

Friday, November 12, 1869

**ABSTRACT OF PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

**VOL 8**

**1869**

**P L**

*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.*

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

**P R E S E N T :**

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

**His Honour the Lieutenant Governor of Bengal.**

**The Hon'ble G. Noble Taylor.**

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

**The Hon'ble John Strachey.**

**The Hon'ble F. R. Cockerell.**

**The Hon'ble D. Cowie.**

**Colonel the Hon'ble R. Strachey.**

**The Hon'ble F. S. Chapman.**

**The Hon'ble J. R. Bullen Smith.**

The Hon'ble Mr. Chapman and the Hon'ble Mr. Bullen Smith each took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

**MR. H. S. MAINE.**

**HIS EXCELLENCY THE PRESIDENT** moved the following Resolution :—

“This Council, entertaining a high sense of the conspicuous ability displayed by Mr. H. S. Maine during the time that he held office as Law-Member of the Council of the Governor General, hereby expresses to him its cordial thanks for his long, faithful and valuable service—its deep regret at his departure, and hearty wishes for his future welfare and happiness.”

**HIS EXCELLENCY** said :—

“The duty I propose to ask the Council to perform on this our first meeting after reassembling in Calcutta is at once a painful and agreeable one. It is painful because we are united to record publicly our regret at the departure from among us of an able and most valuable colleague—agreeable because it is always gratifying to be allowed to participate in a recognition of private worth and public service.

"Gentlemen, the distinguished man who has lately ceased to be a member of our body, from a very early period of his life, exhibited evidences of that capacity which enabled him in after years to perform so much good service to his country.

"During his University career he was one of the first classical scholars of his day. His proficiency in the study of Law caused him to be elected Regius Professor of Civil Law in the University of Cambridge, and he afterwards discharged with much success the duties of Reader on Jurisprudence in the Middle Temple.

"He rapidly rose to eminence as a lawyer, but more particularly as a jurist, and the lectures which he delivered, both as Cambridge Professor and also as Reader in the Middle Temple, formed the basis of that remarkable work which is now esteemed, not only in England, but on the Continent, as one of the standard books on Jurisprudence, namely, his work on 'Ancient Law.'

"Such was his early career.

✓ "In 1862 he was nominated by the then Secretary of State, Lord Halifax, as Law-Member of the Council of the Governor General.

"He came to India in that year, and with the exception of six months till the other day, he laboured continuously and industriously in the arduous duties of his office.

"Although, when he came to India, the great Acts which form the foundation of modern Indian Written Law had been passed, and the Penal Code and the Codes of Civil and Criminal Procedure, which were the work of many able and distinguished men, were in existence, yet, still, under Mr. Maine's auspices was completely developed that *even* continued course of annual well-considered legislation which has, I believe, conferred much benefit upon this country and the necessity of which is now recognized by all classes in India.

"Among the 209 Acts which were placed on the Statute-book during his tenure of office, the great majority of which were actually drawn under his personal supervision, and all of which were, more or less, carefully criticized and considered by him, are to be found measures which embrace every important branch of Indian polity.

"There are to be found among them many measures which deal with the most important questions of general and local taxation, with the administration

of justice, both civil and criminal, and, on more than one occasion, with the organization of the Police of the country.

“Among them are to be found Acts which deal with difficult and complicated questions connected with the tenure and improvement of land, with our works of irrigation and those of inland navigation.

“Many statutes were passed under Mr. Maine’s direction for the development of our commerce and trade, and on social subjects important Acts were inaugurated by him, which deal with the difficult questions of Marriage and Divorce and with Emigration and European Vagrancy.

“It is of course to be expected that, in a country like this, where free discussion in the Press and otherwise is generally practised, some difference of opinion may exist as to the wisdom and prudence of some of his measures, but no one will deny that, to the consideration of the important questions with which he had to deal, Mr. Maine invariably brought profound legal knowledge, much ingenuity, great originality, latterly vast experience and an amount of judicial fairness that was very remarkable.

“In the advocacy of those measures, as far as I could judge, he exhibited all the keenness of the Pleader combined with the impartiality of the Judge, and by the gift of eloquence and facility of expression with which he was endowed, he was enabled to place before his colleagues and the public sound views and wise maxims in the most attractive form.

“The departure of such a man from among us must be looked upon at any time as a great public loss; but it is peculiarly so at this moment, in such an epoch in the history of the country as that at which we have arrived.

“We are now emerging, I may say have almost emerged, from what has been called a system of discretionary government.

