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 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th December 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble H. P. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. M. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

The Hon'ble MR. BRANDRETH, the Hon'ble MR. SHAW STEWART, the Hon'ble MR. HOBHOUSE, the Hon'ble MR. SKINNER, and the Hon'ble MR. COWIE took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

INDIAN PENAL CODE EXTENSION (STRAITS' SETTLEMENT) BILL. INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE introduced the Bill to extend the Indian Penal Code to the Straits' Settlement, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

He also introduced the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

He said that they were two of a series of legislative measures pressed on the Council by the Government of the Straits' Settlement. Two of these measures had been passed by the Council during some formal sittings at Simla, but the present Bills were of too important a character to be passed elsewhere than at Calcutta, though it was possible he might have at some future stage to pass them summarily under a suspension of the Rules for the Conduct of Business. It was not improbable that some further legislative proposals would come from the Straits' Settlement before the sittings ended, and that the Council might be asked to proceed with them at some speed. Under these circumstances, he thought it proper to explain to the Council how these proposals came on them so suddenly, and why it might be necessary to deal with them in an exceptional manner. He must state that very little of Indian legislation had been extended to the Straits, and none of the greater enactments. It was not to be denied that there had been, for long, much repugnance in the Straits' Settlement to its being brought under Indian law. How far the feeling was shared by the general community, he could not say; but if it was so shared, he should be disposed to attribute it to that impression of a diversity of interests which had caused the separation of the Settlement from the rest of the Indian Empire. At all events the Judges and the legal profession were unquestionably opposed to the extension of Indian legislation to the Settlement, and the Local Government constantly protested against its inclusion. Thus it resulted that, in the former Legislative Council, the Straits were as a matter of course exempted from the operation of Indian Statutes. More recently, there appeared to have been a change of feeling, and complaints had been received that the Straits were deprived of the benefits of Indian legislation. In this state of things, a section was added to recent enactments, empowering the Governor of the Straits' Settlement to extend their provisions to the territory under his jurisdiction, though, owing to the non-extension of the Codes of Civil and Criminal Procedure, the judicial and administrative system of the Straits differed so widely from that of India, that the Council could not take upon itself to describe those Courts and Officers by whom the powers given were to be exercised. Still more recently the negotiation between the India and Colonial Offices for the separation of the Straits from India had come to a successful issue, and an Act of Parliament had been passed during the last Session under which the Queen was enabled, by an Order in Council, to declare the time at which the Settlement would become independent. No sooner was this result known than we received from the Straits' Government a series of urgent requests that the Settlement should not be allowed to separate until a large part of Indian legislation had been extended to it. In particular, it was asked that the Penal

Code and the Succession Act, which was the first part of the Civil Code, should be made applicable to the Straits. It seemed to him likely that further requests of the same nature would be received.

The Council would probably agree with him that this change of feeling was not a little remarkable; and as this was the first Meeting of the Council, he would propose to contrast the spirit of these applications with that of some criticisms contained in a paper which had possibly been circulated, and which it would be his duty to notice sooner or later. One of the Judges of the High Court of Madras, with whom he had not the advantage of personal acquaintance, but who was reputed to unite the best characteristics of the Barrister and Civilian elements of those tribunals, had remarked as follows on a proposal to extend certain formalities prescribed by the Succession Act to the execution of Wills by Muhammadans and Hindús :—

> In conclusion, I have to express the great reluctance with which I furnish an opinion favouring further legislation. I regard the rapidity with which legislation is now proceeding as a very great evil. If it continues, I do not think that either Judges or practitioners, and still less the public, will know from day to day the law which governs them. Statutes, unless very carefully constructed, do not afford certainty, but doubt; and litigation is not repressed, but aggravated, by every fresh enactment.

Now it would perhaps be sufficient to contrast this passage with the implied criticism of the Judges and Government of the Straits' Settlement. It was not unfair to say that the Settlement wished to retain nothing of India except Indian legislation; but a further reply than that was necessary. If Mr. Holloway's opinion had stood by itself, MR. MAINE would probably not have noticed it, for the truth was that learned lawyers were the natural enemies of legislation, which impaired the completeness and symmetry of their knowledge. But the same feeling had been exhibited in other quarters; and MR. MAINE thought he could not too soon meet the charge of precipitate and excessive legislation on the part of that Council. He did not deny that when the annual Statute-book was looked at by itself, it might be observed with surprise or dismay that the annual production of laws was about thirty. But no just conclusion could be reached unless there were a further examination as to the classes of enactments which the book comprised, and the proportion which one class bore to another. MR. MAINE would divide the Acts of the Indian Legislature into four classes—a division only rough but practically sufficient.

