

Friday, March 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 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd March, 1866.

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

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

The Hon'ble Rájá Sáhib Dyál Bahádúr.

The Hon'ble W. Muir.

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

The Hon'ble D. Cowie.

The Hon'ble Stewart St. John Gordon.

The Hon'ble George Ross.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to provide for the Establishment of a Public Museum at Calcutta, said that this Bill was intended to carry out an agreement which had been arrived at between the Government of India and a very distinguished body, the Asiatic Society of Bengal. The object of the agreement was to transfer a part of the collections of the Society to Trustees, and to devote them under certain conditions to public use. Since the first overtures towards this arrangement were made, there had been considerable delay in giving effect to it, delays attributable to various causes. The latest difficulty which had arisen grew out of the Society being not unnaturally desirous that the Bill which carried out the agreement should bear more or less resemblance to the English Statute which regulated the relations of the British Museum with the

Government of Great Britain. But the proposal of the Society, Mr. MAINE thought, was founded on a mistaken analogy between the powers of this Council and those of Parliament, and some of the terms proposed were inconsistent with the relations, in matters of finance, of the Governor-General in Council to the Home Government of India. This had been pointed out to the Society, and Mr. MAINE understood that they were satisfied with the Bill as it had now been framed.

The Bill provided in the first instance that the Governor-General of India in Council should cause to be erected at the expense of the Government of India a suitable building in Calcutta, on or near the site now occupied by the Small Cause Court, to be devoted in part to collections illustrative of Indian archæology and of the several branches of Natural History, in part to the preservation and exhibition of other objects of interest, whether historical, physical or economical, in part to the records and offices of the Geological Survey of India, and in part to the fit accommodation of the Asiatic Society of Bengal and to the reception of their Library, Manuscripts, Maps, Coins, Busts, Pictures, Engravings and other property.

It was further proposed to create a Board of Trustees, who were to be the Chief Justice of the High Court of Judicature at Fort William in Bengal, the Bishop of Calcutta, the Vice-Chancellor of the University of Calcutta, the Secretary to the Government of India in the Home Department, four other persons to be nominated by the Governor-General of India in Council, the President of the Asiatic Society of Bengal, and three other members of the said Society for the time being, to be nominated by the Council of the said Society. These Trustees were to be a Body Corporate with perpetual succession. The Bill went on to provide that the Corporation should have the necessary powers to make bye-laws, hold property, and so forth. Such collections of the Asiatic Society as were intended to be transferred to the Trustees were to be removed to the new building as soon as it was completed so far as to be able to receive them.

The Society was to have the exclusive possession of such part of the new building as should be set apart by the Trustees for its accommodation, and the Trustees were not to interfere with the present exclusive control which the Society now had over their Library, Manuscripts, Maps, Coins, Busts, Pictures and Engravings. The Society was, whenever this change took place, to be at

liberty to lease or sell their present house. In case of the determination of the trust, the Society was to be at liberty to reclaim their collections.

These were the principle provisions of the Bill which he now moved for leave to introduce.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS' COMMITTEES' BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill to empower the Committees appointed under the seventh Section of Act No. XX of 1863 to raise the costs and expenses incurred in the performance of their duties, and for other purposes, said that this was a small matter. The Act which it was the object of this Bill to amend, which was passed at the instance of his Hon'ble friend the Lieutenant-Governor of Bengal, and than which no measure has received more public approval, was an enactment by which the Government had divested itself of all concern with the management of Native religious endowments.

Under the Act two bodies were contemplated: the Trustees or Managers who were in charge of the several Mosques and Temples, and the Committees appointed to superintend those Trustees and Managers, and to take the place of the Board of Revenue under the Regulations thereby repealed.

In order to carry out that duty effectually, it was necessary for the Committees to keep accounts, to provide establishments of clerks and messengers and to be able to raise funds for the purpose of paying for these establishments. But the Act contained no provision enabling the Committees to raise such funds.

As far as Bengal was concerned, there was a little difficulty, because the Board of Revenue, when the Act was passed, was in possession of funds belonging to the religious establishments, and had transferred them under Section 12 to the Committees. It appeared however that, in Madras, before the Act became law, the Government had transferred all such property to the Trustees and Managers, so that the Committees had no property in hand, and no power to raise thereout the expenses necessarily incurred in the performance of their duties. The Bill which he proposed would enable the Committees to raise or cause to be raised the money required for the purpose.