“In the early days of our rule, the system of discretionary government was to a great extent inevitable, and was necessarily practised throughout a large portion of this empire. But now, as civilization has advanced, as our power has been consolidated, as our authority is thoroughly established and intelligence is becoming more rapidly developed, it follows, almost as a matter of course, that our rule must be conducted according to the forms and procedure of Written Law, and of statutes based on those principles which wise men of every age, class and creed have thought best for the good government of mankind.

"Far be it from me to deny that discretionary government and rule by personal influence have not performed a great mission in this country. It has great advantages, and I would go further, and say that even still in some districts in India the retention of it may for some period be a necessity; but no one can deny that all Governments in civilized countries, to be strong, uniform and just, must be administered according to those published statutes and well-known laws which in every country are considered by the wisest and best of men to be indispensable to freedom of action and of thought and to the security of property and life.

"In the great work of the education of the people Mr. Maine invariably took a lively and practical interest.

"In all the discussions that took place during his tenure of office on that interesting and all-important question, his opinions, delivered with great authority and weight, were esteemed and valued by all classes in this country, and his eloquent addresses during the three years that he filled the office of Vice-Chancellor of the Calcutta University are not among the least of his public services and will long be remembered by the youths of Bengal.

"But it was not only as a legislator and a philanthropist that Mr. Maine was enabled to perform great service to the State. In the Executive Council of the empire he was always found a wise councillor, an impartial adviser, and a minister of originality, sagacity, and resource.

"In common with the rest of his colleagues, I deeply deplore his loss, for I always found him ready to labour on any subject or in any matters, even though not directly connected with his Department, in which his assistance was required; and I am sure my colleagues will agree with me that his genial temper, his deference to the opinions of others, his modesty and forbearance, and the interesting way in which he always advanced or elucidated his opinions, made a discussion with him on difficult and important matters as agreeable as it was instructive.

"He has departed from among us, but we may hope that, as he is still young and strong, so much knowledge and so much experience will not be lost to India. He never informed me of his intentions as to his future career. I know little of his aspirations or of his wishes. It is quite possible that, after so many years of labour in this climate, he may naturally wish for comparative repose. But I am sure I only express the unanimous opinion of this Council in saying that, whether it be in the Senate, the Council, or on the Judicial Bench at Home, the Indian public will still hope for a continuance of those services

from which it has already so much benefited; and we may be sure that, whatever sphere he may select for active exertion, the influence of his great experience, learning and eloquence will be strongly felt and will ever be exercised for good.

Gentlemen, I am aware how inadequate are the terms in which I have endeavoured to recommend this Resolution to your consideration, and that what I have said is hardly worthy of the conspicuous public services I have endeavoured to describe. I feel that anything that may be spoken of him today will add little to his character or to his fame; but we may be content to know that the best and most lasting records of his long and able service will be found in those wise laws which under his auspices were placed on our Statute-book, in the eloquent addresses delivered in this chamber, which by the happy intervention of the Press have been preserved and given to the public, and in those numerous and able documents which have issued from his pen and which now comprise so valuable a portion of Indian Political Literature."

The Hon'ble MR. COWIE :—"My Lord, I have much pleasure in seconding the Resolution which your Lordship has so ably introduced. I have had the good fortune to hold a seat in this Council with Mr. Maine under three successive Viceroys, and while I would leave to others more competent than myself to describe his great eminence and talent as a jurist, I readily bear testimony to his eloquence, his industry, and his unfailing courtesy. The two latter qualities always accompanied him to the Select Committee room, where, as your Lordship knows, the practical part of this Council's work is chiefly carried on.

"An opinion was once entertained in some quarters, both here and in England, that Mr. Maine was too eager for legislation and for the reform of existing laws. I confess that at one time I was inclined to share that opinion, but I am bound to say that, in a minute dated some months back, he completely and triumphantly refuted the charge. During his occupancy of the distinguished post of Legislative Member of this Council, the following important measures specially affecting commerce and trade have become law :—

Act VI of 1864, consolidating and amending the law as to Sea customs :

Act III of 1865, defining the rights and liabilities of common carriers :

Act V of 1866, for summary procedure on Bills of Exchange, guarantees, acceptances, &c., and assignment of rights under marine and fire policies :

"Act X of 1866, known as the Companies' Act, and, lastly, Act XVIII of 1869, the General Stamp Act.

"My Lord, the bankers, merchants, and traders of India are all, more or less, indebted to this Council for the valuable laws which I have thus briefly enumerated; but they are specially so indebted to Henry Sumner Maine, and I feel honoured in being allowed thus to second the Resolution which bears testimony to his great merit and his most successful career.

"I heartily concur in your Excellency's hope that a brilliant career may yet be open to him in his native land."

