



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament, 24 and 25 Victoria, Chapter 67, is published for the information of all whom it may concern :—

The Council met at Poona, on Saturday the 19th September 1863.

PRESENT:—

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay, Presiding.
His Excellency Sir W. R. MANSFIELD, K.C.B.,
The Honorable Mr. W. E. FRERE,
The Honorable Mr. J. D. INVERARITY,
The Honorable Mr. H. L. ANDERSON,
The Honorable Mr. JUGONNATH SUNKERSETT,
The Honorable Mr. PREMABHAI HEMABHAI,
The Honorable Mr. A. D. ROBERTSON.

The Council proceeded to consider the Report of the Select Committee appointed to revise the Rules for regulating the conduct of business at Meetings of the Council, held for the purpose of making Laws and Regulations under the provisions of the Statute 24 and 25 Victoria, Chapter 67.

The UNDER-SECRETARY read the Rules as amended by the Select Committee on the 28th August 1863, and finally submitted with their Report on the 3rd September 1863.

The PRESIDENT suggested that in line 13 of Rule 1 the words "under his authority" be inserted between the words "done" and "by." The Rule would then provide that whatever was done by an Under-Secretary or Assistant Secretary would be done under the authority of the Secretary. The effect would be that there would be one person only responsible for all acts done by the Ministerial Officer of the Council. And it appeared desirable that responsibility should be fixed in this manner on some one person, and that the possibility should be prevented of the Under-Secretary giving an order on any subject at variance with any order given by the Secretary.

The Honorable Mr. FRERE observed that the Secretary already acted under authority delegated to him by the Council. To allow him therefore to delegate authority to an Under or Assistant Secretary would be to have an *imperium in imperio*, and this would be scarcely what the Council would wish to have. It would besides obstruct the rapid disposal of business and occasion other difficulties if the Under-Secretary were always required to state that he signed papers or transacted any other business under the authority of the Secretary. It would be better to consider the Under-Secretary as acting under the immediate authority of the Council, in the same manner as the Secretary would act if he personally performed those duties that were ascribed to him under the Rules. The word "Secretary" was simply used in the Rules for convenience, but it was always contemplated that the duties of a Secretary might be performed by some other officer, who while performing these duties would act under the full sanction of the Council as if he were really the Secretary.

His Excellency Sir WILLIAM MANSFIELD said that he understood the Rule in the same sense in which it had been taken by the Honorable Mr. Frere.

The PRESIDENT said that under the Honorable Mr. Frere's explanation, which seemed to be concurred in by the Council, he would not press for any alteration in the Rule.

At the suggestion of the Honorable Mr. INVERARITY, it was agreed that in the 4th line of Rule 3 the word "future" should be substituted for the word "further;" it was also agreed that in the 2nd line of Rule 5 the word "the" should be substituted for the word "any."

The PRESIDENT observed that as the word "President" was defined in Rule 1, the words "if the Governor or Ordinary Member of Council be present" were unnecessary in Rule 6. These words were accordingly omitted in lines 8 and 9 of the Rule, and in line 10 the word "the" was substituted for the word "their," and the words "of such President" inserted between the words "absence" and "the."

The Honorable Mr. FRERE remarked that in line 3 of Rule 13, Section XIX. of the Statute 24 and 25 Victoria, Chapter 67, was erroneously quoted. Section XIX. of the Indian Council's Act related to the Council of the Governor General; the 43rd Section related to this Council and ought therefore to have been quoted. The error was corrected accordingly.

