COUNCIL OF GOVERNOR GENERAL

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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 Vict., Cap. 67.

The Council met at Government House on Friday, the 13th December 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble Sir George U. Yule, C.B., K.C.S.I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. Skinner.
The Hon'ble Steuart Gladstone.

INDIAN NEGOTIABLE INSTRUMENTS' BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the present Bill dealt with a branch of the general law of contract comprised in the Bill which he had laid before the Council at their last sitting. As however the law of negotiable paper embraced a separate subject, he thought it desirable to present it as a separate Bill, in the form in which it had been prepared by the Indian Law Commissioners; but he should propose that the Bill be referred for consideration to the Select Committee which had been appointed on the Indian Contract Bill, and, if such a course should be deemed advisable, the present Bill might be incorporated with the larger body of law. The Bill was, for the most part, an adaptation of the English law of bills of exchange, promissory notes, and cheques, as long administered in Great Britain, the presidency towns and for the most part in the mofussil, except where, in the case of hundis, a custom had been established. A bill of exchange was perhaps the simplest document that could be framed, and yet so multiform were the combinations of circumstances arising from the rights and liabilities of the parties, that the decisions on the subject now formed a voluminous and complex body of law. He held in his hand a text-book of no

small bulk, which was merely an abstract of those decisions; the Council would not therefore be surprised when he had to present to them a Bill on the subject which contained 145 sections. The greater part of the Bill, of course, consisted of mere matters of detail; and it would be the duty of the Select Committee to whom the Bill would be referred to go through the clauses *seriatim* and consider whether they were suited to the circumstances of the country. He would only embarrass the subject if he plunged into all the details comprised in the Bill, and would therefore now merely notice a few of the prominent points in which the Indian Law Commissioners recommended a deviation from the law as it obtained in England. Those recommendations were chiefly in the direction of giving greater security to the parties to these instruments, and increasing the facilities for their negotiation; and if the Council were of opinion that those objects had been attained, they would come to the conclusion that a great amendment of the law had been effected.

No important alteration was proposed in regard to the form of a bill of exchange. Such instruments were the creatures of commercial necessity, and their form had been so long established that it would be exceedingly inconvenient to depart from it. The Commissioners, however, recommended that a bill of exchange might be signed by a stamp or by a seal. As he understood the law, manual signature was excused in the case of bills and notes only where the drawer or maker could not write, and then he might sign by his mark. The Select Committee should, he thought, carefully consider the expediency of the proposed alteration. There were also provisions empowering the holder of an instrument payable to bearer to restrict its negotiability by making it payable only to order or to an individual. The present law on this head unreasonably restrained the powers of the holder, and was, MR. MASSEY believed, not in accordance with the wishes of the mercantile community. The Commissioners did not propose (except in the case of a person signing without authority) to extend the liabilities of parties to a negotiable instrument. But as regarded the liability incurred by a person who drew a bill or made a note in the name of another, without authority, the Commissioners had made an important change. By the law as it stood it appeared that, in such case, the drawer or maker incurred no *civil* liability. The Commissioners had, however, adopted from the German law a rule providing that, in the case of acceptors as well as of others, a person who signed without authority the name of another to a negotiable instrument should be personally liable upon it, exactly as the person whose name was so signed would have been if he had given authority.

A cheque on a banker was a form of inland bill payable to bearer on demand. By the English law, the drawer of a cheque was not discharged from liability

by the failure of the holder to present it in due time, unless he sustained actual loss in consequence of the delay, and then he was only discharged from liability to the extent of the loss, and no further. The Indian Law Commissioners were of opinion that the principle of that rule should be applied to all cases where the drawee of a bill of exchange had a fund in his hands at the disposal of the drawer, and had in effect provided that a bill of exchange should in this respect be an instrument of precisely the same character as a cheque, provided it was drawn on a person who had in his hands funds of the drawer. That, MR. MASSEY thought, was an improvement to which in practice there could be no reasonable objection.