The Hon'ble MR. STRACHEY:—"I feel, my Lord, that I cannot, as a member of this Government, remain altogether silent, when this Council is recording its admiration, its gratitude, and its regrets, on the departure of a wise and most accomplished statesman, who, for the last seven years, has been the most brilliant ornament of our Indian legislature.

"When, my Lord, Mr. Maine first came to India, the popular belief did not want expression,—perhaps, indeed, it is a professional belief also,—that practical ability can hardly co-exist with intellectual refinement and devotion to the study of the abstract principles of jurisprudence. I suppose that no more complete contradiction to this belief was ever given than that which has been given to it by Mr. Maine's career in India. Mr. Maine has not only been a great author and jurist, but a great legislator and statesman. More fortunate, in this respect, than some of his predecessors in the philosophy of law, Mr. Maine became the head and the guide of the practical legislation of a great empire.

"I will not, my Lord, dwell on the details of Mr. Maine's services to Indian legislation, because this has been done already by your Excellency and by my Hon'ble friend Mr. Cowie. The few remarks which I propose to make will be of a more general character.

"I believe, my Lord, that no competent and candid person can deny the general excellence of late Indian legislation. It has been excellent in substance and excellent in form, and it is not too much to say that it will soon be true of India, that there is no country in the world which possesses more admirable laws. The simple language and scientific arrangement of our recent Acts make them models of which any legislature might be proud.

"In one of those admirable addresses to the Calcutta University to which your Excellency has referred, Mr. Maine said that if he were asked to give a

rough and popular definition of law to persons quite ignorant of it, he should say that law was common sense.' 'A lawyer,' he said, 'cannot do without technical rules any more than a sculptor or a painter; but still it is universally true that a disposition to over-rate technicalities, or to value them for their own sake, is the characteristic mark of the journeyman, as distinguished from the artist. A very technical lawyer will always be a third-rate lawyer.'

"I think that these remarks of Mr. Maine very well describe the character of recent Indian legislation. It has been the expression of common sense, divested to the utmost possible extent of all those worthless technicalities which so long in this country, even perhaps more than in England, usurped the place of rational law. It would be hard to exaggerate the benefit which has been conferred upon India by these excellent enactments, which everybody can understand, and which have superseded the cumbrous and contradictory mass of judge-made law which our Courts not long ago were forced to administer. Although there may not be actually less litigation, its character has been simplified. There are fewer disputes regarding the interpretation to be put upon the law, fewer costly references to counsel and attorneys, fewer law-suits wasting the time and labour of the Judges, the money and the patience of the litigants. If, even in England, the maxim 'Ignorance of the law excuses no one' renders it desirable that the statutes should be clearly drafted and intelligibly arranged, how much more is this the case in India, where the bulk of the population is ignorant of our language and our modes of thought, and where competent translators are found with difficulty.

"We cannot acknowledge too fully the value of the work which was thus performed by Mr. Maine. In saying this, however, there is one thing which I must not forget, for it is one that Mr. Maine himself was always the first to declare. I refer, my Lord, to the obligations which we are under to one whose services we are still fortunate enough to command in the Legislative Department of this Government, the learned and accomplished Secretary to this Council, Mr. Whitley Stokes. While we remember the admirable expositions made by Mr. Maine in this Council of so many important laws, we must not forget how much is due to Mr. Stokes for making the laws themselves models of terseness and lucidity. In speaking of the character of recent Indian legislation, it would be difficult to give to Mr. Stokes greater acknowledgments than he deserves.

"But, as your Excellency has observed, legislation was only one part of Mr. Maine's Indian services. For the last seven years he has been a working member of the Executive Government, taking at all times an active part in

✓ the administration. / Owing to the peculiar, and, in my opinion, unfortunate constitution of our Government, a member of the Executive Council has no definite or separate official responsibility. He may originate or may obstruct measures that closely affect the interests of millions, yet the public will know little of him beyond the fact that he belongs to that somewhat mysterious body, the Governor General in Council. And so it happens that, although Mr. Maine has been concerned in almost every measure of importance, affecting the civil administration of the country, which has come before the Government of India for several years past, it is difficult for the public to learn specifically what his actual share in those measures was. / But your Excellency and my Hon'ble colleagues in the Executive Council well know how great a power in the State Mr. Maine has really been, and how active a part he has taken in the practical work of the Government of India.

