

Thursday, September 10, 1868

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 7

APRIL - DEC.

BOOK NO 2

1868

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 Simla on Thursday, the 10th September 1868.

PRESENT :

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

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. N. Taylor.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble Colonel H. W. Norman, C.B.

The Hon'ble F. R. Cockerell.

CARNATIC RECEIVER'S BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to appoint a Receiver of the property of the late Nawáb of the Carnatic be taken into consideration. He said that the Committee had merely made two slight additions to the preamble and to the last section.

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.

MAUZA KHERIA (EXTENSION OF ACTS AND REGULATIONS) BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to bring the Mauza Kheria, in the District of Agra, under the operation of the General Regulations be taken into consideration. He said that the Committee had made no alteration in the Bill. There was nothing for them to consider, nor was there anything for the Council to discuss. Down to July 1866, the Mauza had been foreign territory: it had then become part of British India, and legislation was necessary to extend to it the general Acts and Regulations now in force in the North-Western Provinces.

The Motion was put and agreed to.

NATIVE MARRIAGE BILL.

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

The Motion was put and agreed to.

NATIVE MARRIAGE BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to legalize marriages between certain Natives of India not professing the Christian religion. He said that the Bill had been prepared at the instance of a sect, of which the origin and general character were probably known more or less to the Council—the Brahmos. It appeared that, since its foundation by Rammohun Roy, the sect had gone through several phases of religious feeling. Of late, its members had become unwilling to contract marriages, or to allow their children to contract marriages, with the rites practised among orthodox Hindús, and these marriages were, MR. MAINE believed, celebrated according to a reformed ritual arranged by the Brahmos themselves. Some doubt, however, having suggested itself as to the legal validity of these marriages, the Brahmos submitted a case for the opinion of the learned Advocate General of the Government of India. Mr. Cowie replied in effect that the Brahmo marriages not having been celebrated with Hindú or Mahometan rites of orthodox regularity, and not conforming to the procedure prescribed by any law, or to the usages of any recognized religion, were invalid, and the offspring of them were accordingly illegitimate. The Brahmos, therefore, through a Native gentleman whom they acknowledged as their representative,—Bábu Keshub Chunder Sein,—applied to the Government of India for relief. Such relief, MR. MAINE apprehended, must be granted. It was not the policy of the Queen's Government in India to refuse the power of marriage to any of Her Majesty's subjects, and he doubted whether even orthodox Hindús would wish to deny to the Brahmos a legal privilege fully enjoyed by Santals and Gonds. Some slight difficulty had occurred in the preparation of the measure. When relief in any matter connected with religion was sought by any sect or body of the Natives of India, and when a case for such relief was established, he held it to be good policy to confine the relief to the particular sect or body making application. Considering the unknown depths of Native feeling on these subjects, it was better not to generalize beyond the immediate necessity, and hence MR. MAINE thought the policy which confined the relief of the Native Converts' Marriage Dissolution Act to Christians was sound, although there were doubtless other classes in the same position. But, after much conversation with the Native gentleman above referred to, MR. MAINE had convinced himself that the creed of the Brahmos lacked stability. The process by which the sect was formed might be increasing in activity; but there seemed also to be