The PRESIDENT said that he could not understand why any change had been made by the Select Committee in the number of times that a Bill should be read before it could be passed. The Report did not make this point clear, and if the suggestion of the Committee were to be adopted, the Council would throw itself open to the charge of having deviated without any apparent reason, from the course followed by the other Councils. It would be difficult, he thought, to answer such a charge, and considering that it had been the object of the Council in revising the Rules to assimilate them as far as possible to the Rules of the other Councils, he could have wished that no change had been made in the procedure. He pointed out the difference in this respect between what was required for the convenience of such a body as that Council and what was suited to the British Parliament. There it was always understood that when a member moved for leave to introduce a Bill, he was at liberty to discuss the question in the most general manner, and often when leave was granted a member for the introduction of a Bill, he had not at the time any definite idea of the precise form that the measure would assume when introduced. But in this Council leave was never asked for the introduction of a Bill without a draft of the proposed measure being ready for submission to the Council, and in the case of Government measures no steps were taken in Council until after much preliminary investigation by the Executive Government. The Council had been reminded by the Secretary of State that it met for the purpose of making laws and not for the purpose of discussing generally any question which had no connection with legislation. It was for them, therefore, to decide what procedure was the best adapted to ensure the speedy and effective despatch of such business as the Council might legitimately have before it.

His Excellency Sir W. MANSFIELD said that the change in the Rules had been recommended by the Committee at the suggestion of the Honorable Mr. Anderson, who would probably be better able than he to explain the reasons for the change. He (Sir W. Mansfield) would, however, only state that the effect of the new Rule, if adopted, would not be to really increase the number of discussions that would be allowable in connection with

any measure, as at the first reading the statement of the mover of the Bill in support of its general provisions would be made instead of at the time when leave is asked to introduce it. Thus this statement would be made after sufficient notice had been given to put other members in a position fairly to comprehend it. In other respects the first reading would generally be a formal procedure. The advantage of the proposed plan would be this, that members would not be taken by surprise in regard to any measure proposed for their adoption. They would have time to consider all the bearings of any measure before they were irrevocably committed to an opinion in one way or other. To illustrate his remarks, he could only refer to his position in regard to the Time-Bargains Bill. This Bill came on the Council before most of the members were aware of its character or of its objects. The old Rules were so cramped that with his views he had actually been compelled to a course which otherwise he should have avoided as inconvenient. If the Rules as amended by the Committee had been in force at the time, he would not have opposed the first reading, simply because his voting for the first reading would not have committed him in any manner to the measure, while time would have been afforded for gathering the necessary information. It would be understood also that the Report of the Select Committee often afforded very valuable information on the scope and bearing of a Bill independently of changes and consideration affecting particular Clauses. Under the new Rules there would be this advantage that, at the second reading, according to Rule 20 of the revised rules, it would be competent for Honorable members to discuss any measure as a whole in an enlightened manner, with full knowledge of all that could be said in favor of it, or against it. And it would then be in the power of the Council to accept the Bill if it approved of it, and so proceed to consider it in detail, or else, if at this stage, the Council found that the measure was objectionable, it could at once reject it without further loss of time and labour in going over a great number of Clauses. This plan had at least the merit of convenience to recommend it. It was calculated to save the Council much waste of time, for while it tended to ensure discussion after full information had been received on any point, it discouraged a hasty and premature discussion of any measure, which was more than could be said (as they knew from experience) in favour of the system in force under the existing Rules. After a full discussion on the second reading, with all the information afforded by the Report of the Select Committee, the Council having resolved itself into a Committee of the whole Council, if we are permitted the use of the term (which is very doubtful), any further discussion on the principle would, under the new rules, be unnecessary and therefore out of place. The third reading would often be a merely formal step in the procedure. It was easy to see that by this arrangement much valuable time would be saved. He (Sir W. Mansfield) was not present at the meetings of the Council that were held during the last cold season; but he had heard that one measure then before the Council had been carefully matured after the Report of the Select Committee had been considered, each Clause had been carefully examined and passed, its details had been modified to a great extent, and it was on the point of receiving the final stamp of the Council's approval, when, at the eleventh hour, the whole discussion on the principle was re-opened by an Honorable member, who then only found that he could not conscientiously subscribe to the Bill as a whole. He was open to correction in what he stated, but he believed that what he had said was the case; and there could be no doubt that a system that permitted such a catastrophe as he had described, was not a system that was favourable to that speedy and effective despatch of business that they were all so anxious to ensure. And though the proposed system was not conformable with the procedure in the other Councils, still that, he hoped, would not be held a sufficient reason for rejecting it. At all events, if the Council determined to have only two readings of a Bill, he hoped the new Rules would be referred back to the Committee, in order that the whole of the proposed procedure under the head of "Bills" might be recast in accordance with the wishes of the Council.