“ Although, my Lord, I cannot now attempt to detail the many claims which Mr. Maine possesses to our grateful and admiring recollection, there is one other branch of his public services in India to which your Excellency has referred, and which I must briefly notice,—the services which he performed as Vice-Chancellor of the Calcutta University. That the author of ‘Ancient Law’ was no less eminent for his literary acquirements and ability than for his knowledge as a jurist, it is hardly necessary for me to say; and his scholastic experience, his learning, and his broad and sound views as to the true objects and scope of study will, I am convinced, be found to have produced a lasting effect on the progress of education in this country. The key-note of those brilliant addresses to the Calcutta University which signalized Mr. Maine’s tenure of office was this :—That the object of all study is to attain a knowledge of the truth; that truth, whether in relation to the external world and its phenomena, or to human nature and society, and the feelings and influences under which they act, must conform to the same general conditions; and that the teaching of all true science, to whatever it be applied, is (to use Mr. Maine’s own words) ‘continuous sequence, inflexible order, and eternal law.’ He warned us, in eloquent language, that the genuineness of knowledge is the one essential consideration, and that the merely literary form in which knowledge is conveyed is in itself a small matter. Never, he maintained, under any guise of oriental culture or otherwise, must we teach that which is not true. Attention to these fundamental principles has nowhere been more required than in India, and at no time is it more required than at present. By no one have these principles been more clearly or more forcibly enunciated than by Mr. Maine, and it will be well for the cause of education in India if we follow his weighty counsels.

"But, my Lord, while we regret Mr. Maine's departure, we may, I think, have the satisfaction of feeling that his career, unlike that of many of the distinguished men who leave India, is not closed. England is at last beginning to recognize the evils of her shapeless legal system, and to see the necessity of digesting, and ultimately of codifying, that enormous mass of statutes, precedents, dicta, and rules of practice which constitute the bulk of her law. In helping on this work, Mr. Maine's learning and experience would be especially valuable.

There are other ways in which he may render services perhaps still more useful to his science, to England, and to India.

"In his 'Ancient Law' Mr. Maine has shown that the inductive method ✓ is the only way to attain clear notions as to the origin of those elementary legal conceptions which are incorporated into our social system; and the primeval institutions and customs of India which have been handed down, almost unchanged, to the present generation—such as the village community, the undivided family, the practice of adoption taking the place of testation—furnished him with admirable subjects for the application of that method. The extended knowledge and experience which Mr. Maine's residence in India has given him will enable him to pursue with increased power his scientific researches, and we may hope that he will be able, from the chair which he is expected to fill at Oxford, to impart to the youth of England, not only correct principles of jurisprudence, but to extend that intelligent and unselfish interest which the best minds in England are beginning to take in this country and its history and institutions, and to diminish the contempt and dislike which, as between nations, are almost always due to ignorance alone. We may hope, too, that Mr. Maine's teaching may have a yet wider range; that the beneficial influence of his scientific and philosophical mind may extend beyond questions affecting the conditions of any single human society, or the relations of two countries such as England and India, and may reach that almost unbroken field of International Law to which he has already given so much of his attention. If there be any man able to fix the true principles of this most important of all branches of jurisprudence, that man is Mr. Maine.

"It would be a worthy conclusion to his labours to lay the foundations for ✓ that complete respect for the authority of such law which Whewell reckoned among the most hopeful avenues to that noble ideal, a perpetual peace; 'the most hopeful,' he says, 'because along this avenue we can already see a long historical progress, as well as a great moral aim.'

✓ "But, my Lord, independently of the work which lies before Mr. Maine as a jurist and a philosopher, I hope that we may find that he has not altogether abandoned in England that active political life which he has been living here. The present seems to be the very time for a statesman like Mr. Maine to turn to good account his practical Indian knowledge. ✓ England is now entering on the consideration of matters affecting the condition of the people, the rights of landlords and tenants, and all the difficult questions connected with property in the land. The subjects that are now being discussed in regard to Ireland seem to us here strangely like those over which Indian statesmen have been labouring for the last three-quarters of a century. I believe that there is very much that might usefully be told to the people of England regarding the experience that has been gained in India, and there is no man that could speak with greater knowledge and authority on such matters than Mr. Maine."

"However all this may turn out, this is certain, that not only every member of this Council, but all the thinking public of India will heartily agree in the Resolution which has now been moved by your Excellency, in token of the regret which we feel at Mr. Maine's departure, and of the hope that his career in the future may be as distinguished and as useful as it has been in the past."