As the Act was under revision, one other amendment had better be made. The Act provided that the members of the Committees were to hold office for life. But it appeared that some cases had occurred in which the members of a Committee wished to resign their appointments, and no provision was made for filling up the vacancies which would be caused by such resignations. The Bill authorized the appointment of new Committee-men, not only in the cases above mentioned, but also in that of a member leaving India.

The Motion was put and agreed to.

OUDE LIMITATION BILL.

The Hon'ble Mr. MUIR introduced the Bill to exempt certain suits in Oude from the operation of the rules of limitation in force in that Province, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that when he obtained leave to introduce the Bill, he had explained at length the reasons for it and the nature of the Bill. A copy of the draft Bill had since been referred to the Chief Commissioner of Oude, and his opinion, as also that of the Financial Commissioner, had been invited; and one or two amendments had been made in the draft in conformity with suggestions received from those officers. MR. MUIR need only refer to one point in the second Section which related to the redemption of mortgages. The Section provided that, when a mortgagee shall, by virtue of a mortgage executed before the 13th February 1844, or twelve years before the annexation of the Province, have obtained possession of land comprised in his mortgage, the mortgagor "shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding." The proviso here made had reference to Clause 15, Section 1, Act XIV of 1859, in which it was provided that the period of limitation was thirty years from the date of mortgage, or from the acknowledgment of the title or right of redemption of the mortgagor. If this point had not been specially provided for, any acknowledgment of the right of redemption might have been pleaded as a new period of limitation. No suit would lie on account of any mortgage executed prior to the 13th February 1844, whatever admissions might subsequently have been made in respect of it. The only exception to this rule was in a class of cases which, at the instance of the Chief Commissioner, had been provided for by a new Section (3). Wherever, by the mortgage deed, a period had been fixed within which the right of redemption

might be exercised, and that period did not expire till after the date of annexation, a suit would lie notwithstanding that the mortgage had been executed prior to the 14th February 1841.

These provisions were introduced in conformity with agreements which had been made with the Chief Commissioner by most of the Land-holders who held under *Sunnud*. They were in themselves reasonable, and by their adoption the law would now be brought into accord with the administrative rules of the Province.

With these remarks MR. MUIR begged to introduce the Bill, and to move that it be referred to a Select Committee, with instructions to report in a fortnight.

The Motion was put and agreed to.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE moved that 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, be taken into consideration. He said that he would state to the Council the sole amendment which the Committee proposed to make. The Act, it would be remembered, provided for two systems with respect to arms—one was in force only in certain proclaimed Districts, while the other took effect all over India. Under the second system, licenses were necessary for the lawful carrying of arms; but there were certain exemptions from the necessity of taking out these licenses. It was to these exemptions that the sole amendment of the Committee applied. The original Act allowed persons to be exempted by order of the Local Government, and the word "persons" had been construed by those Governments as permitting them to exempt classes, such as Europeans and Parsees. Possibly this was going a little beyond the letter of the law. But the Committee proposed to legalize the practice by inserting the word "classes" in the last clause of the Section. The Committee also proposed to allow the exemption of Districts and parts of Districts, which was a concession to the opinion expressed by his Hon'ble friend Mr. Muir, when the Bill was last before the Council. It was intended, of course, to prevent the mischief of wholly disarming parts of British India which abutted on Native States, and

where the inhabitants were exposed to violence and outrage from the subjects of States with a weaker administration and police than our own.

Since the Bill had been brought before the public, MR. MAINE had heard or read complaints of the original Act, which contrasted rather singularly with the anticipations entertained when it was under discussion. It was said that the Act was not sufficiently stringent. Now, upon paper and as a piece of legislation, the Act was extremely severe. The only way in which its stringency could be increased, would be by withdrawing the discretion given to the Local Governments, and MR. MAINE would be very loath to do that. If he did, he could not but fear that a measure of which the operation, however wholesome, was at best invidious, might become odious. The point was for the Local Government to consider, and it was just possible that, having regard to the feeling which prevailed when it was originally passed, they might have administered it somewhat laxly and leniently. It had been alleged that sales of improved arms constantly took place. As they were alleged to be effected without the knowledge of the Government, it was of course impossible from the nature of the case for the Government to pronounce an opinion. But it did happen that intelligence of such sales or attempted sales now and then reached the Supreme and other Governments; and considering the sensation which such attempts to sell obviously created, and the promptitude with which information concerning them was apparently conveyed to the Government, MR. MAINE could not help doubting the existence of the practice at least to any considerable degree. The matter, however, was one which would necessarily receive the careful attention of all the Governments in India.

