Governor of the Panjáb; for instance, the power, without any control whatever, to appoint Committees, to make rules, to sus-

pend or limit the powers of the Committees, and to levy town-duties and taxes. If the Bill was really required, it might be made a temporary Act for one or two years, but not a permanent enactment.

The 5th and 9th sections of the Bill were those to which he referred as giving the Lieutenant-Governor these very unusual powers. According to those sections, the Lieutenant-Governor might appoint any number of persons, not less than five, to be a Committee. When that Committee was appointed they had power to levy taxes, to make rules, and levy rates or make assessments; and the Lieutenant-Governor might suspend or limit all or any of the Committee's powers, and might cancel or modify any of their proceedings or rules, and direct that the funds required for the purposes of this Act should be raised by town-duties at such rates and on such things as he should approve, and such funds were to be raised accordingly.

For the last few years the system of levying town-duties had been silently spreading, and, as he believed, had acted as a serious check to the commerce of the country. A large sum was easily raised. The townspeople did not object to the tax generally, because in point of fact the whole of the district was taxed for the benefit of the town; that was to say, any person who went into the market to buy English cloth paid the duty charged by the town-duty contractor; so that in parts of the country where this system had been introduced, the whole commerce of the country was affected. He believed that even raw cotton had been taxed on entering the limits of a town. Articles of great value and small bulk as well as those of small value and great bulk had been taxed. Piece-goods which were imported into Bombay and Calcutta, and which were the subject of imperial taxation, were taxed.

Before the Council authorized the extension of these duties to the towns and villages of the Panjáb, he thought that some information should be obtained as to the working of the system in places where it had been established. He was not sure if he was right in point of form. But he proposed to ask His Excellency's permission to call for a return shewing the names of the towns in the Panjáb and in other parts of India where town-duties under any name were levied, also schedules of the rates at which the tax was levied upon each article, the gross produce of the town-duties and an estimate of the amount realized on each article.

The Hon'ble MR. MAINE suggested that the best course would be to let the Bill go to Committee, and then the Committee would call upon the Executive Government for the returns which his Hon'ble friend required. As regarded the

last sections of the Bill, to which Mr. Riddell had adverted, and which indemnified the Panjáb Government for some of its past acts, there was no doubt that that Government had exceeded its legal powers. It must be remembered, however, that down to 1861 it was generally believed in India that the Local Government of a Non-Regulation Province might make rules, which, made for a Regulation Province, would require legislative sanction. What the Lieutenant-Governor had done was to continue the exercise of these powers rather too long, that was after the time when the Indian Councils' Act had finally settled the question by providing impliedly that there should be no legislatures in India save those constituted under the Statute. MR. MAINE quite agreed with Mr. Riddell that the powers proposed to be given by the Bill were somewhat large, but it was very difficult for the Imperial Council sitting in Calcutta to say what would be the best composition of Municipal Committees in the Panjáb. The most obvious way of saving this Council from the necessity of such legislation was the constitution of a separate legislature for the Panjáb under the Indian Councils' Act ; but they were told that no material for such a legislature could be obtained. If that were so, it was inevitable that they must sometimes have recourse to Bills like the present, which in effect restored to the Lieutenant-Governor a part of the legislative power which he lost in 1861.

The Hon'ble MR. BRANDRETH said that he had got several papers connected with this Bill, which would probably furnish all the information which the Hon'ble Mr. Riddell required. If it should be found to be otherwise, the information could be called for, as the Hon'ble Mr. Maine had suggested, by the Committee to which he (MR. BRANDRETH) proposed that the Bill should be referred.

His Excellency THE PRESIDENT said that he thought there was a good deal of force in what the Hon'ble Mr. Riddell had advanced. At the same time it seemed to him pretty clear that we must either raise money in the way that the Bill sketched out, or forego the local improvements which it was very desirable should be made. It was impossible that the Government of India could, out of the revenues of the country, afford means for them ; and therefore we must have the machinery by which we could raise the necessary taxation. So long as this machinery was limited to towns, HIS EXCELLENCY thought that there was not much danger of abuse. The inhabitants of these towns—at any rate, the leading men in these towns—were more or less educated, and if there was any serious abuse of such a power as that proposed to be conferred by the Bill, we should hear an outcry.