✓ Major General the Hon'ble SIR HENRY DURAND said that, in the spirit of the Resolution before the Council, he wished to say a few words on a point which was adverted to by the Hon'ble Mr. Strachey, and which might not be well known by the public—in fact could not be well known—namely, the great use of which Mr. Maine had been during the administrations of Lord Elgin and Sir John Lawrence; and His Excellency the President knew best, in connection with his own administration, the immense service of which Mr. Maine's opinions were in that particular department which is ✓ called international law. Questions of international law in this country did not come before us in that simplicity of form in which they came before European Nations of co-equal powers and rights. His Excellency was quite aware how nice and delicate were the points of such law which arose here between the dependent States of this empire and the supreme authority. SIR HENRY DURAND could not enter into any detail by way of exemplification: the cases were so numerous that it would be difficult to select an example. Yet he might say that Mr. Maine was ever ready, at all times, to give the fullest consideration and the best advice with reference to these questions. He felt that it was due to Mr. Maine to say that he was something

more, and in fact a great deal more, than an ordinary Jurist. As a jurisconsult having to deal with most complicated and difficult questions, there was no man more fitted than Mr. Maine to solve the problems of international law which constantly came up for decision under the administrations during which Mr. Maine was a member of the Government; and the obligation of the Government to Mr. Maine on account of the part he had taken in that large and anomalous class of questions, was really almost beyond calculation.

SIR HENRY DURAND would not take up the time of the Council by saying more on this part of the subject; he felt from what had fallen from the Hon'ble Mr. Strachey and His Excellency the President that it was quite unnecessary for him (SIR HENRY DURAND) to do anything more. Still he was anxious that the great ability and value of Mr. Maine as an international jurisconsult, and the obligations of the Government to Mr. Maine in that respect, should not be allowed to pass without the amplest recognition.

The Hon'ble Mr. TAYLOR said that, although he was unprepared to follow his Hon'ble colleagues at any length in support of the Resolution which His Excellency had proposed today, he could not allow the occasion to pass altogether in silence. He had enjoyed the privilege of being associated with Mr. Maine in the Executive Council for a period of nearly five years. He had thus been in a position very thoroughly to estimate the value of the services of such a man in the Supreme Government of India; to appreciate his talents, his industry, his genius and his worth. He desired then simply to say that he joined most heartily in the well-deserved tribute of praise and admiration which His Excellency had so eloquently paid to their late distinguished colleague, and in the expression of regret for the great loss the Council had sustained by Mr. Maine's departure from India.

The Motion was put and agreed to.

#### SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble Mr. STRACHEY, in moving for leave to introduce a Bill to enhance the price of Salt in the Presidency of Fort St. George, and the duty on Salt in the Presidency of Bombay, said the circumstances under which he asked for leave to introduce this measure were so well known to the Council and to the public that it was hardly necessary that he should now enlarge on them. The Government of India came to the conclusion that it was for financial reasons necessary to increase the duties on salt in Madras and Bombay. As the legislature was not at that time sitting, it became necessary for His Excellency to exercise the power given to the Governor General by the Indian Councils' Act, and to authorise temporarily, by an Ordinance, that the increased duty should be at once put in force. It was at the same time stated publicly

that a Bill would, with the least possible delay, be brought into the Legislative Council to substitute for that Ordinance the regular form of legislation. That intention would be fulfilled if the present motion was carried, and the Council would remember that legislation on this subject was essential, because, under the Indian Councils' Act, an Ordinance made by the Governor General must expire at the end of six months. It would be more convenient to defer until next week any remarks MR. STRACHEY might desire to make regarding the policy of this measure. He hoped that at their next meeting the Hon'ble Sir Richard Temple would be able to introduce the Bill referring to the Income Tax, and MR. STRACHEY thought that would be the proper opportunity of also discussing the measure which he now asked leave to introduce.

The Motion was put and agreed to.

#### ALIMENTARY SALT (N. W. P. &c.) BILL.

The Hon'ble MR. STRACHEY also moved for leave to introduce a Bill to provide rules for the manufacture, storing and sale of alimentary Salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces. He said the Council was already aware that the Government of India some time ago came to the conclusion, with the approval of the Secretary of State for India, to sanction experimentally the manufacture of salt in Oudh. A similar manufacture might probably be soon introduced in certain parts of the North-Western Provinces, and perhaps also at some future time in the Central Provinces and the Panjáb. It was found that legislation was necessary, for although the Acts in which the law on the subject was contained prohibited the unsanctioned manufacture of salt, they did not enable the Government to prescribe rules respecting the mode of making, storing and selling that article. He need not today occupy the time of the Council in explaining at any length the reasons which had led the Government of India to allow the local manufacture of salt, but he hoped at a future stage of the Bill to take the opportunity of giving some account of the policy which the Government of India proposed to follow in regard to this very important matter.

The Motion was put and agreed to.

The Council then adjourned to Friday, the 19th November 1869.

WHITLEY STOKES,

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

CALCUTTA,

*The 12th November 1869.*