The first of these classes was one of serious importance, and it was probably from vague associations with it that people had begun

to speak of dangerous over-legislation. This class consisted of enactments affecting the civil usages or religious opinions of the people of the country. There could hardly be any censure too heavy for the Council if it really did pass such measures with incaution and precipitancy. He did not acquiesce in that interpretation which had been sometimes put on the proclamation issued by the Queen on assuming the direct Government of the country, and which apparently pledged Her Majesty to surrender the power which was the sole moral justification for our being in the country at all—power to improve its institutions—but he fully admitted that it would be the worst policy to pass measures of this class without the maturest consideration and the most scrupulous regard for the feelings of the people. But how did the facts really stand? Since MR. MAINE had been in India, that was four years, he could only remember two measures which could distantly be described as disturbing or affecting Native custom or Native religious opinion. One was the Native Christian Marriage Dissolution Act passed last Session, the other was the Registration Act. The latter was much more serious than the former, inasmuch as it added a formality to the majority of civil transactions, penetrating into every corner of Native life. He was not going to defend those measures, but he wished to call attention to the duration of the discussion on them. Proposals for registration had been before the Government for thirty-six years, and the Bill itself for six and a half years before the Council. Again, the principle of the Converts' Dissolution of Marriage Act had probably been discussed ever since there had been Missionaries in India. But the proposal ultimately adopted was under active discussion for thirty-two years, and the Bill itself was two years under the consideration of the Legislature. He would mention one other enactment which might possibly be supposed to come under the class as affecting a portion of the community not numerically large, but of great importance. This was the Act erroneously called the Act for abolishing Grand Juries, but more properly entitled an Act for enabling Europeans to be tried elsewhere than in the Presidency towns. It was founded on a Report of the Indian Law Commissioners, dated in 1853, and the Bill passed in 1865, so that the subject had been twelve years under discussion. In admitting, therefore, that the Council would be censurable if it passed enactments of this class with the fullest deliberation, he was bound to state what the facts were, that the class consisted of only three measures discussed during an average period of four and twenty years.

The second of the classes into which he divided Indian legislation was intended to bring up law which was common to England and India to the

pitch of improvement which it had reached at home. He could remember but four enactments of the sort passed of late years. The two Trustee Acts recently passed at Simla, the Mercantile Law Amendment Act, and the Indian Companies' Act. Nobody, he supposed, would charge the English Parliament with precipitate legislation, and certainly the immediate framers of the two Acts first mentioned—Lord St. Leonards, and Lord Justice Turner—could not be accused of feverish zeal for reform. The truth was that the Indian Legislature had, in enactments of this class, lagged far behind the English Parliament, and one measure in particular—The Indian Companies' Act—had barely been passed in time, as recent occurrences in Bombay had abundantly proved.

MR. MAINE now appoached the third class—of an importance which it was hardly possible to over-estimate—the Codes. Three of them were passed by the former Legislative Council—the Penal Code and the Codes of Civil and Criminal Procedure. This Council had as yet passed but one single chapter of the fourth Code—the Succession Act—but he might mention that one enactment—the Partnership Amendment Act—was in reality part of the Civil Code. MR. MAINE had stated at the time, that the law was in anticipation of the Code, and this was proved, for the Act was embodied in the Draft Code of the Law of Contracts which the Indian Law Commission had just sent out. The responsibility for the Codes was shared between this Council and the Indian Law Commissioners. The Commissioners sent out the first draft, and, in the case at all events of the Indian Civil Code, it had been accepted by the Council with but slight alteration. He wished, however, not to put off the responsibility on other persons, but to meet the objection that the Codes added to the law and rendered it unintelligible to the people. MR. MAINE ventured to lay down exactly the opposite proposition; the Codes enormously reduced the bulk of the law, and rendered it for the first time intelligible to the people. He would not enter into the general question of codification. His own observation showed him that the vulgar prejudice against codification had greatly decayed in England, and had given way to deep regret that the characteristics of English law were such as to render it if not impossible, at all events enormously difficult to reduce it to a Code. But the question for the Council was, how far had the Indian Codes rendered law unintelligible or bulky in India? MR. MAINE did not himself recollect the state of the law in India before the three Codes which were already law. But there were gentlemen in the Council who perhaps had administered that law either as Judges or as Magistrates. He should be surprised if they did not bear out his impression, which of course rested on hearsay, that nothing could exceed its uncertainty,

