

Wednesday, May 20, 1868

**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, 21 & 25 Vic., Cap. 67.

The Council met at Simla, on Wednesday, the 20th May 1868.

P R E S E N T :

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. Noble 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 Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

BOMBAY BANK BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to appoint a Commission to enquire into the failure of the Bank of Bombay, and requested 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 moved that the Report be taken into consideration. He said that the Bill would have become law at Calcutta but for the necessity of previously communicating with the Secretary of State for India and the Local Government of Bombay. Those communications had now been received and acted upon. As, in the opinion of the Local Government, the Bank would ultimately pay its debts, and have some surplus, the recital in the Preamble had been correspondingly modified. The Government of Bombay had further suggested that the Commission should be allowed to act even though its members were reduced to two, but there were inconveniences in a Commission so constituted; power however had been expressly given to the Governor General of India in Council from time to time to add to the persons named in the Commission, and to replace members disabled from acting. Section 3 would require some further change to meet the views of the Secretary of State. The enquiry would begin at Bombay, but provision would be made for continuing the enquiry, if the Government of India should

think fit, at places in the province other than the Presidency town. In Section 4 the Committee had, at the suggestion of the Secretary of State, empowered the Commissioners to compel the personal attendance of witnesses residing not merely within the Presidency of Bombay, but in any part of British India. The alternative course of examining such witnesses by commission might still be followed by the Commissioners, and here the Bombay Government had recommended that this power of delegated examination should be limited to Judges and Collectors. The Select Committee, agreeing in the view of the Bombay Government, had at the same time thought that the matter was one fairly left to the discretion of the Commissioners who might be trusted to select proper persons to take evidence in their name. The most important amendment was the introduction of Section 9. The Bombay Government had suggested that provision should be made for pursuing the enquiry in England and elsewhere, and had urged that without this, it could never be complete. It was obviously not easy to comply with this request, for of course the Council of the Governor General had no power to bind directly persons residing in England. But Sections 177 and 178 of the Code of Civil Procedure authorized the High Court to issue Commissions for the examination of witnesses resident beyond the limits of British India, and the Statute 22 Vic., cap. 20, afforded facilities for taking evidence in one part of Her Majesty's dominions in relation to proceedings pending before Courts in another part of those dominions. It had accordingly occurred to the Committee that the difficulty might be met by declaring the Commissioners to be a Court for the purpose issuing commissions to take evidence beyond British India. The clause inserted was as follows:—

9. The Commissioners may, whenever they think fit, issue a commission for the examination of witnesses resident beyond the limits of British India, and shall, for the purpose of issuing such commissions, be deemed to be a Court authorized to issue commissions by Sections 177, 178 and 179 of the Code of Civil Procedure.

Section 179 of the Code of Civil Procedure contained provisions as to the return of the commission to the Court issuing it together with the depositions. The English Courts would, he hoped, consider themselves justified in aiding the commission, if necessary. Section 11 was new, and provided not only for the punishment of perjury before the Commissioners, but also for that of the fabrication of false evidence and committing contempts. In Section 12, the Committee had, at the desire of the Secretary of State, struck out the provision that no statement made by a witness should be admissible against him in a civil proceeding, and had expressly provided that nothing in the proposed Act

should exempt him from a civil suit. The clause in the Bill as introduced was certainly in the usual form. Such clauses of indemnity were not however inserted on any principle which required that a person should be absolved from civil liability because the evidence of such liability consisted in an admission compulsorily extorted from himself. Since legislative changes in England and India which allowed the interrogation and examination of defendants, such a doctrine could not be maintained. Indemnity clauses were simply intended to induce persons aware of facts relevant to the enquiry to come freely forward and to answer freely, and the simple question was whether it was worth while holding forth such an inducement in the present case. MR. MAINE on the whole agreed with the Secretary of State that it was not. Criminal liability rested on a different footing, and the witness answering honestly would still be relieved from penal consequences.

In Section 13 the bar of suits against the Commissioners for anything done in the execution of the Act had been rendered absolute.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that in lieu of the first clause of Section 3, the following should be substituted:—

3. The Commissioners shall enter upon the said enquiry in the town of Bombay on the first day of June 1868, or as soon after that day as they can conveniently do so, and such enquiry may be continued in the Commencement of enquiry. Presidency town or at such other place within the territories under the Government of the Governor of Bombay in Council as the Governor General of India in Council shall from time to time appoint.

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.

The Council then adjourned till the 27th May 1868.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Department (Legislative).

SIMLA, }
The 29th May 1868. }