

Friday, March 9, 1866

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 5

JAN. - DEC.

1866

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 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th March 1866.

P R E S E N T :

His Excellency the Viceroy and Governor-General of India, *presiding*.
 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 Vijayaráma Gajapati Ráj Bahádúr of Vizianagram.
 The Hon'ble Rájá Sáhib Dyál Bahádúr.
 The Hon'ble W. Muir.
 The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádúr, Mahárájá of Burdwan.
 The Hon'ble D. Cowie.
 The Hon'ble George Ross.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE introduced the Bill to provide for the Establishment of a public Museum at Calcutta, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that he had fully described to the Council last week the arrangement which had been come to between the Asiatic Society and the Government of India. Even now he was rather afraid and there was something in the language of the Bill which would require to be corrected, as not being quite consistent with the financial position of the Government. The Bill, in its present form, had received the assent of the Society, and if the Council would allow it to go to Committee, any necessary alteration could easily be made in its phraseology.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS COMMITTEES' BILL.

The Hon'ble MR. MAINE also introduced the 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, and moved that it be referred to a Select Committee, with in-

structions to report in a fortnight. He said that the Bill had been necessitated by the speed with which the Government of Madras had transferred all the property belonging to religious institutions to the Trustees or Managers of the several Mosques and Temples superintended by the Committees appointed pursuant to Act XX of 1863. It was supposed, when that Act was passed, that a certain amount of property would remain in the hands of the Committees which would be sufficient to defray the expenses necessarily incurred by them in the performance of their duties—duties for neglecting which they were liable to be sued. But in Madras, before the Act was passed, all the property was transferred to the Trustees; and the consequence was that the Committees had nothing to pay for Clerks and Chuprassees. Section 1 of the Bill accordingly provided as follows:—“It shall be lawful for every such Committee from time to time to pay or cause to be paid out of the income, or to raise or cause to be raised out of the Capital, of the property of any religious establishment under their superintendence or management, such sums of money as shall be required to defray the costs and expenses incurred from time to time in relation to or concerning such superintendence or management. Every Trustee, Manager, Superintendent and other person in whom all or any part of such property may be vested shall be bound to make such payments out of the said income, and to execute such conveyances of the said capital as may be necessary to effect the purposes of this Act; and, in default of compliance with any of the provisions of this Section, he shall be liable to a fine of one hundred rupees.”

And then Section 2 provided that no person taking under any sale, mortgage or other disposition purporting to be made under the powers conferred by this Act, should be bound to enquire into the necessity or expediency thereof, or to see that no more than was required was raised.

In the absence of a law for all India, MR. MAINE really did not know whether that declaration was required in the Mofussil, but it was certainly needed in the Presidency Towns, where what was technically known as the doctrine of Notice, was fully understood and applied. He thought under these circumstances that he should best carry out the intention of the framer of the original Act by introducing this Section.

As he had explained to the Council last week, Section 3 was required to correct an omission in Act XX of 1863, which makes no provision for the appointment of a new Committee-man in the place of any member of a Committee wishing to resign. The Bill authorizes the appointment of a new Committee-man, not only in this case, but also in that of a member leaving India.

The Motion was put and agreed to.

JUDGES COMMISSIONS' BILL.

The Hon'ble Mr. MAINE also introduced the Bill to relieve the Governor-General of India in Council from the duty of signing the Commissions mentioned in sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill explained itself. It proposed to provide that a seal should be made at the expense of the Government of India with this inscription 'The seal of the Governor-General of India in Council,' and should be kept in the custody of such person as the Governor-General of India in Council should from time to time appoint in that behalf, and that the Commissions respectively mentioned in Sections 22 and 44 of 'The High Courts' Criminal Procedure Amendment Act 1865,' might be stamped with such seal by such person as the Governor-General of India in Council should from time to time appoint in that behalf; and when so stamped should be equally valid and effectual as if they had been signed by the Governor-General of India and the members of his Council.

