

Thursday, August 13, 1868

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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 and 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 13th August 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 Major General Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

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

The Hon'ble F. R. Cockerell.

INDIAN DIVORCE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial causes in England.

OCTROI (LUCKNOW) BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to give validity to the levy of certain duties in Lucknow. He said that the Bill was rendered necessary by a mistake, at first sight very unimportant, which had been made in 1865 by the Chief Commissioner of Oudh, and which had been overlooked in the Foreign Department of the Government of India. The Lucknow Municipal Act (XVIII of 1864), section 13, declared that duties on such things and at such rates as the Chief Commissioner with the sanction of the Governor General in Council from time to time declared should be levied in respect of the said things when brought into the city of Lucknow for consumption or use therein. The section also provided that the Chief Commissioner should lay down rules as to the mode of levying and collecting the duties. In May 1865, the Chief Commissioner sent up

certain rules for the collection of Octroi in Lucknow, appended to which was a schedule specifying the goods on which the duty was to be levied and the rate at which the duty was then fixed. Unfortunately he headed these rules—"Rules for the collection of Octroi duties in Lucknow for 1865-66." Now, when power was given by an Act of the Legislature to declare duties from time to time, this did not mean that they were to be declared to be leviable for a limited time, but that they were to be declared for an indefinite time and then altered (if need should be) from time to time; but the heading seemed to have been overlooked in the Foreign Office, and the Government of India simply sanctioned the Chief Commissioner's declaration and published the rules in the *Gazette of India* for May 13th, 1865. Last month a new schedule of duties was prepared by the Chief Commissioner and sanctioned by Government, and as to these there was no difficulty or question; but up to that time the duties mentioned in the former schedule had been levied at Lucknow. In a recent case, however, in which there had been a refusal to pay some duty demanded, a doubt had been raised as to whether in consequence of the heading to which he had referred, the former schedule had not a merely temporary operation, and ceased to have any legal validity in the year 1866. The matter came before the local Financial and Judicial Commissioners, who differed upon it. Under the provisions of Act No. XXXVII of 1867, the question was referred to the High Court at Agra, and there also the learned Judges differed. The majority, he understood, concurred with the Judicial Commissioner in holding that the recent levy of duties under the former schedule was unauthorized by law. MR. MAINE confessed that he, personally, would have thought that the word and figures "for 1865-66" were merely what lawyers called surplusage, and that they merely implied an expression of intention on the part of the Chief Commissioner to alter the rules at the end of the current year. The point, however, was quite arguable; all that was clear was that the Government could not allow their officers to be exposed to the risk of a prosecution for the slip committed by a Chief Commissioner and overlooked by the Foreign Department. The Bill would, therefore, declare that the declaration and sanction to which he had referred should be deemed to have been in force from the 9th of May 1865 to the 28th of July 1868, and that Government officers and farmers of the duties should be indemnified for any thing done before the passing of the proposed Act, which might lawfully have been done if the Act had been in force.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration.

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.

EXTENSION OF REGULATIONS (MAUZA KHERIA) BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to extend the Acts and Regulations to Mauza Kheria in the North-Western Provinces. He said that nearly two years ago the Ráná of Dholpúr had transferred to Government the Mauza Kheria. The Board of Revenue of the North-Western Provinces had represented that the Mauza was not subject to the general regulations, and the Bill would provide for the annexation of the Mauza to the District of Agra, and the extension to it of all Acts and Regulations now in force in that district.

The Motion was put and agreed to.

The Council adjourned till the 20th August 1868.

WHITLEY STOKES,

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

SIMLA, }
The 13th August 1868. }