

Friday, April 24, 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 pro-
visions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 24th April 1868.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal.

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. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, c. s. i.

The Hon'ble H. Crooke.

The Hon'ble Sir R. Temple, k. c. s. i.

PRINCIPAL SADR AMÍNS, SADR AMÍNS AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL moved that the consideration of the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs, and for other purposes, be resumed.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said that, before proceeding with the motion which stood first on the List of Business, he proposed to submit to the Council the amendments of which he had given notice. In so doing, he thought it was unnecessary to recapitulate the facts of the case, or to advert particularly to the arguments urged at the last meeting, all of which must be fresh in the recollection of the Council. The starting-point of objection taken by the Hon'ble Sir Richard Temple was that the Bill proposed to enlarge the powers which the High Court at present exercised in the matter of the appointment of the subordinate judicial officers ; and MR. COCKERELL thought it was to be inferred from the Hon'ble Member's speech that, if no such extension of the existing law had been contemplated by the Bill, he would have been content to let the Bill pass. The amendment which he (MR. COCKERELL) proposed, therefore, contemplated merely the re-enactment of the existing law as laid down in Regulation V of 1831 ; and he ventured to hope that the Hon'ble Sir Richard Temple would be disposed to accept this amendment in lieu of that of which he had given notice. MR. COCKERELL thought he might say that the discussion which took place on this question at the last meeting sufficiently indicated the divided

opinion on the part of several Hon'ble Members on the subject, and under all the circumstances of the case, and looking to that conflict of opinion, it seemed inexpedient to make any substantive alteration of the existing law on this subject. With those remarks he would move that, in lieu of section five, the following be substituted :—

“5. Whenever the office of a Subordinate Judge under this Act is vacant, the Local Government may appoint to the office such person as it thinks proper.

Whenever the office of a Munsif under this Act is vacant, the High Court shall nominate such person as it thinks fit to fill such office, and the Local Government shall appoint him accordingly.

It shall be lawful for the Local Government, with the sanction of the Governor General of India in Council, to make rules as to the qualifications of persons to be nominated Munsifs under this Act, and from time to time to alter and add to the rules so made.

When such rules shall have been made, no person, notwithstanding anything hereinbefore contained, shall be nominated to the office of Munsif, unless he possesses the qualifications prescribed by the said rules.”

The Hon'ble SIR RICHARD TEMPLE said, the Hon'ble Mr. Cockerell had most correctly described the object which he (SIR RICHARD TEMPLE) had really had at heart when he addressed the Council at its last meeting, which object was to prevent any additional power being conferred on the High Court by this legislature. In doing so, he wished to speak with every proper respect and deference to that great tribunal. But now he observed that the object in view had been substantially and effectually ensured by what he might term the revised amendment of the Hon'ble Mr. Cockerell. According to that amendment, the future practice as laid down by law would be in accordance with the present usage, and no additional power would be conferred on the High Court. Under these circumstances, and also believing that the Hon'ble Mr. Cockerell's amendment would be approved, generally at least, by the Council, he begged leave, with the permission of the President, to withdraw the amendment of which he had given notice.

The Hon'ble MR. MAINE said, it appeared to him that, considering the differences of opinion that had disclosed themselves in the Council, it was expedient to maintain the *status quo ante* by re-enacting the existing law. He begged, therefore, His Excellency's permission to withdraw his amendment. All he would say was, that it was not to be inferred from the strong expressions which he had used at the last meeting (expressions which he was ready to admit were perhaps stronger than the occasion demanded, but which were explained by the fact that the proposal of his Hon'ble friend Sir R. Temple took him

completely by surprise), that he (MR. MAINE) intended to commit himself against a well-considered and comprehensive measure for creating a department of administrative justice under the Government of Bengal or any other Local Government. There was, he would add, one expression in Mr. Cockerell's amendment which perhaps might be construed as not precisely reproducing the existing law. The power to make rules prescribing qualifications was given by the Regulation of 1831 to the Governor General in Council. Here it was given to the Local Government with the sanction of the Governor General in Council. But the fact was that the Governor General in Council of 1831 was not precisely the Governor General in Council of the present day. MR. MAINE thought that his Hon'ble friend had accurately translated the expression of the old law into the language of the present day by the phraseology he had employed.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said he would move the introduction of the other amendment of which he had given notice, and which seemed to follow as a necessary consequence of the affirmation of the principle in the acceptance of his first amendment. This amendment contemplated simply the re-enactment of the provisions of section VI of Regulation V of 1831, with this slight distinction, that it proposed to vest in the High Court the power of suspending Subordinate Judges, which that Regulation vested in the District Judge. The alteration, it would be observed, was one of detail, not of principle, and had been thought desirable with reference to the present status and circumstances of the Subordinate Judges. With these remarks, he would move that, in lieu of section 10, the following be substituted :—

"10. The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

Whenever the High Court suspends any such Subordinate Judge, it shall forthwith report to the Local Government the circumstances of such suspension, and the Local Government may direct him to be removed from his office, or make such other order as the case may require.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the High Court a full report of the case with the evidence, and the High Court shall make such order in the matter as it thinks fit.

The High Court may at any time by order remove from his office or suspend any Munsif subject to its control."

The Motion was put and agreed to.