Section 22 of the High Courts' Criminal Procedure Amendment Act, 1865, empowered the Governor-General of India in Council to authorize the Judges of a High Court to be sent under his Commission into the Mofussil; and Section 44 provided for the appointment of a Barrister-at-law to hold sittings at certain places under the Commission of the Governor-General in Council.

The Motion was put and agreed to.

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

The Hon'ble Mr. MAINE also moved that 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 be taken into consideration. He said that the Committee had no amendments to suggest. The Sudder Court of the North-West had expressed their entire concurrence in the Bill. He, however, had felt considerable doubt as to whether he should proceed with it, because he saw that the establishment of a High Court for the North-Western Provinces had been gazetted, although whether or not the Letters Patent had been signed he was unable to say. Still it might happen that the High Court when established might wish merely to continue the rules which the Sudder Court had made; and on the whole he thought it better that the Bill should be passed.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

INDIAN COMPANIES' BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill for the incorporation, regulation, and winding up to Trading Companies and other Associations be taken into consideration. He said that this was a much more important measure than those which he had just introduced. It had had the good fortune of receiving the fullest approval of the public bodies to which it had been referred. Most of them had sent it back with an expression of their opinion that the Bill was desirable in the interests of the community, and that it should be passed with as much despatch as possible. There were two exceptions, not to the approbation expressed, but to the absence of suggestion. The British Indian Association had recommended that the Inspectors who might be appointed under certain Sections of the Bill to examine into the affairs of Joint Stock Companies should be bound to secrecy. The suggestion was founded on a sound idea, for it was not desirable that the Inspectors should gossip about the results of their inspection; but MR. MAINE was sorry to say that he thought it quite impracticable. The usual expedient for securing secrecy was an oath: but it was open to the objections to which all oaths were open, that they bound the conscience of the swearer little more than his sense of duty would have bound him already, and that as they were a burden on the conscience, they often prevented a scrupulous person from undertaking the duty for which he was most fitted. MR. MAINE thought, moreover, that the Association overrated the evils of publicity through the indiscretion of Inspectors. There was doubtless a point in the history of every trader or Company at which it was against their interest that the exact state of their affairs should be known. But by the very nature of the case, this point must have been passed before Inspectors were appointed. Something must have occurred to throw doubt on the prosperity of the Company, or there would have been no inspection. If these doubts were unfounded, the sooner the truth was known the better for the Company. If there was ground for them, the time when everything would be divulged could not, under the circumstances, be far distant. MR. MAINE must add that, so far as England was concerned—he could not speak with confidence of India—the class of people employed on inspections were very little likely to betray confidence. They were professional accountants, and were no more in the habit of talking of the affairs of the Company whose books they examined, than medical men were in the habit of talking of the diseases of their patients. They made it a point of honour not to do so, and their business depended on their continued discretion. The Land-