The Hon'ble MR. GORDON said that, as the Hon'ble Member who had introduced this Bill had, on a former occasion, referred to some communication which he (MR. GORDON) had made, he thought he had better explain to the Council the difficulty which he had at first felt in assenting to this Bill, and the way in which that difficulty had been removed.

The first twenty-five Sections related to the whole of India. They dealt with the manufacture and possession of cannon, and the manufacture and sale of ammunition and small arms. Then came Section 26, which forbade the carrying of arms. But it did not make the carrying of arms an offence. It merely said that, if a man carried arms, he might be deprived of them.

Another Section went on to say that, if a Magistrate had reason to believe that a person had arms in his possession, and was likely to make an unlawful use of them, he might cause the house of that person to be searched, and seize any arms found there, and detain them as long as might be deemed necessary.

Those were the general provisions of the law as applicable to the whole of India. But Section 36 applied to certain excepted Districts, where for some reasons the Local Government had ordered that the people should be disarmed. In those Districts the law was exceedingly stringent. The simple possession of arms in a proclaimed District was forbidden, houses might be searched, and any arms found there might be confiscated and the owners punished. In an ordinary District, the simple possession of arms was not an offence, nor the purchase of arms, nor even the importation of small quantities of arms for private purposes.

Therefore there were two *régimes*. One was lenient and the other was exceedingly severe. But the Act did not provide any special means for explaining, either to the Magistrate or to the people, under which of these two *régimes* they lived. The proclaimed Districts were those Districts which were proclaimed either under the provisions of Act XXXI of 1860, or under the provisions of a former Act which it had repealed,—Act XXVIII of 1857; and in order to ascertain whether any particular place was subject to these stringent rules, or to the very mild ones which he had endeavoured to describe, it was necessary for the Magistrate to hunt through the whole of the Gazettes published since 1857, to ascertain, *first*, whether that place had been proclaimed, and *secondly*, whether that proclamation had or had not been withdrawn.

Of all laws it was least expedient that there should be any difficulty in ascertaining whether a criminal law was or was not in force. MR. GORDON had felt some difficulty, therefore, in assenting to the perpetuation of the Arms' Act without some express provision to remove this serious objection to it as it stood. But he understood that the Executive Government had undertaken to direct that the notifications should be periodically re-published in the Government Gazettes of the several Administrations. That being so, the only objection he had felt to the passing of the Bill had been removed.

The Hon'ble MR. MAINE said that his Hon'ble friend (Mr. Gordon) had mentioned to him the difficulty which he had felt, and he (MR. MAINE)

was authorized to state that the matter had been discussed by the Executive Government, and that the announcement wished by his Hon'ble friend would be made by the Local Governments.

The Motion was put and agreed to.

His Honour the **LIEUTENANT-GOVERNOR** said that there was a slight verbal alteration which he begged to suggest. It was the substitution, in line 5 of Section 1, of the words "the Act last hereinbefore mentioned" for the words "such Act."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble **MR. MAINE** also moved that the Report of the Select Committee on the Bill to amend 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) be taken into consideration. He said the Committee had altered the title of the Bill, which would now explain its object. It was a very trifling matter. Since the Bill was introduced, the Code of Civil Procedure had been extended to all Her Majesty's Courts in India except the Court of Judicature in the Straits' Settlement. That Code provided for service of summons when the defendant resided within the jurisdiction of any Court in the Territories to which it applied, other than that in which the suit was instituted. But people in the Straits' Settlement preferred their old procedure, and the Government of India did not therefore think it desirable to extend the Code to that Settlement. The result was that, as the law now stood, there was no possibility of executing in the Straits' Court process issued by any other Court in India. Moreover, the Bill, as drawn, referred to the Supreme Courts as being in existence, and as having a procedure identical with that of the Straits' Court. For these and other reasons some alteration was necessary. As the Committee had finally settled the Bill, it was simply a Bill to enable service in the Straits' Court of process issued by any of the other Courts in British India, and service in the latter Courts of process issued by the Straits' Court.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. MAINE also moved that 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) be taken into consideration. He said that the Bill had originally been limited to certain amendments of the Code of Criminal Procedure strongly urged upon the Government of India by the three Governments of Bengal, Madras and Bombay. The Committee had had the advantage of the Hon'ble Mr. Gordon's experience, who had pointed out several other offences which fell precisely under the reasoning in virtue of which the Bill had been drawn. At Mr. Gordon's instance, the Committee had agreed to add to the offences contemplated in the Bill the following :—