The Hon'ble MR. MAINE said he had an amendment of no very great importance to propose in section 20. The provisions of the section itself had been originally suggested by the High Court of the North-Western Provinces. It was alleged that the Local Government had not thought fit to deny what it considered to be the advantage of a Small Cause Court to certain districts where there was hardly work sufficient for such a Court. The result was that a comparatively highly paid officer was sometimes not rendering to the public services commensurate with his salary. It was thought, therefore, that some expense might be saved by investing selected Principal Sadr Amins and Munsifs with limited Small Cause Court jurisdiction. When the proposal came before the High Court of the Lower Provinces, that Court recommended that all Principal Sadr Amins and all Munsifs should be invested with this limited jurisdiction. But it proposed certain modifications of the Small Cause Court system intended to bring it more under control. MR. MAINE had considered these last suggestions with all the attention and respect they deserved, but he had not been able to convince himself of their clear expediency. Whether they were expedient or not, they did not reconcile him, and he was sure they would not reconcile His Excellency the Viceroy, to the wholesale investiture of these judicial functionaries with Small Cause Court powers.

The High Court had done him the honour to quote a remark of his published in 1863, that—

"it is essential that the qualifications of the judicial officers appointed should be such as "to afford a guarantee for justice, equal or nearly equal to that which is now afforded by the "opportunity for correcting mistakes furnished by the power of appeal."

Mr. MAINE adhered to that opinion, and still considered selection to be of the essence of the Small Cause Court system. There was, however, one objection of the High Court, to which MR. MAINE thought effect ought to be given. As the Bill stood, it enabled the Local Government to invest Subordinate Judges and Munsifs with a jurisdiction varying up to a certain fixed limit. The result would be that the Court might have to enquire, not simply into the fact whether a particular Subordinate Judge or Munsif had been invested with these powers, but, further, what was the limit of those powers. Every one conversant with the practice of Courts would say that such a provision would produce delay, and, perhaps, facilitate chicane. MR. MAINE had been in communication with His Honour the Lieutenant Governor of Bengal, and found that His Honour agreed in this view, and that, in fact, even if the Bill remained as it was, His Honour would only invest persons with Small Cause Court powers up to the highest limit. The amendment now proposed would have the effect of substituting a fixed for a varying limit. MR. MAINE would only add that, if the Bill became law, His Excellency the Viceroy

would probably see fit to instruct the Lieutenant Governors administratively to make the local limits of the Small Cause jurisdiction of the Subordinate Judges co-extensive with the limits of the sadr stations..

The Hon'ble MR. MAINE then moved that, in section 20, lines 8 and 11, for the words "any amount not exceeding," the words "the amount of" be substituted.

The Motion was put and agreed to.

* The Hon'ble MR. COCKERELL moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

BOMBAY BANK BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to appoint a Commission to enquire into the failure of the Bank of Bombay, said that the object of the Bill was to give effect to the instructions of the Secretary of State addressed to the Government of India, which instructions directed a formal enquiry into the causes of the unfortunate failure of the Bank of Bombay. The character of those instructions would be best conveyed to the Council by reading two paragraphs from the Secretary of State's despatch :—

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"9. It now remains to enquire whether any, and, if any, what modifications are desirable in the relations between the Government and the Presidency Banks, and whether this opportunity should be taken to introduce them into the Charter of the new Bank of Bombay. I think it important that a full and searching inquiry should be instituted into the circumstances which led to, and which attended, the recent catastrophe in the old Bank. In no other way, I think, can we fully learn the lessons which the experience of that catastrophe ought to teach us. It is important to ascertain whether the calamity which has befallen the Bank is due to the faults either of a system or of individuals, and whether measures can be devised for the prevention of similar misfortunes. It is unnecessary for me to enter at length upon all the questions which should be investigated, but among those which are the most obvious, I mention the following,—whether the presence of Government Directors at a Board upon which they are in a minority is a sufficient precaution against mismanagement, supposing them to do their duty, or whether further powers should be given to them; whether a system of Government audit or inspection is desirable; how Government Directors should be selected, and how they should be paid; whether it is desirable to disqualify for the office persons who are shareholders; whether any control should be exercised by the Government over the alteration of bye-laws;

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how far the relations between the Financial Department of the Government and the Banks are satisfactory, and whether the responsibility of the Supreme and of the Presidency Governments respectively is rightly defined.

10. I request, therefore, that you will, in communication with the Government of Bombay, direct the issue of a Commission to inquire, without delay, into the circumstances attending the failure of the Bank of Bombay, with full powers to conduct the inquiry."

It was evident that the cardinal point of enquiry, that upon which all others hinged, was the question whether the collapse of the Bank was due to faults of system or faults of individuals. Such a question could not be answered by a Commission unless they had judicial powers to examine witnesses and call for books. The Bill was a Bill in the ordinary form, conferring such powers on the Commission.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also 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. He said that it empowered the Governor General to appoint Commissioners, and in case any seat on the Commission should become vacant, to fill it up. The Commissioners would sit with open or closed doors as they thought proper. They would be empowered to compel the attendance of witnesses and to examine such witnesses upon oath. They would call for all such books, papers and writings as they thought proper. Witnesses refusing to attend or answer would be treated as if the refusal had been given to a principal Court of original civil jurisdiction, and witnesses answering falsely would be punishable for perjury. The reasonable expenses of witnesses would be paid. No witness would be excused from answering on the ground of privilege or on the ground that the answer would criminate himself. But an indemnity was given against the consequences of any answer. MR. MAINE had further to state that one member of the Commission would be appointed from home, one by the Government of India, and one by that of Bombay. There was reason to believe that the Commissioner sent from home would be a gentleman long resident in this city and much respected here—Sir Charles Jackson, formerly a Judge of the Supreme Court and afterwards of the High Court. MR. MAINE would introduce the Bill and move that it be referred to a Select Committee with instructions to report in

three weeks, which was probably a sufficient time for communicating with the Government of Bombay.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to appoint a Commission to enquire into the failure of the Bank of Bombay—The Hon'ble Messrs Strachey and Cockerell, the Hon'ble Sir R. Temple and the mover.

The Council then adjourned till the 30th May 1868.

CALCUTTA,
The 24th April 1868.

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