confusion, and intricacy. It was true that the Codes of the Non-Regulation Provinces, which were descended from the Panjáb Code, were greatly simpler. But being clothed in half-popular language, they had a natural tendency to become overlaid with glosses and interpretations. When the last of them, the Civil Procedure of the Panjáb, was superseded the other day by the Code, it was not too much to say that it consisted of a mountain of Circulars. But now, looking to the Civil Code, with which alone the Council was concerned, would it, by passing the Chapters of the Code at the rate of about one in two years, lay itself open to the imputation of increasing the massiveness or the unintelligibility of the law? What was the Civil law of India at this moment, apart from the religious law, which included the law of intestate succession, and which the Code did not propose to touch, and apart from the law of land, which stood on a footing of its own? It consisted, in the first place, of Native usages, which differed not only from province to province, but from district to district, and from family to family. It consisted, further, of the writings of Hindú and Muhammadan jurists, so vague from the confusion of ethical with legal rules, that it was hardly possible to extract a trustworthy conclusion, or, what was worse, that it was possible to extract two conflicting conclusions, each equally trustworthy with the other. There were, further, the old Regulations, which were certainly not remarkable for precision of language, and there were, further, a few principles—few, that was to say, as compared with the whole mass of legal principles—decided by the late Supreme and Sudder Courts, and by the Privy Council. There were great chapters of law on which, in India, there was no indigenous system of rules of any sort. Contract, for example, was utterly unregulated, except by some small portion of Muhammadan jurisprudence. Now, was that state of things satisfactory? No doubt, the answer of some persons would be that if the people were contented, it was no business of the Government or the Council. But the truth was there was an influence in India which tended to simplify this confusion. That was the influence of English law, not as modified by the Codes, but of English law pure and simple. It was all very well in theory to say that an Indian Mofussil Judge decided by Native usage, "equity and good conscience"; but in practice, if he did anything of the kind, his reputation would suffer. The Court which revised his decision would insist upon his applying a stricter rule than could be got out of equity and good conscience, and the rule applied would be one mediately or immediately derived from Englsh law. Now, was that a process which an English Government, conscious of its own responsibilities, could allow to go on without check? Mr. Maine was not likely to say any evil of English law;

but it was certainly one of the most difficult systems of law in the world, and its compass was enormous. Its *corpus juris* was a law-library of a thousand volumes. How many law-libraries were there in India? Probably twenty at the outside. But could there be conceived a more intolerable hardship than that 150 millions of people should have their civil rights dependent on a system contained in records which were inaccessible to them, which they could not translate, and which, if they could translate, they could not understand. Some persons answered that this was immaterial so long as there was a learned profession competent to expound the law, and urged that in England no one except a professional man understood the law, or would act without the advice of legal practitioners. That was true, but it was a peculiarity of England, and not an honourable one, and not one which Englishmen should carry all over the world with them. At the same time, in England there was a legal profession spread over the country, from whom a trustworthy opinion could always be obtained. But how many persons were there in India who, considering the invasion of the country by English law, could give such an opinion? Probably outside the Presidency towns, they could be counted on one's fingers. It seemed to him, therefore, a matter of simple duty to the people that the labours of the Indian Law Commissioners should proceed. The only possible remedy for the state of things he had described was a Code which, without going over much into detail, should set forth fundamental principles with as much simplicity as was compatible with accuracy. Such a Code would perfectly well fit in with Native usage when it was wholesome; nor was there any fear that English law, characterised as it was by good sense and logical coherence, would fail to supply the greatest part of the material.