Another point in which the Commissioners proposed an amendment was in regard to the rights of indorsees after maturity. As the law stood, indorsement *before* maturity might give the indorsee rights greater than those which the indorser himself possessed, and although the general rule was that indorsement *after* maturity gave the indorsee only the rights of the indorser, there were certain cases in which the indorsee might obtain a perfect title from an indorser who could not recover on the instrument. The Commissioners proposed to abolish these exceptions, and they said "It appears to us desirable to maintain, and even to mark more strongly, the distinction between indorsements made before and those made after maturity. According to the rule of English law, indorsement before maturity may give to the indorsee greater rights than the indorser himself possesses. On the other hand, indorsement after maturity can in general give to the indorsee only the rights which the indorser possesses. There are, however, excepted cases. Where a bill of exchange is indorsed for value after maturity, the indorsee obtains a perfect title against a previous signer, although such indorsee may have known, when he took the instrument, that the signer signed it for no other cause than the accommodation of another. Again, there may be an indorser and indorsee of an instrument, who stand in such a relation to each other, owing to facts independent of the instrument (such as a set-off in a general account), that the indorsee cannot recover the amount of the instrument from the indorser; yet this indorsee may indorse the instrument to another person even after its maturity, and that other person can recover the amount from the indorser. We think it better not to recognise either of these exceptions from the general law, and we have so framed our proposed law that, in these cases, a person to whom an instrument is transferred after maturity shall acquire only the rights of him by whom it was transferred." The Commissioners, it would be seen, proposed to carry out to its full extent the dictum of one of our greatest Judges, who said that after a bill or note was due it came

disgraced to the indorsee, and it was his duty to make inquiries concerning it. If he took it, though he gave a full consideration for it, he took it on the credit of the indorser and subject to all the equities with which it might be encumbered. That part of the Bill, however, which referred to the status of a bill after it had attained maturity would, MR. MASSEY apprehended, probably not be very much resorted to. A bill of exchange was a commercial instrument, and commercial men would generally take care that it was presented at maturity, and it would rarely happen that any laches would take place in presentation, because a man in business knew well that the credit of a bill was impaired, and the security of the holder was diminished, after maturity.

There was another antiquated practice which the Commissioners proposed to abolish. The drawee of a bill of exchange was always allowed what was called days of grace, that was, in England and India, the bill was not presented till after the expiration of three days after it became due. The Commissioners were of opinion that this practice was not recommended by reasons of necessity or convenience, and therefore proposed to abolish it, and to substitute the simple rule that a bill should be payable when it expressly became due. Another novel provision related to the place of payment, when a bill had been made payable at a particular locality, where a man had his residence and place of business in one and the same town. The question had arisen whether a bill of exchange should be presented to him at the place where he transacted his business, or at his residence. On this point the Commissioners proposed that the bill should be presented for acceptance either at the place of business or at the residence of the drawee; but MR. MASSEY was inclined to think that it would be more convenient to make the rule on the subject positive.

The next provision referred to the subject of notice of dishonour, and on this point he must say that the law was not in a very creditable state. He hoped it had never been the misfortune of the Hon'ble Members of that Council who were connected with commerce to protest a bill. When a bill fell due and failure in payment was made, the holder had to give due notice of the dishonour to the indorsers and (in the case of a bill payable to a third party) also to the drawer. One would suppose that, for that purpose, the simplest form of words would be sufficient, and indeed the Courts had been studious in asserting that no particular form was necessary; but in practice, the Courts had been critical in construing such notices, and it had become hardly safe for any man in England to give notice of dishonour except under professional, or at least notarial, advice. The books abounded in cases

in which notices of dishonour had not been considered sufficient. If the holder of a bill wrote to the man who had to pay, and told him that the bill had been dishonoured, what inference could be drawn by the receiver of the notice except that the holder looked to him for payment? But the law required that the holder must not only apprise the party liable of the dishonour, but also intimate that he was expected to pay the amount. The Commissioners had proposed a great improvement in the law as regarded that point: their proposals, indeed, were always in the direction of simplicity, and were made with the view to prevent the raising of questions in regard to instruments which ought to be at once convertible and negotiable without difficulty. They got rid of all those questions of legal and proper notice by merely requiring that a notice of dishonour should state the fact of dishonour, and dispensed with the necessity of expressly intimating the intention of the holder to look for payment to the party served.

Other provisions related to remedies on lost bills. By the law of England, the holder of a bill of exchange who was entitled to payment, and which by accident was lost, was entitled to payment on giving security to indemnify the payer, and this rule had been recently adopted by the Indian legislature. The Commissioners proposed to restrict the operation of the rule to claims against the maker of a note and the acceptor of a bill. No reason was given for excluding indorsers and thus curtailing the rights of holders, and the proposed restriction would, MR. MASSEY thought, require careful consideration. His present impression was that the proposed change was a concession to indorsers to which they were not fairly entitled.