Knowingly disobeying any quarantine rule :

Driving or riding on a public way so rashly or negligently as to endanger human life, &c :

Dealing with fire or any combustible matter so as to endanger human life, &c :

So dealing with any explosive substance :

A person omitting to take order with any animal in his possession, so as to guard against danger to human life or of grievous hurt from such animal :

Committing a public nuisance ; and

House-trespass.

It was obvious that the inconveniences of removing the cognizance of the offences first mentioned in the Bill from the minor Magistrates arose equally in the case of the offences to which the attention of the Committee had been drawn : they were petty offences, and were frequently committed. It was a great hardship on those whose evidence was necessary for the conviction of the offender to be dragged to a distance for the purpose of substantiating charges of this nature, and it was even more undesirable that such offences should be hushed up from the fear of encountering these hardships.

Since it had become known to the public that there was an intention of amending the Code of Criminal Procedure, a rather remarkable number of communications on the subject had been received by MR. MAINE, either privately or in the Legislative Department. It was evident that there were considerable defects in the Schedule to the Code ; and on the whole MR. MAINE thought that a case was made out for its early revision. Nothing could be more inex-

pedient than the premature alteration of bodies of law which were intended to be comparatively permanent. But here the weight of opinion in favour of some revision seemed to MR. MAINE too great to be withstood. The revision of the Code of Criminal Procedure was not, it must be remembered, quite the same thing as the revision of the Penal Code. The Penal Code was based on principles something like universal. But the Code of Criminal Procedure was directed to the immediate convenience of the persons by whom and for whom it was administered. If it did not serve that convenience, a presumption instantly arose in favour of the necessity for modifying it. On the whole, he thought the Council might usefully devote itself in the next sittings to the reconsideration of this Code. In all probability, before it became law, it would be referred to the Indian Law Commissioners at home.

The Motion was put and agreed to.

The Hon'ble MR. GORDON said that he had to move an amendment not of a very radical character. There were some offences which, he thought, might well be added to Section 1 of the Bill. He would take the last in order first, as it was most important, *viz.*, House-trespass in order to the commission of an offence punishable with imprisonment, or where the offence intended to be committed was theft. The Bill proposed to invest any Magistrate with the power of trying Theft in a dwelling-house, and the amendment by the Committee proposed that House-trespass should be made cognizable by any Magistrate. But House-trespass in order to the commission of theft was part of Theft in a dwelling-house, and might almost be described as an attempt to commit that offence. As the greater contained the less, if any Magistrate was authorized to punish Theft in a dwelling-house, he should also have the power of disposing of the smaller offence, namely, House-trespass in order to the commission of theft.

Another part of the Schedule to the Act to be amended allowed a Magistrate of the first Class to try one of the most difficult and important class of cases that could possibly be found (Criminal breach of trust by a servant, banker or agent), which offence was punishable with transportation for life.

If therefore a Magistrate of the first Class was competent to try such an offence as that, any Magistrate was certainly competent to try the offence which he (MR. GORDON) wished to see added to Section 1.

The other offences stood on different grounds, *viz.*, absconding to avoid service of summons or other proceeding from a public servant, and non-attendance

in obedience to an order from a public servant. These offences peculiarly required to be dealt with summarily. A man might lose his cause by the non-attendance of his witnesses. But he seldom would prosecute a witness, because he might require his evidence again in a further stage of the same cause.

The Civil Courts therefore must see the law enforced. There must be a complaint, and a ministerial Officer must be sent to lay the complaint before a Magistrate. MR. GORDON had known cases where the witnesses and accused had to travel a hundred miles before their case could be decided, and then a hundred miles back again to their homes.

