

Friday, February 12, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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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 24 & 25 Vic., cap. 67

The Council met at Government House on Friday, the 12th February 1869.

PRESENT

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I.,
presiding.

His Honour the Lieutenant Governor of Bengal.

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

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

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

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Sir George Couper, BART., C. B.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahadúr, K. C. S. I. of
Bahrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the appointment of Justices of the Peace be taken into consideration. He said that this Bill was originally necessitated by an Act of Parliament passed in 1865. The Statute 28 Vic., c. 15, sec. 3 empowered the Governor General in Council to re-distribute, by notification, various jurisdictions of the High Courts, and in particular to alter the local limits of the original criminal jurisdiction which they exercise over European British subjects. The Justices of the Peace to whom the measure referred had no functions outside the presidency towns except those of dealing with charges against European British subjects, of fining them in certain cases and committing them for trial in others. When the notification had been issued under the Statute of 1865, a question arose whether a Justice of the Peace could commit to any High Court

except the one under whose seal his commission issued. The learned Judges differed on the point, and legislation became imperative. As the Bill was originally framed, it merely removed this particular difficulty, and enabled the High Courts to commission any Justice of the Peace having power of commitment to such Courts. The Judges, however, of two of these Courts, on receiving the Bill, asked why they should not be relieved from the burden of issuing commissions to Justices of the Peace? They had no option in the matter; they were obliged to obey the requisition of the Government, and the duty seemed an unjustifiable waste of their time. The Select Committee could not but adopt such a suggestion emanating from such a quarter, and the Bill had been amended in that sense. MR. MAINE would go through the sections in connection with his amendments, which had all been assented to by the Committee. It would be observed that the third section enabled the Governor General in Council to appoint Justices of the Peace for the whole of British India. There was no intention (as would be inferred from the composition of the Committee) to confer on the Supreme Government the power of usurping any of the legitimate functions of the Local Governments. But the Council would see that under the section of the Act of Parliament to which he had referred, the local limits of the original criminal jurisdiction of the High Courts might be constantly shifting. For example, European British subjects were committed from certain portions of the Central Provinces to the High Court of Bombay. But as the railway from Jubbulpur advanced westward, it might be more convenient to have them committed to the High Court of the North-Western Provinces. The Council would at once perceive the great convenience there would be in having an authority whose appointments would be independent of all limits and would be valid all over India. The words at the end of the first clause of the section MR. MAINE proposed to omit, and to embody their substance in a separate section. The objection had been taken by a high authority, that the Bill, as it stood, had an air of legislating for the Native States, which was not within the competence of the Council whose legislative powers as to such States were confined to British servants of the Crown and European British subjects. By the fourth section the Governor General in Council had a power collateral to that of the Local Government of appointing Justices of the Peace for Calcutta. This was done on account of the special relation of the Government of India to Calcutta. But MR. MAINE apprehended that the power would be seldom exercised. The fifth section merely conferred on the Justices of the Peace to be appointed under the Act all the powers and authorities now belonging to the present Justices of the Peace. But he proposed to alter the words "make commitments of" into the words "have power to commit for trial."

After section 5 MR. MAINE proposed to introduce the new section relating to the Native States. The Council was not competent to legislate formally for these States, but it could empower Justices of the Peace appointed for other parts of India to deal with charges made in those States against certain classes of persons. The Justices thus acting in Native States were to be servants of Government, for it was desirable that none but Political Officers should exercise these functions. The reference to Christian subjects of Her Majesty in the last part of the section was introduced, because the Act of Parliament of 1865 made provision for such Christian subjects being placed under the criminal jurisdiction of the High Courts.

The next two sections related to the oaths which Justices of the Peace were to take. They were left in the Bill by a majority of the Committee, and MR. MAINE was afraid he was the only dissident. He did not, however, intend to move to omit them, because he did not think the question of very great importance, and he admitted that the arguments were nearly evenly balanced. MR. MAINE thought that too many of such oaths were taken in this country; and, as the characteristic function of a Justice of the Peace beyond the Presidency Towns was to deal with Europeans, who (he was afraid) were too often European vagabonds, there did not seem any reason for imposing any additional burden on their consciences. On the other hand, there was the analogy of the law at home; and it must be allowed that the chief reason for maintaining the institution of separate Justices of the Peace was that it might be the nucleus of a better system for disposing of the minor crimes of European British subjects. If the Justices acquired such functions, it might not be unreasonable that they should take fresh oaths. MR. MAINE, however, did not presume that his hon'ble friends wished the existing Justices to be sworn over again, and therefore "no such person" in section 7 must be altered into "no person other than a Justice of the Peace now acting under a commission."

The next section, of which the language was taken from the old law, must be altered since it appeared that some of the Local Governments had now no Home Office, its duties having probably been distributed among other Departments. The last section of the Bill merely conferred on existing Justices the same powers which they would enjoy if appointed under the new law. But on the principle of the omission in section 3, the last words of the first clause must be omitted "and for the dominions of the said Princes and States."

MR. MAINE trusted that the Council would pass the Bill into law, and that it would be found to substitute a simple and convenient system, for one which

was extremely cumbrous, and for which little could be said except that it existed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved the following amendments :—

1. That, in section 3, the words 'and the dominions of Princes and States in India in alliance with Her Majesty' be omitted.

2. That, in section 5, line 4, the words 'full power and' be omitted, and that, for the words 'make commitments of,' line 5, the words 'have power to commit for trial' be substituted.

3. That, after section 5, the following section be added :—

'6. All persons being servants of Government appointed by the Governor General in Council to act as Justices of the Peace for the whole of British India,

and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid,

shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.'

And that the numbering of the subsequent sections be altered.

4. That, in section 6, line 1, for the words 'no such person,' the following be substituted :—

'no person other than a person now acting as a Justice of the Peace under a commission.'

5. That, for section 7, the following section be substituted :—

'The subscriptions of such persons to the said declarations shall be deposited with and kept by such officer as the Governor General in Council or the Local Government (as the case may be) shall from time to time appoint.'

6. That, in section 9, lines 9 and 10, the following words be omitted :—

"and for the dominions of the said Princes and States."

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.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER asked leave to postpone his motion that the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces be taken into consideration.

leave was granted.

IMPROVEMENT OF LAND (N. W. P.) BILL.

The Hon'ble MR. STRACHEY moved that His Excellency the Commander-in-Chief, the Hon'ble Mr. Taylor and the Hon'ble Sir George Couper be added to the Select Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till the 19th February 1869.

WHITLEY STOKES,

*Secy. to the Council of the Governor General
for making Laws and Regulations.*

CALCUTTA,
The 12th February 1869. }