There were also provisions as to alterations in negotiable instruments. The present law on the subject, which rendered an instrument invalid by an alteration made even by a stranger, certainly seemed too severe. The Commissioners provided that such alterations should have no effect on the liabilities of a party signing as maker or acceptor before the alterations were made. That, he thought, restrained the doctrine within safe limits. MR. MASSEY need not now go into other details which were more fit for discussion in Committee than for debate in Council. The points which he had stated were, so far as he had been able to discover, the more prominent points to which the attention of the Council should be drawn. He did not know that he could claim for the able framers of the present Bill that deference which he hoped they would meet with in the case of the Contract Code. He would ask his two Hon'ble friends who were engaged in commerce to give their careful attention to the provisions of the Bill, as the Select Committee would, no doubt, expect from them sound opinions for their

guidance. He might mention that the fact of there being differences of opinion in other quarters, as to the principles and provisions of the Bill, had lately come to his knowledge. He had received a statement from a gentleman well acquainted with the subject and entitled to speak with some authority, commenting upon and criticising the Bill in an unfavourable spirit. MR. MASSEY had directed that those observations should be put in print and circulated to the Members of the Council, and they would no doubt form the subject of discussion in Committee. All that he had now to do was to move that this Bill be referred to the Select Committee on the Indian Contract Bill with instructions to report in three months.

The Hon'ble MR. STEUART GLADSTONE said that when first he saw this Bill, he was of opinion that it would be a very useful addition to the laws of the country, but, since he had more carefully studied its provisions, his opinion had somewhat changed, and unless it was greatly altered in Committee—so altered indeed as to be hardly the same Bill—it had better at once be thrown out for any benefit it was calculated to do the public. As a matter of fact, he did not know of any grave objections to the laws which at present regulated such transactions, but he freely admitted that it might be a boon to have such laws codified in some such form as that proposed, so that those anxious to make themselves acquainted with law might have the opportunity of doing so without much labour or difficulty, for at present most people, he feared, followed customs blindly, without knowing what the exact law really was. He therefore thought that it might be desirable for the Bill to pass into Committee, there to be recast and remodelled as might appear desirable. It reminded him, however, of the story of the Quaker who, wishing to give some idle persons employment, employed them in moving a lot of bricks from one side of his yard to the other, and when that was done in moving them all back again. Such, he took it, would be the labours of the Committee; they would take this Bill to amend existing laws into their careful consideration, and would, he hoped, so completely amend the amendment as to leave those laws very much as they found them. The Statement of Objects and Reasons drew attention to the chief points of the Bill, and the alterations referred to in paragraphs 3, 4, 5 appeared to be reasonable and proper. Paragraph 6, however, would, he hoped, be very carefully considered, for it seemed to him that an indorsement, unless anything was stated to the contrary, should have reference to the full value of the instrument. Paragraph 7 referred to the abolition of days of grace, and there seemed no reason why they should be retained. He believed they were allowed, originally, as the reasonable time within which an acceptance might be met, and had since, by use and custom, been established as a right. It

really was of no importance whether they were abolished or not, but days of grace were still the custom in England, and the abolition of them here contrasted rather strongly with the wish expressed to assimilate the laws of the two countries. He was, however, quite in favour of their abolition, but he did not so readily concur in the proposed latitude allowed to bills maturing on holidays. He failed to see why this should follow as a natural consequence of the abolition of the days of grace. The transaction represented by a bill was supposed to have worked round so as to supply funds by due date of the bill, and as no business could be done on a non-working day, it was no hardship to make the bill due on the last working day before its maturity. The proposed alteration would, he hoped, be thrown out in Committee, and the law allowed to stand as at present. Paragraph 9 related to the domicile of a bill, and he thought it might be considered whether a bill should not be made to bear upon the face of it the place where it would be paid, and where notice of dishonour could be legally sent. In this country, where people moved about so much, it would be difficult to say what a man's residence really was. Paragraph 11 related to the recovery of the value of a dishonoured bill, but its provisions, as regarded interest, were, he thought, incomplete; the holder should be entitled to recover from the drawer interest from the date of the bill. Paragraph 13 related to the restriction on the operation of the rule relating to loss or destruction of a bill, and he failed to see why an indorser should in such cases be relieved from liability. Apart from the question of the maker and acceptor having become insolvent, it was frequently the credit of an indorser that led to the negotiation of a bill, and the holder's action against him should not be less assisted than his action against the maker or acceptor, neither of whom he might ever have heard of, or considered, when he gave value for the instrument. Paragraph 14 referred to crossed cheques, a system which he hoped the Committee would carefully consider; for it did not seem to him at all adapted to the country. At home the existence of a clearing house made the system valuable, but they had no corresponding institution here, nor were they likely to have for many years, and who was to define who a banker was within the meaning of the Act? Paragraph 15 related to the rules of presentment and dishonour, which appeared to him to be unnecessarily arbitrary and stringent, and likely to lead to much complication and legal difficulty. It was easy to conceive the trouble that a drawee might give under the latitude herein allowed. He might refuse at any time to pay a cheque without first instituting all manner of frivolous and vexatious inquiries as to the time used in negotiation of a bill or cheque. Paragraph 17 had reference to the alteration made in bills, but he thought