The fourth and last class was the most numerous of all. Probably it was by not noticing the proportion which this class bore to the rest of the enactments that people had obtained the impression of excessive legislation. It would have to be remembered that this Council was not simply the Imperial Legislature, but the Local Legislature for all Provinces which had not got Councils of their own. From Lower Bengal, Madras and Bombay, there were hardly any applications for legislation at all. The few Bills that came from those Provinces were necessitated by a technical difficulty, namely, that by the Letters Patent of the High Courts, the Local Councils were prohibited from interfering with the jurisdiction of those tribunals. But from those Provinces which had no Legislatures of their own, there was a constant stream of applications for legislative enactments. Now, what was the character of those enactments? They were merely Local Bills.

They did not create rights or obligations. They merely affected the machinery by which rights were protected or declared. They simply carried out small judicial or administrative impovements. The fact was that the country was passing from an administrative to a legal condition, from a state in which good government depended on the energy of individuals, into a state in which it depended on adherence to well considered rules. There were some, MR. MAINE knew, who looked on the process as wholly evil. The further you got from Calcutta, the more you heard the complaint that law was paralysing administration. All that could be said in reply was that the change was inevitable. Energetic administration in the ruder provinces produced wealth, security, and comfort, and the infallible result was a wish to have rights of enjoying property regulated by fixed law, and a disinclination to allow those rights to vary with the varying theories of successive administrators. MR. MAINE thought he understood what was meant by the assertion that law paralysed administration. But certainly the last person to object to the suits of the change should be a Judge of a High Court, because the moving cause was undoubtedly a growing taste for legality, fostered, probably, by the strengthening of the higher tribunals and particularly of the High Courts. There were examples of the change and of the demand which it had produced in the legislation submitted to the Council. There was an example in the Hon'ble Mr. Brandreth's Bill for establishing Municipal Committees in the Panjáb. There was a practice existing which the Local Government held to be healthy, useful, and convenient. Suddenly some ingenious person discovered that it rested on no legal foundation. Thereupon the Local Government came to the Council for a Bill to legalize it. Or take the converse case, in the Bill for the suppression of gambling, of which the Hon'ble Mr. Riddell was in charge. The Local Government had had its attention drawn to the prevalence of public gambling in large cities as productive of all evil. Now, did any body suppose that, thirty years ago, if a person in the position of the Lieutenant Governor of the North-Western Provinces or the Chief Commissioner of British Burmah had made up his mind that public gambling was productive of crime, he would have come for a Bill to this Council? Why, he would have told his police to put it down, or issued his orders to the District Officer. But now-a-days, quite reasonably and properly, he came to us for a Bill. These Bills, providing for small judicial or administrative changes, were and must be constantly required. When such a measure was strongly recommended by the Local Government, MR. MAINE held that this Council would be heavily responsible if it declined legislation. At all events the executive Government would be censurable if it did not submit to the Council a Bill to legalize the change. It would be the

merest pedantry to stereotype legislation of this sort. In a country in which those who knew most of a people knew little of them, our system of government must necessarily be tentative, and small administrative improvements must be from time to time required and conceded. If it were true that there was too superstitious a regard for legality, the proper remedy was an active legislation. For these reasons MR. MAINE considered that this class of local Bills could never fall off very much in number, and it was further inevitable that they should constantly take the form of Bills amending Bills, not because the hand or mind of the legislator was uncertain, but because the material of policy upon which he worked was from its very nature shifting. MR. MAINE hoped that every Bill submitted to the Council at these sittings would be found not only justifiable but incapable of postponement. He himself would be personally glad if the spell of an annual sitting, except for financial measures, could be broken; but he trusted it would be seen that no one of the measures now proposed for consideration could have been put aside or delayed without injury to good government.

As regarded the particular Bills before the Council, the first of them merely proposed to extend the Penal Code to the Straits. A short Bill, separately before the Council, provided for certain consequences arising from the definition of the word "offence" in the Penal Code. That Bill had been embodied in the second Section of this measure. Some papers had come in, which suggested still further change in the same direction, but he trusted the discussion on these points would be taken on the separate Bill, and not on the measure now submitted.