If this Bill were to apply to villages, HIS EXCELLENCY would be very much opposed to it. But so long as the tax was limited to the towns, he did not see the likelihood of any harm being done. He was opposed to any extra cess being levied on the land. There was no doubt much force in what the Hon'ble Mr. Riddell had advanced, namely, that the tendency of such taxation as was contemplated in the Bill was to interfere with trade. But so long as the rates were kept low, the amount levied would be quite inappreciable to those who had to pay it. At the same time, it was difficult to see that the trade of the country would be materially affected. These being his views, HIS EXCELLENCY was inclined to support the Bill of the Hon'ble mover.

The Hon'ble MR. HOBHOUSE said he hoped that some explanation would be given in Committee as to the very large powers which he saw by this Bill were proposed to be given to the Lieutenant-Governor. In looking over clauses 5 and 9, he found that there was hardly anything that the Lieutenant-Governor could not do. According to Section 5 he might appoint, by election or otherwise, the Committees. He might remove any of the members, add to their number, fill up vacancies occurring among them, and determine the time and manner of their election. Then again, by Section 9, he might suspend or limit any of the powers of the Committees, and also cancel or modify any of their proceedings or rules. He (MR. HOBHOUSE) did not mean to say that it might not be necessary that the Lieutenant-Governor of the Panjáb should have these powers. But he thought that, when these enormous powers were given to him,—so enormous as in fact to render the Bill itself unnecessary,—there should be some explanation as to the reason why such large powers were required. He had no experience of the Panjáb or of its Government. But in a case of this kind, it did seem necessary that some explanation should be given, and he hoped that it would be given accordingly.

The Hon'ble COLONEL DURAND thought the Hon'ble Mr. Riddell's suggestion exceedingly important, that we really ought to know what we were doing before this Bill was passed. The Bill proposed to give enormous powers for a wide-spread system of municipal taxation, and we did not up to the present moment know how far that kind of taxation might come into conflict with the general taxation of the country. He thought that, before the Council proceeded with this Bill, there should be some very clear and specific information furnished to Hon'ble Members.

The Hon'ble MR. BRANDRETH said that perhaps he might explain that Bills very similar in character had already been passed by the Council for Oudh and the Central Provinces. He admitted that these town-duties did in some degree interfere with trade. But unless they were put a stop to altogether, we must clearly legalize them by this Bill. There were many questions connected with the Bill which would no doubt receive consideration in Committee, and therefore he thought it would be better at present to postpone any further discussion on the subject.

The Hon'ble MR. MAINE wished to state as a fact that no law similar to the present Bill had been passed for the Central Provinces, though no doubt an application for such a Bill had been received. There was a Municipal Act for the city of Lucknow in Oudh which might be extended to other cities by the Governor General in Council. Perhaps a reasonable solution of the difficulty as to taxation would be obtained by introducing the words "with the previous consent of the Governor General in Council" wherever a power to impose duties was conferred on the Lieutenant-Governor. The Government of India, being responsible for the finances of the Empire, there would in this way be a not inconsiderable security against the power of local taxation being abused.

His Excellency THE PRESIDENT thought the introduction of the words proposed by Mr. Maine would be very appropriate, and would act as a check on any excessive enlargement of a system of municipal taxation. The fact was that there either must be some such system, or they must give up all hope of improving towns, and sanitary reform must be abandoned.

The Motion was put and agreed to.

GANGES TOLLS' BILL.

The Hon'ble MR. RIDDELL presented the Report of the Select Committee on the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges.

PUBLIC GAMBLING BILL.

The Hon'ble MR. RIDDELL also presented 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 Prov-

inces of the Presidency of Fort William, and in the Panjáb, Oudh, the Central Provinces, and British Burmah.

The following Select Committees were named :—

On the Bill to make further provision for the administration of justice in the District of Darjiling—The Hon'ble Messrs. Maine and Hobhouse, and the Mover.

On the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees—The Hon'ble Messrs. Riddell and Hobhouse, and the Mover.

On the Bill for the levy of enhanced port dues in the ports of Moulmein and Bassein, and to provide for the establishment and maintenance of coast lights in the eastern part of the Bay of Bengal—The Hon'ble Messrs. Maine, Shaw Stewart, Skinner and Cowie, and the Mover.

On the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammuniton, clothes, and other articles—The Hon'ble Messrs. Maine and Hobhouse, and the Mover.

On the Bill to make better provision for the appointment of Municipal Committees in the Panjáb and for other purposes—The Hon'ble Messrs. Maine, Riddell, Shaw Stewart and Hobhouse, and the Mover.

The Council adjourned till the 18th January 1867.

•CALCUTTA, }
The 11th January 1867. }

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