the English rule was preferable to that sought to be established. Bills should be kept in proper custody, so that no stranger could have access to them, and they should be preserved in their original state to make them valid instruments, leaving it to the discretion of the acceptor to discharge his obligation or not.

He had preferred taking the annexure rather than the Bill itself as the basis of his remarks, but there were sections in the Bill itself which were equally objectionable, but which would be tedious to go through now in detail. They would, he hoped, be all carefully dealt with in Committee, and be so altered and modified as to make the Bill a much more satisfactory one than it could claim to be at present. The theory of assimilating the laws of India with those of England might be excellent, but practically he doubted the benefit of such assimilation if it was too closely adhered to without proper consideration of the very different position and circumstances of the two countries.

There was an addition, too, which he would wish to see made to the provisions of this Bill, and that was the adoption of summary proceedings in cases of dishonour, or even when reasonable grounds existed for suspecting intention of dishonour, and he should be glad if such summary proceedings included personal arrest. Such a measure would, he thought, be productive of much good, and afford protection in many cases where now it was much wanted.

In conclusion, MR. GLADSTONE repeated that he voted for the introduction of the Bill, because he believed that a codified form of bill-law would be acceptable and useful to the public, not because he had any fancy for the Bill itself. Indeed the more he looked at it the less he liked it, but he trusted that it would be so altered in Committee that not even the framers of it would be able to recognize it as their production. One principle would, he hoped, be kept steadily in view throughout, and that was the liability of any person putting his name to a bill or instrument of any description, from which liability he should not be lightly or easily released. If this were done, and if the common sense of existing customs were consulted, he had little doubt that the labours of the Committee would result in a measure that would be no disgrace to the Indian Statute Book.

The Hon'ble MR. SKINNER entirely concurred with Mr. Gladstone in thinking that this Bill would hardly, in its present form, be considered an acquisition to the commercial law of the country. There was probably no branch of mercantile affairs more important than that which related to the subject dealt with in this Bill; and there was at the same time none with regard to which a better understanding existed, and more general harmony prevailed, even in this coun-

try, where there were so many different usages in trade. Still, he thought it desirable that the different rules and customs prevalent in regard to bills should be gathered up and condensed into a Code of law of universal application, to which all parties might refer in cases of difficulty or doubt. But he did not think the present Bill supplied that want satisfactorily. It seemed to him that its terms, especially in the definition-clauses, were diffuse and vague; in some cases also inaccurate; and in others obscure. For instance, the definition of promissory notes, cheques and bills of exchange might be made more concise and clear. Then, there was an inaccuracy in the clause which said that these instruments must specify a sum of money to be paid at once or by instalments: that definition did not apply to cheques, an essential characteristic of which was that they must be paid at once. Then, section 4 provided that the maker of a bill of exchange might sign by means of a stamp or seal. The use of the stamp, he presumed, applied to corporate bodies, but the stamp in these cases was generally attested, and there appeared to be no provision requiring such attestation. So also with regard to seals, the rule, he presumed, was intended to provide for the case of Natives of rank: in that case also, he thought, it would not be desirable to allow persons to sign by sealing, without some attestation of genuineness. Section 10 provided for cases that did not occur in practice, and he did not see the use of it. There was another section (40) which provided that the transfer of bills by delivery warranted their genuineness. That was in direct opposition to the common practice with regard to transfers of bills. Very large operations did take place by transfers by mere delivery, and the bills were by consent taken without the indorsement of the transferor on the faith of the names already attached to them. There were many technicalities and refinements which were not needed, and doubts and difficulties were raised which would tend very much to unsettle the existing practice. As regarded days of grace, he did not see any reason why they should not be done away with, though on principle he was opposed to innovations on long established usages, unless they were founded on good grounds. He believed France was the only country in the world where they were not used. In some continental towns, days of grace varied from three to fourteen days: in America and England there were three days: but the question was quite unimportant. He thought the removal of the distinction between bills payable on demand and at sight was reasonable. As regarded notice of dishonour, by the practice in England, whatever the law might be, it was sufficient, in cases of dishonoured bills, for the holder to give notice to the party to whom he stood in the nearest relation, that was the person from whom he held the bill. Any different rule would be extremely inconvenient, having regard not only to the great dis-