As regarded the Bill to extend the Succession Act to the Straits' Settlement, it was another of the class of Bills which had been asked for by the Local Government. The Bill proposed to extend the Act, but with two important modifications. Here in India the operation of the Act was excluded in the case of the Hindús, Muhammadans and Buddhists: the result was that it affected a comparatively small class of the community, and its great importance was the indirect effect that it would be sure to have on the Native law of succession. The Local Government wished the Act to be made the *lex loci*, without distinction of race or creed; but the Straits' Settlement was a community of an omnigenous character, and if the Succession Act was to be applied, provision would have to be made for two matters. First, as in the case of many primitive races, a part of the population practised adoption. The Bill accordingly provided that, for the purpose of intestate and testamentary succession, an adopted son

should be considered a legitimate child of his adoptive and not of his natural father. The provision was so far in accordance with the Hindú law, but omitted the inequitable rule, that in case of a son being born to the adoptive father subsequently to the adoption, the share of the adopted son should be only one-fourth of that of the natural-born son. Secondly, there were many persons in the Straits whose marriage-law permitted a plurality of wives. It would be absurd to apply to such persons the rule that marriage should operate as a revocation of a will. The Bill accordingly provided that, in the case of a polygamist, his will should not be revoked merely by his marriage. Provision was also made for the case of his dying intestate and leaving several widows.

The Motions were severally put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to provide for the appointment and maintenance of Municipal Committees in the Panjáb, said that the effect of the Bill in most towns would be to give a legal status to the municipal committees which had already been appointed. During the earlier years of our possession of the Panjáb, and until within a very short period, the district officer alone initiated and carried out all plans for the conservancy and the improvement of towns. The head quarters' town was generally well cared for; but the more distant places did not receive so much of his attention, Therefore it was that the late Lieutenant Governor of the Panjáb, Sir Robert Montgomery, about three or four years ago, determined on introducing municipal committees in almost all the principal inhabited places in the Panjáb. He wished to give the people a more direct interest in matters that so nearly concerned them as the cleanliness and improvement of the places where they were passing their lives, than they could have felt under the former system. He directed that these committees should be appointed by the people themselves. MR. BRANDRETH thought there could be no question that these measures had been attended with considerable success. Useful tanks and wells had been dug; efficient conservancy establishments had been entertained, and very many important improvements had been effected. To some towns he could point, in which river-encroachments had been prevented, swamps drained, and the safety and health of the towns entirely secured by the measures taken by the local committees. The municipal funds were raised by town-dues, fixed at such rates and levied on such commodities as the committees decided. These municipal committees had, however, no legally recognized existence. The taxes they levied, they had no legal right to levy. The townspeople had hitherto paid them in consequence of the good under-

standing subsisting between them and their committees; and with regard to the few defaulters who had been brought into Court, though it was probably owing to their ignorance, he had never heard of their ever having pleaded that the arrears demanded of them were not legally due. But it could not be expected that this patriarchal state of things should last. The Lieutenant Governor had applied for legislation on the subject, and he (MR. BRANDRETH) thought that he had been well advised in so doing. There was no question that some law ought to be passed. The Civil Procedure Code had recently been introduced into the Panjáb. It would be followed by a whole army of pleaders, whether for good or for evil to the country, remained to be seen. There was no doubt, however, that they would advise defaulters to resist all taxes not clearly in accordance with the law.

The Bill which he proposed would be a short one. It would contain but few rules; it would rather prescribe certain limits within which the Lieutenant Governor might lay down all necessary rules for the efficient working of the existing municipal committees in the Panjáb. MR. BRANDRETH thought there could be no doubt that the Lieutenant Governor ought to have an almost exclusive control over these committees. The Bill would also provide for the continuance of the town-dues, but only where the consent of the people was obtained, where the majority of the inhabitants of all classes were shown clearly to wish for town-duties in preference to either a house or personal assessment, which where the only other modes of assessment that could conveniently be recommended.

He was aware that considerable objections might be urged to these town-duties. It was certain that the course of trade was inconvenienced by them to an appreciable extent; and he knew of some places in which taxes had been introduced without the consent of the people. But this mode of taxation had been in existence for several years. It was on the whole popular with the people, and he should regret very much to see it put a stop to by law.