Under these circumstances the Court could not always spare the services of these Officers for so long a time, and the persons injured were often unwilling to prosecute, so this class of offences, although exceedingly common, were seldom in fact punished, and positive injustice must in consequence often result. These offences were not visited with heavy punishment. Six months' simple imprisonment or 1,000 Rupees fine was the maximum, and in practice the punishment awarded was generally very slight indeed. These cases were simple in their nature, and well within the competence of any Magistrate.

He (MR. GORDON) would therefore move the amendment of which he had given notice, *viz* :—that the numbers 172 and 174 be introduced after the word "Sections" in Section 1 of the Bill, that the word "and" be omitted before the number 448, and that the word and number "and 451" be introduced after the number "448" in the same Section.

The Hon'ble MR. MAINE had no objection to the Hon'ble gentleman's amendments. It should be understood that they had not been rejected by the Committee, but would probably have been accepted by it, if they had been submitted to it by the Mover. He would make one general remark about the Schedule to the Code. Its defects, wherever they occurred, seemed to have arisen from the Legislative Council having proceeded on a principle only partially true. That principle was that when the punishment allotted to an offence was heavy, the cognizance of that offence should be reserved to a higher Magistrate. This was all very well as a rough rule; but it required to be modified by the consideration that, in respect of certain offences for which the maximum punishment was extremely high, the degree of culpability evinced by the Commission might vary very widely. The contingency that an offence punishable by a heavy

maximum penalty might be perpetrated under circumstances which called for a very slight punishment did not appear to have been sufficiently provided for.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

JUDGES' COMMISSIONS BILL.

The Hon'ble MR. MAINE said that, if His Excellency would allow him, he would move for leave to introduce a Bill which was not entered in the List of Business. He thought that, if he mentioned the nature of the Bill, the Council would unanimously agree with him that there was occasion for it. Under Act XIII of 1865, which amended the Criminal Procedure of the High Courts, a mode was provided for the exercise of the Courts' jurisdiction in the Mofussil by Judges deputed under Commissions of the Governor General of India in Council. It was at first intended to organize a system of Circuits such as there was in England. But after consultation with the Chief Justice, MR. MAINE thought it would be premature to organize regular Circuits in the present state of the Courts' business and of the means of communication through the country. Accordingly, for a system of Circuits, there was substituted a system of tours of inspection by Judges who visited the Mofussil with the view of examining into the working of the subordinate Courts. These Judges were not under Commission, but it had been arranged that, whenever the High Court thought that the ends of justice would be served by trying a European British subject at a distance from the Presidency, a special Commission should issue. In short a system of special Commissions had been temporarily substituted for a system of Circuits. On English analogies, however, which required that Commissions should be signed by Her Majesty, these Commissions would have to be signed by the Governor-General and all the Members of his Council.

There would have been no difficulty if the system of Circuits had been inaugurated, and if the Commissions were issued at regular intervals. But now it was impossible to know when the necessity for issuing the Commissions would arise, and the Governor-General and the Members in Council might then be absent from the Presidency, and accordingly it was the object of the present Bill to relieve the Governor-General and the Members in Council from the duty of signing the Commissions. It was proposed that a seal should be made,

that it should be kept in the custody of whomsoever the Governor-General in Council might appoint, and that the Commissions should be stamped by order with such seal by the person so appointed, and, when so stamped, should have the same force and effect as if they had been signed by the Governor-General, and the Members in Council. A telegraphic communication to the Secretary to the Government of India in charge of the Calcutta Office would be sufficient warrant to affix the seal.

The Motion was put and agreed to.

ASSAM COMPANY'S BILL.

The Hon'ble Mr. MAINE then presented the Report of the Select Committee on the Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company).

PLEADERS' AND MOOKHTARS' ACT EXTENSION (N. W. P.) BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars) to the Sudder Court of the North-Western Provinces.

INDIAN COMPANIES' BILL.

The Hon'ble Mr. MAINE also presented the Report of the Select Committee on the Bill for the incorporation, regulation and winding up of Trading Companies and other Associations.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble Mr. GORDON presented the Report of the Select Committee on the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances).

The following Select Committee was named :—

On the Bill to exempt certain suits in Oudo from the operation of the rules of limitation in force in that Province—The Hon'ble Messrs. Maine and Grey, the Hon'ble Colonel Durand and the Mover.

The Council adjourned till the 9th March.

WHITLEY STOKES.

Asst. Secy. to the Govt. of India,

Home Dept. (Legislative).

CALCUTTA ;
The 2nd March 1866. }