tances in this country, but also to the difficulties of communication. As regarded crossed cheques, he quite agreed with Mr. Gladstone that there was no necessity for introducing that practice in this country, and the great difficulty was in knowing who a banker was here: every shroff and money lender was a banker, and many houses of agency were considered bankers. Such a rule was not necessary in this country, but he did not think there was any harm in the provision. He thought it a decided improvement in cases of dishonour to give to noting the same effect as protesting, but he did not think the value of that alteration would be much appreciated, unless it were followed by a summary procedure for recovery. The defects of the Bill were so numerous that, to point them all out, he should have to go through it section by section. He could hardly put his finger on half a dozen sections which did not require some alteration or another; and it seemed to him that, if the Bill was to be of any value, it must, if committed, emerge from the Committee in a very different form to what it now presented. Unless Mr. Massey was prepared to proceed with it on that understanding, MR. SKINNER would prefer that it should at once be thrown out.

The Hon'ble MR. SHAW STEWART observed that the Hon'ble Members of the Council who were connected with commerce had stated their views with regard to the mercantile and trading interests in the presidency-towns. He trusted the Committee would also take pains to ascertain the opinions of Natives in the interior of the country, as the Bill would affect their exchange operations. He believed that its effect on such transactions would be far greater than what had been stated. He would not detain the Council by stating particulars as to the effect the Bill would have on Native hundis, but he hoped to be able to lay before the Committee the views of the Native merchants in Bombay.

The Hon'ble MR. BRANDRETH did not pretend as yet to have paid any attention to this Bill. He had not done so, partly because he had been busy with some other Bills with which he was more immediately concerned, and also because he gathered that it was not proposed to pass this Bill for some considerable time; and thus, if after he had time to study the Bill any thing worthy of being mentioned should occur to him, he would be able to bring it to the notice of the Select Committee; but, as he was cursorily looking over the Bill before coming down to Council, he was struck with the difference between one of its provisions and the commercial custom of the Panjáb, which he would mention because it presented a curious analogy to the difference between the existing law of India and the law proposed by the Commissioners in regard to the ownership of stolen property, which was discussed last week

when Mr. Massey introduced the Contract Bill. From sections 86, 87 and 88 of the Bill now before the Council, it appeared that the drawee or acceptor of a Bill might discharge himself from liability by payment to the possessor, "provided the payment was made under circumstances which were not such as to raise a reasonable presumption that the possessor was not entitled to receive it." The expressions were the same as those used in the other Bill in regard to the acquisition of the ownership of goods by purchase from the possessor; but by the custom of sahukárs—bankers in the Panjáb—there was no such discharge from liability. Persons who cashed, accepted, purchased or received bills in the Panjáb were held responsible for their mistakes if they dealt with a party who had wrongfully acquired possession. For their own protection, therefore, such persons were in the habit of exercising great caution and of requiring security from the opposite party in the transaction, unless he was well known as trustworthy. By the law of the Panjáb the innocent payer of a bill that had been stolen was no more discharged from liability than the innocent purchaser of stolen property.