growing disinclination to accept any set of common tenets. It would be difficult for legal purposes to define a Brahmo, and, if no definition were given, there might shortly be petitions for relief by persons who were in the same legal position as the present applicants, but who declared that they could not conscientiously call themselves Brahmos. Hence the Bill had been drawn with some degree of generality. It would legalize marriages between Natives of India "not professing the Christian and objecting to be married in accordance with the rites of the Hindu, Mahometan, Buddhist, Pársi or Jewish religion," provided the marriages were celebrated under certain conditions. The religions mentioned were the only recognized religions of India which were worth referring to. The conditions were as follows:—that marriages should be solemnized in the presence of an official to be styled the Registrar of Native Marriages; that the parties should be unmarried; that the husband should be over the age of eighteen, and the wife over the age of fourteen, and that the parties should not be related to each other in any of the degrees prohibited in the first schedule. If the wife had not completed the age of eighteen years, the previous consent of her father or guardian was also required. The Registrar would be appointed for each district by the Local Government, and would probably be, as in the case of Pársi marriages, the Registrar appointed under the law for the registration of assurances. The Registrar would make a certificate of the marriage, and enter it in his register, which would be open to public inspection. The Bill also contained a clause legalizing prior marriages between the Natives described in the Bill, if the marriage had been solemnized in the presence of three witnesses, and if the provisions as to age, consent, and prohibited degrees had been complied with. Lastly, the Bill contained a clause subjecting every person married under the proposed Act to the penalties of bigamy who, during the lifetime of his or her wife or husband, contracted a marriage without having been lawfully divorced.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then asked the President to suspend the Rules in order that the Bill might be introduced.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill. He said that it would be in substance a Civil Marriage Bill, having, however, the peculiarity that the persons availing themselves of the new power must not be Christians (to whom a special system of Marriage Registration applied), and must expressly object to be married with the rites of any one of the

recognized Native religions. With religious ceremonial it would not be concerned. The Brahmoo could add to the requirements of the law whatever ritual they preferred, and the result would be that, as in several European countries, there would be first a civil and afterwards a religious marriage. It was necessary for MR. MAINE to state to the Council that the Brahmoo, through their representative, had made one request which had not been complied with. They had asked for an express legislative declaration that the descendants of persons marrying under the Act should continue to live under the Civil law which was applicable to the last ancestor who professed a recognized Native religion. It would seem, however, that all which the Brahmoo required was given by the existing law as laid down by the Privy Council in a most important case, *Abraham v. Abraham* (Moore's Indian Appeals, vol. IX, p. 195). It was there decided that a Native of India, abandoning Hindúism or Mahometanism as a religion, and the descendants of such Native, might at pleasure continue to live under Hindú or Mahometan Civil law, or might exchange it for any other set of usages known to the law. The provision requested might, therefore, have the effect of abridging the liberty of the Brahmoo, as taking away their power to adopt another, but a recognized, law. MR. MAINE commended the Bill to the Council as one for which a strong case had been made out and one which, after all, involved a very small extension of the principle of the *Lex Loci* Act (XXI of 1850). That Act relieved from all civil disabilities persons excommunicated from any recognized Native religion, or, in other words, the first generation of converts or dissidents, but it did not expressly provide relief to the second and ulterior generations. The omission was partly repaired by the decision of the Privy Council, and would be in part supplied by the present measure.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN moved for leave to introduce a Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native forces. He said that this measure would have been brought before the Council by the Hon'ble Major General Sir Henry Durand, but for his unavoidable absence, and he, Colonel NORMAN, was authorized to state that the Bill had received Sir Henry Durand's entire concurrence. The bulk of the existing Articles were contained in an Act passed in 1861, but this Act had subsequently been amended twice, namely, by Acts V of 1863 and XXVI of 1865. Considering that the Act of 1861 had been passed not long after the suppression of the Mutiny, it was matter of surprise and satisfaction that, so few changes of substance had been found necessary. Some such changes, however, were desirable, and it was thought better to embody

them in an Act consolidating the whole law on the subject than to add a fourth to the three Acts in which that law was now contained. The Bill had been prepared with great care in the Military Department. It was then submitted to the Legislative Department, and Hon'ble Members would find that the opportunity had been taken, not only to improve the arrangement of this large and somewhat complicated body of Military Law, but also to make numerous verbal alterations which would have the effect of rendering more precise the description of the crimes punishable under the proposed Act. Care had been taken, however, to avoid falling into the error of over-technical particularity. The Bill would be accompanied by a Statement of Objects and Reasons, which would afford the Council and the Public full information as to all the changes of any importance which the Bill proposed to effect. The Bill was concurred in by His Excellency the Commander-in-Chief, and careful attention had been paid by its framers to the communications on the subject which had been received from the Governments of Madras and Bombay.

The Motion was put and agreed to.

The Council then adjourned to the 17th of September 1868.

WHITLEY STOKES,

*Asst. Secy. to the Govt. of India,
Home Department (Legislative).*

SIMLA,
The 10th September 1868. }