He had looked at two important Acts passed for the improvement of towns in Madras and Bengal; but he did not think it advisable to apply the elaborate provisions of those Acts to the Panjáb, as they might only lead to misunderstanding among the people. Where there was a European element and European ideas on the subject of self-government, a committee would no doubt feel a strong objection to the power of minute control with which it was proposed to invest the Government by this Bill, but these committees had no

such feeling, and would probably be all the better pleased, on account of the interest the Government would manifest in their affairs by its interference.

The Bill that he proposed was based mainly on the suggestions received from the committee which had been appointed by the Lieutenant Governor of the Panjáb to consider the matter, and he (MR. BRANDRETH) had added and altered a few things such as his own experience had suggested.

He must not omit to allude to Act XXVI of 1850, the existing Municipal Act, which the Lieutenant Governor had power to introduce into the towns of the Panjáb. This Act seemed to him (MR. BRANDRETH) to contain a tedious and unnecessary process for ascertaining whether the communities should have committees or not. It appeared to him that, if it was admitted that the management of towns could best be conducted by committees, it should not be necessary to ask the consent of the people on that point, while on another and much more important point, as to what mode of taxation the people would least object to, the Act contained no facilities for ascertaining the wishes of the people. This Act (XXVI of 1850) moreover made no provision for the police appointed by the Lieutenant Governor under Act V of 1861, and it left the Lieutenant Governor too little control over the proceedings of the committees in the numerous small towns in which they were appointed. He thought that these infant corporations should be closely watched by Government. Not that the Government should be perpetually interfering with them, but that it should have the power of control wherever it might be necessary. He knew four or five places where Act XXVI of 1850 had been introduced. The committees there were composed either entirely, or in part, of Europeans. They enjoyed a more independent position under this Act, with which the Lieutenant Governor might not wish to interfere, if they had hitherto done their work to the satisfaction of Government. The Lieutenant Governor would be able to exempt any of these places from the complete operation of the present Bill; but he would be able, by extending any one or more of its provisions only, to supply actual deficiencies in Act XXVI, such for instance as the provision for the new Police.

The Motion was put and agreed to.

THE INDIAN SHIPPING BILL, 1867.

The Hon'ble MR. SHAW STEWART introduced the Bill to consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea, and

moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill had, with His Excellency's permission, been published in the *Gazette of India* on the 6th, 13th and 20th October last. It was found absolutely necessary to amend the law in one or two important points, and the opportunity was taken of examining the existing legislation on these subjects and consolidating these laws into a single Act.

The law was most inconveniently scattered over nine Acts, past at various times from 1838 to 1863. Three Acts related to the mode in which ships belonging to Indian ports could by registration acquire all the privileges of British ships. Three Acts provided for the discipline and protection of Merchant Seamen, and three for the protection and comfort of Native passengers, especially pilgrims to the Red Sea and Persian Gulf. In all, there were nine Acts of the Government of India, besides several local Acts of the local legislatures, which would be consolidated in this Bill. It was very necessary that, in consolidating so many Acts passed at such different times and for such varying objects great care should be taken to ensure accuracy and prevent discrepancies, but he thought the Bill when passed would be a great convenience to the masters and owners of ships and to the public generally.

The amendments specially provided in the Bill, as published, were explained in the Statement of Objects and Reasons. The one was to enable the Courts which had now power to investigate charges of incompetency against masters whose certificates were given by the Board of Trade, to enquire into similar cases against masters certificated by the Indian Governments; and the other was to enable the Local Government within whose jurisdiction a vessel had arrived, to exercise the same jurisdiction in ordinary investigations into such charges as was now exercised by the Local Government from whom the master had obtained his certificate. These defects were of great importance, and, unless remedied, would seriously interfere with the execution of the law.

Besides these two points, many suggestions had, since the publication of the Bill, been received from different parts of India, which would all be considered in Committee. The most important of these, he (MR. SHAW STEWART) would shortly describe.

It had been pointed out that power should be given to the Local Governments to remove wrecks on the coasts of India, beyond the limits of harbours and ports, when those wrecks tended to endanger or obstruct the navigation. Government had the power to do this as regarded wrecks within the

limits of ports, but it was proposed to enable them to exercise the same power in all cases where it was necessary.