MR. BRANDRETH saw that the Hon'ble Mr. Maine, in his Statement of Objects and Reasons published with this Bill, referred to the multifarious customs with respect to Native hundis observed in the mofussil, as differing from the provisions of the present Bill. He only wished to state further that he hoped the nature and extent of those differences would be carefully enquired into by the Select Committee before the Bill was passed into law. He entirely concurred with his Hon'ble friend Mr. Shaw Stewart, that the opinion of the Native merchants and bankers throughout the country ought to be ascertained. He should have thought the Bill itself had been a masterpiece of theoretical legislation. His Hon'ble friends on his right, however (Messrs. Gladstone and Skinner), appeared to be of a different opinion, but any way it was most important that the effect of the practical application of the Bill to this country should be carefully considered.

The Hon'ble Sir HENRY DURAND thought that certain points which had been brought to the notice of the Council should be carefully considered in Committee with reference to Native mercantile transactions. There was one thing which perhaps the Right Hon'ble gentleman (Mr. Massey) might take into consideration, though it was rather a point of practical detail. The rules as to noting and protesting involved the employment of a notary public. So far as he was acquainted with the state of things in this country, notaries public were few, except in the presidency-towns, and questions would arise, supposing the Bill were passed in its present form, as to what officers should be substituted

in the mofussil for notaries public. He would therefore draw attention to the Registration Act, and ask whether the officers employed to administer that law might not be made use of for this purpose.

There was another detail to which he would refer. The option of using a signature, stamp or seal only appeared in one section: was it intended to apply to other sections, as to endorsement, and so forth? He thought the point involved some difficulty.

[The Right Hon'ble MR. MASSEY stated that the option was intended only to apply to the maker of a Bill.]

Other points in the Bill had struck him as requiring consideration, but they would be more fitly dealt with by the Select Committee.

The Right Hon'ble MR. MASSEY thought the discussion which had taken place showed that the Bill would be much more effectively considered in Committee than by a protracted debate in Council. He must of course advert to the general dissent expressed by the Hon'ble gentlemen who represented the commercial interests in the Council, but he did not apprehend that they were prepared summarily to reject the Bill: that, he thought, would be inconsistent with the respect due to the Indian Law Commissioners, who were amongst the most eminent lawyers of England. They would no doubt vote for the reference of the Bill to a Committee, and he hoped that the result would be a measure acceptable to them and the mercantile community. The Hon'ble gentlemen had made sundry objections to the details of the Bill, but he hoped they would not consider that he was guilty of disrespect towards them if he preferred discussing those objections in Committee; they were of course of great weight as coming from such a quarter, and they were, for the most part, in themselves substantive objections deserving of consideration.

With regard to the question of the use of a seal or stamp for the purpose of signing, he had already adverted to it in his opening statement. He thought it extremely doubtful whether it was advisable to maintain that provision in the form in which it appeared in the Bill. By the English law, it was competent to persons to sign a bill of exchange by a mark: if, moreover, a man were in the habit of printing instead of signing his name, it had been held that he might be considered to sign a bill of parcels by his printed name; and there were still many persons in England engaged in commercial transactions whose education had been neglected, and who were not, therefore, able to sign their names. He had no doubt that the provision in the Bill was intended to apply to a similar class of persons in India. But when it was considered how few per-

sons in this country made notes or drew bills without being able to write their names, and how greatly the recognition of printed signatures would encourage fraud and forgery, the provision in question seemed not only uncalled for but inexpedient. On this matter, however, he did not express a decided opinion; it was a question for the consideration of the Committee, and he had no doubt that the Council would adopt the recommendation of the Committee on the subject.

There were some provisions objected to, which were supposed to be new, but which were really in accordance with the present English law. Mr. Skinner, for instance, had referred to section 10, which declared the respective liabilities of two joint makers of a note, when one subscribed only to an alternative liability, as an useless novelty. But though he (MR. MASSEY) admitted that a note made in such form was of rare occurrence, nevertheless it did occur (there were two or three cases on the subject cited in *Byles on Bills*, p. 92), and the framers of the Bill would have been justly chargeable with incompleteness had they omitted, in codifying the law, to declare the liability of the parties to such instruments. There seemed little difference of opinion as to the question of discarding days of grace. Mr. Skinner appeared to think that it was only in France that such days had been abolished; but the fact was that, owing to the authority of the French Codes, they had been abolished almost everywhere in continental Europe. Mr. Skinner had also alleged that the provisions of the Bill were diffuse, vague and obscure. But MR. MASSEY thought that every lawyer would agree with him in regarding the draft as remarkable for its terseness, clearness and precision. Mr. Shaw Stewart and Mr. Brandreth desired that the Bill should be circulated in the mofussil in order that the Natives might see what effect it would have on their transactions. MR. MASSEY believed that the Bill had already been translated into Urdu and Bengali and inserted in the local *Gazettes*: if, however, any further publication were considered necessary to promulgate the Bill, such publication could be made during the time the Bill would be in Committee. The Bill itself had been before the English-reading public for some time, and would be the subject of discussion for the time during which it remained in Committee, and he hoped they would receive suggestions from all quarters tending to improve the Bill. Sir Henry Durand had adverted to some other points of detail in reference to noting and protesting. It was true that, except in the presidency-towns, we had not here, as in England, an officer whose business it was to record the fact of the dishonour of a bill; but although notaries public were hardly to be found in the mofussil, the Commissioners had provided that notarial functions might be exercised by any public officer authorized (that was, MR. MASSEY supposed, authorized by the Local Government) in that behalf. It would, however, be a question for the Committee