holders Association' had called attention to an important point which had been much discussed by the Committee. They had observed on the risk to which policy-holders were exposed by the conversion under the Bill of Unlimited into Limited Life Insurance Companies. The Bill provided for the consent of a certain portion of the shareholders being obtained. But the Association remarked, with great truth, that the persons most interested were not the shareholders, but the policy-holders. Now MR. MAINE held strongly that, where a Life Insurance Company had agreed to pay the amount secured on a policy on a certain contingency, its liability being unlimited at the time of making the contract, it could not limit the liability either of the aggregate association or of the individual shareholders by simply registering itself as a limited Company. The shareholders remained responsible to the policy-holder to their last shilling or rupee. But it was true that the policy-holder were placed in a considerable practical difficulty. For from the moment of the conversion of an unlimited into a limited Company the policy-holders must either discontinue his payment of premiums, in which case his policy became void, or he must continue to pay these premiums to the limited Company; and in that case he would run much risk of being held by a Court of Justice to have accepted the security of the limited, in lieu of that furnished by the unlimited, Company. The Association had admitted the difficulty of finding a mode of obviating this injustice. To ask the consent of the policy-holders would be simply nugatory, for policies were generally held under trust, and the trustee would surely refuse his consent—indeed it would be his duty to do so. The case of an Unlimited Life Insurance Company transmuting itself into a Limited Company, did not, so far as MR. MAINE could judge from the reports, appear to have occurred. But the case of two Companies amalgamating and of the policy-holders objecting to the new security was known to have happened; and it seemed that the only way in which they could protect themselves from constructive acquiescence in the liability of the new Company was by paying all their premiums under protest,—a most inconvenient course. MR. MAINE thought that the practical requirements of the case were met by the amendment which the Committee proposed to introduce. The Committee proposed to provide that no Unlimited Life Assurance Company existing at the date of the passing of the Act, should be allowed to transmute itself into a Limited Liability Company. Practically the only Companies formed under the the act would be limited, for one of the great objects of the Act was to empower Natives to form Life Assurance Companies, which they would only enter into on condition of their liability being limited. The great majority of Insurance Companies now doing business in India were branches of English Associations incorporated under English law.

One point remained, to which he would call the attention of the Council, because it was a departure from the English Statute, though it was in harmony with the Indian Act of 1857 now proposed to be superseded. The obligation of shewing a balance-sheet and having the accounts audited was in the English Act part of table A, and therefore could be waived by intending shareholders. But in India, considering the distance of many of the shareholders from the theatre of the Company's operations, and their general incuriousness, Mr. MAINE thought it should be made a positive duty incumbent on the Directors to shew an annual balance-sheet and to submit to an annual audit. The Bill, therefore, followed Act XIX of 1857 in requiring this, and it further made the omission to do so penal.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE said that he had an amendment to propose which was not on the List of Business. Section 65, which related to the recovery of penalties under the Act, incorporated by reference two Acts of the Indian Legislature. The Committee, however, had introduced at the end of the Bill a series of Sections providing expressly for the recovery of penalties. He therefore begged to move that Section 65 be omitted and the necessary changes made in the numbers of the subsequent Sections.

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.

ASSAM COMPANY'S BILL.

The Hon'ble Mr. MAINE also moved that 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) be taken into consideration. He said that this was a mere matter of form. The Bill had simply been necessitated by a Section in a private Act of the English Parliament which require that this Council should repeal the old Act of the Indian Legislature before the new Act of the English Parliament came into operation. The Committee had no modifications to suggest.

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.

PRIVATE WATER-COURSES' BILL.

The Hon'ble Mr. MUIR presented the Report of the Select Committee on the Bill to provide for the appropriation of land required for private water-courses from Canals.

The following Select Committees were named :—

On the Bill to provide for the establishment of a public Museum at Calcutta—His Honour the Lieutenant-Governor, the Hon'ble Mr. Grey and the Mover.

On the 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—His Honour the Lieutenant-Governor, the Hon'ble Rájá Sáhib Dyál, the Hon'ble Mr. Muir and the Mover.

On the Bill to relieve the Governor-General of India in Council from the duty of signing the Commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865—The Hon'ble Mr. Grey, the Hon'ble Colonel Durand and the Mover.

His Excellency THE PRESIDENT said that, before adjourning the Council, he wished to express his sorrow for the loss of their colleague, the Hon'ble Stewart Gordon. He was sure that all would sympathize with him in this feeling. Mr. Gordon, though young in years, was selected, at the recommendation of Sir Bartle Frere, as a fitting representative of the Bombay Presidency, and fully justified that Statesman's choice. He had gained, in his own service, the character of an earnest and able officer, and though he was but a short time among them, they had learnt to appreciate his merits. They deplored his loss, thus cut off in the middle of a career of usefulness and promise.

The Council adjourned till the 16th March.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Dept. (Legislative.)

CALCUTTA, }

The 9th March 1866.