It was proposed to empower distant officers, like the Resident in the Persian Gulf or the Resident at Aden, to exercise the same power of appointing a Board to investigate wrecks or accidents at sea, that was now exercised by the Local Governments. This would prevent much inconvenience and delay. The power of issuing orders on the reports of these Boards of enquiry would, as now, be restricted to the Local Governments.

Regulations for the periodical survey of coasting steamers had been passed by the Governments of Bombay and Bengal, which it was proposed to amalgamate with this Bill.

A very important point had been raised with regard to the English Merchant Shipping Act of 1854, which appeared to define the duties of a Shipping Master to include the exercise of his discretion in sanctioning the discharge of seamen, even in cases where the master and seamen mutually consented. It had always been held that the Shipping Master ought not to sanction such discharge unless satisfied that the seamen would be provided with a passage home, or with other employment. But by a recent ruling of the High Court of Bengal, it had been held that the Shipping Master had no option but to sanction all discharges when both parties agreed in his presence. The result would be that the country would be flooded with unemployed seamen. He (MR. SHAW STEWART) believed a reference had been made to England, and that the Act would be modified if necessary; but in the meantime it was proposed to insert a Section in this Bill, by which the duties of Indian Shipping Masters would be clearly defined.

Another important defect had been pointed out. The present Act prescribed twelve weeks' imprisonment to any seaman assaulting the master of his ship—the same amount of punishment as was prescribed by the Penal Code for common assault. There seemed no question that an assault committed by a seaman on his master, partook of the nature of mutiny and ought to be more severely punished.

The President of the Bombay Sanitary Commission had made several suggestions for improving the regulations in the Act that affected the comfort of Native passengers to the Red Sea and Persian Gulf. MR. SHAW STEWART thought we ought to do as much as we possibly could for securing the health and comfort of these pilgrims, but at the same time we need not attempt too

much, or we should run the risk of failure by not being able to provide a machinery to carry out the control we aimed at.

There were several other minor points that would be considered by the Committee and which he would not refer to at present.

By the passing of this Bill not less than thirteen Acts of the Government of India and Local Governments would be removed from the Statute-book, and consolidated into one single enactment.

The Motion was put and agreed to.

GANGES TOLLS BILL.

The Hon'ble MR. RIDDELL introduced the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill was one of those which the Hon'ble Mr. Maine had referred to. It was a local Bill for a local purpose, which, if the Lieutenant Governor of the North-Western Provinces had power to legislate, it would not be necessary for this Council to consider. For many years past, a small sum had been allowed by the Government of India for the improvement of the channel of the Ganges between Allahabad and Seenah. The sum hitherto so allowed was Rs. 20,000 per annum, the greater part of which went to defray the cost of the necessary establishment and superintendence, and a very small portion of it was expended in the erection of *Bandhals*, put into sand-banks to force the current into a defined channel. This small sum, he believed, had been very well expended, and some good had been done. But it was not intended to carry out works of a more extensive character, to organize a pilot service and survey establishment, and also to employ a powerful steam dredge, so as to deepen the channel and open the navigation of the river between Dinapore and Allahabad. One of the Captains of a river steam boat had mentioned that the passage between Belaspore and Coharcah occupied at present a fortnight; whereas if the channel were free from difficulties, it would take only one day. He (MR. RIDDELL) thought that this was quite sufficient to justify the measure, by which it was proposed that a toll should be levied so as to provide funds for the permanent improvement of the navigation of the part of the Ganges between Allahabad and Dinapore.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble Mr. Hobhouse introduced the Bill to consolidate and amend the law relating to the office and duties of Administrator General, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill itself was so almost entirely a matter of consolidation that he thought it would be only necessary on this occasion to refer to two or three clauses of it. The first clause to which he would call the attention of the Council was Section 14. As he understood the present state of the law, it was this. The Administrator General could, he believed, in the Presidency of Bombay, collect assets belonging to the estates of certain deceased persons, not being Muhammadans or Hindús, anywhere throughout that Presidency. In the Presidencies of Madras and Bengal, that, he believed, was not quite the case. In certain territories adjacent to the Presidency of Madras, such as, he believed, the Provinces of Mysore and Coorg, the Administrator General could not legally collect the assets of estates. So also in the Presidency of Bengal, it was a question whether the Administrator General could collect assets in the Panjáb, the Central Provinces, and British Burmah, perhaps Oudh also. It was certain he could not now go into the North-Western Provinces for that purpose. Until recently the Administrator General of Bengal had the power to collect assets in those Provinces, but since the establishment of the High Court at Agra he could not do so. What he (Mr. Hobhouse) understood was the practice in the Panjáb and Central Provinces to which he had alluded, was this. The Administrator General of Bengal, on the occurrence of a death, applied to the different local judicial officers, who then collected and sold the assets, and remitted the proceeds to his office in Calcutta, where he then administered them. It seemed to Mr. Hobhouse that the Administrators General should legally have that power which they had in practice before, because there could be no doubt in his mind that the office of Administrator General should be maintained for the benefit of the public. Ordinarily an administrator had no knowledge of the law; he was liable to make mistakes, and might also misappropriate assets. In the case of the Administrator General, he had a thorough knowledge of the law from his position and from his profession, and he also was a person who had an office habituated to administer to estates, and who gave security to a large amount for the proper management of the estates which came into his hands. Under these circumstances Section 14 of the Bill provided that the High Court in every Presidency Town should be a competent Court within the meaning of Sections 187 and 190 of the Indian Succession Act, wheresoever within the Presidency the assets might be situate; *i. e.*, that each of the Administrators General of the different Presidencies shoud have power to collect assets everywhere within his Presidency.