whether there was any use in retaining and extending to inland bills provisions as to protest and noting, which were now required only in the case of foreign bills. The Commissioners' provisions as to crossed cheques might also, perhaps, be omitted without detriment. He hoped that Mr. Gladstone and Mr. Skinner would give their attendance in Committee, where the subjects to which they had adverted would form the subject of discussion. The sittings of the Committee would, as far as possible, be regulated to suit their convenience, and notice would be given them when special subjects were to be brought on for discussion.

The motion was put and agreed to.

GENERAL CLAUSES' BILL.

The Right Hon'ble MR. MASSEY also presented the Report of the Select Committee on the Bill for shortening the language used in Acts of the Governor General of India in Council and for other purposes.

CIVIL SUITS (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to enable the Lieutenant-Governor of the Panjáb to invest any person with the powers of an Assistant Commissioner for the trial of civil suits, said that a few words would suffice to explain the object of this Bill. Some years ago several chiefs and Native gentlemen of rank and position in the Panjáb, and more particularly in the cis-Sutlej States, were invested by the Local Government with the powers of Magistrates and Civil Judges within the limits of their own estates. This was done in accordance with the policy and wishes of the late Lord Canning, and the measure appeared to have met with the cordial approval of the then Secretary of State. Many of these chiefs had formerly been independent rulers and administrators of justice, each within the bounds of his own territory; but after the whole country was subjected to the British Government, their possessions were administered as integral parts of British districts. It was with the view therefore, apparently, of elevating the social position of these chiefs, of restoring to them as much of their former authority as could be restored without detriment to the common interests of the people, of enlisting them more firmly on the side of order and good government, and also because, in some of the estates, the people themselves were described as possessed with a strong feudal attachment to their former rulers, that it was determined to associate these chiefs with the officers of Government in the internal administration of the country.

In regard to the magisterial powers exercised by these influential and important persons, there had been no difficulty, for by the Criminal Procedure

Code the Local Government was authorized to invest any person with the powers of a Magistrate; but by the Panjáb Courts' Act (No. XIX of 1865) it was provided that only the Courts described in that Act should have power to try and determine civil suits, and among these Courts the Courts of the Native gentry were not included. Nowadays, everything was questioned in support of which some Act could not be quoted. Doubts had consequently been entertained of the legality of the Courts to which he had adverted. But besides these Courts, the Local Government had established in the Kangra district certain tribunals, with power to dispose of a particular class of cases which he supposed the ordinary Courts were not able to deal with in a satisfactory manner. These were cases relating to marriages and betrothals. The betrothal tribunals of the Kangra district had been pronounced illegal by the Chief Court of the Panjáb. The Lieutenant-Governor, however, was anxious to give them a further trial. The object of the proposed Bill, therefore, was to remove all doubts on the subject, and to authorize the Lieutenant-Governor to invest any person with the powers of an Assistant Commissioner in regard to civil suits, in the same way as he could by the Criminal Procedure Code invest any person with the powers of a Magistrate.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define and amend the Law relating to Promissory Notes, Bills of exchange and Cheques.—The Hon'ble Major General Sir H. M. Durand, the Hon'ble Messrs. Brandreth, Shaw Stewart, Hobhouse, Skinner and Steuart Gladstone, and the Mover.

The Council adjourned till the 20th December 1867.

CALCUTTA:
The 13th December 1867.

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

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