The next point to which he would ask the attention of the Council was Section 30. This Section was a permissive Section. He was told that it often happened that persons who took out administration, from want of knowledge of the law or on leaving the country, could not administer to the estates. The rule 'once an administrator always an administrator' prevented the Administrator General from taking over the interest of the administrator, and the consequence was that great inconvenience was suffered by all parties concerned. It seemed to him (MR. HOBHOUSE) that the Administrator General was a person who ought to have the power to replace a legal representative under the circumstances referred to. The private administrator would of course remain liable for acts or omissions previous to the transfer, and the Administrator General would be liable for subsequent acts and omissions.

The next Section, and it would be the last point to which he would call the attention of the Council, was Section 33. As he understood it, the law now was that the Administrator General might be sued in any District by any claimant upon the estate for which the Administrator General had taken out letters of administration. And there existed no means in the Mofussil of instituting an administration suit and thus staying the plaintiff's proceedings. Now, if the Administrator General were to continue to be liable, like any one else, to be sued in any number of Districts in the Presidency, no doubt the estate in his charge would be put to a very great and unnecessary expense. Therefore, this clause provided that, if a suit should be brought against the Administrator General in a Mofussil Court, then, unless the plaintiff should have previously applied to the Administrator General in writing, supporting his claim by the requsite evidence, he should not be entitled either to the costs of the suit or to have the decree enforced.

There was no other clause of the Bill, which was after all a consolidation Act, to which it was necessary to call the attention of the Council.

The Motion was put and agreed to.

INDIAN RAILWAYS' ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR moved that the Select Committee on the Bill to amend Act No. XVIII of 1854 (relating to Railways in India) be re-constituted, and that the Hon'ble Colonel Durand and the Hon'ble Mr. Riddell be added thereto.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to extend the Indian Penal Code to the Straits' Settlement —The Hon'ble Messrs. Brandreth, Shaw Stewart and Hobhouse, and the Mover.

On the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement—The Hon'ble Messrs. Brandreth, Shaw Stewart and Hobhouse and the Mover.

On the Bill to consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea—The Hon'ble Messrs. Maine, Riddell, Hobhouse, Skinner, Cowie and the Mover.

On the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges—The Hon'ble Messrs. Maine, Hobhouse, Skinner, Cowie and the Mover.

On the Bill to consolidate and amend the law relating to the office and duties of Administrator General—The Hon'ble Messrs. Maine, Riddell, Skinner and the Mover.

On the Bill to amend Act No. XVIII of 1854 (relating to Railways in India)—His Honour the Lieutenant Governor, the Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Mr. Riddell and the Mover.

The Council adjourned till the 21st December.

CALCUTTA,
The 14th December 1866.

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

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