The Honorable Mr. ANDERSON said that His Excellency the Commander-in-Chief had correctly stated the reasons for the change which the Committee had recommended. The old Rules had undoubtedly been liable to the objection that under them Honorable members might find themselves voting for a measure at an important stage of its existence without being in possession of sufficient information to enable them to give their vote in an intelligent manner. The case referred to by His Excellency sufficiently illustrated this. He (Mr. Anderson) was present on the occasion referred to. He remembered that after the District Police Bill had been carefully considered in a Committee of the Council, the Honorable Mr. Inverarity drew up a memorandum on it, which expressed in a most forcible manner various objections to it, and the Council postponed the consideration of the measure pending the receipt of information from the Commissioners of Police,

who were requested to submit their views on the Honorable Mr. Inverarity's objections. Under the old Rules Mr. Inverarity had been quite in order in making his objections when he did. Indeed he would not probably have been in a position to have made them at an earlier stage. But every member must have been conscious of the serious obstruction to public business that was occasioned at the time. The Honorable Mr. Inverarity was not prepared to oppose the Bill on its first reading. He had no opportunity of moving that the Bill be rejected as a whole, until the second reading, that is, until after the Council had spent several days in considering the Bill Clause by Clause. The plan proposed by the Select Committee would effectually prevent the recurrence of this difficulty by reading every Bill a second time *before* its consideration Clause by Clause, and thus enabling a member to move the rejection of a Bill on that second reading. If the second reading were carried, the Bill would then be considered in detail, and after that would come the third reading. It would perhaps tend to explain the procedure recommended by the Committee if he instanced the position in which they at present stood in regard to Mr. Frere's Insolvency Bill. No member had opposed the motion for the first reading of the Bill. But from this it was not to be understood that all the members intended to support the Bill to the end. Honorable members voted for the first reading simply because as yet they saw no ground for rejecting it. But under the present Rules, the Bill having been read a first time without opposition, there would be no opportunity of moving the rejection of the Bill, until after its numerous Clauses had been considered one by one by the Council. The Bill he believed to be an excellent one, but others might think differently. It was a very important Bill and one which no one would wish to oppose at its first stage. But if any members were opposed to it, they ought to have an opportunity of raising a debate on the principle before the measure was considered in detail. He (Mr. Anderson) thought that the proposed amendment in the Rules would in the end be found to save time, although it afforded opportunity for the complete discussion of a measure.

The PRESIDENT said that he saw no objection to the present procedure on the grounds stated by Mr. Anderson. There was no absolute necessity under the present Rules to postpone a discussion on the principle of the Bill, until the whole measure had been considered in detail. In the case of the Time-Bargains Bill, the fullest discussion had arisen on the question that the first Section stand part of the Bill. This being the case, it did not appear what advantages the proposed scheme would have over the present plan. The consideration of the Bill in detail by the Council provided at present exactly the same opportunity for a full discussion as the Select Committee wished to be given by their proposed second reading; and after the whole measure had been finally modified, the question usually put after all the Clauses that the Preamble stand part of the Bill, always enabled Honorable members to speak and divide on the question of principle, so that the present system did allow members to give an intelligent vote on the principle before the Bill was read a second time and passed. What he (the President) thought was, that the proposed plan had no advantages that were not possessed by the present procedure, while it would be utterly unintelligible either to the members of the other Councils or to any one accustomed to the procedure of the House of Commons.

The Honorable Mr. ROBERTSON said that he approved of the proposed change in the procedure, as it would allow any Honorable member to speak to the principle of a Bill before the Council spent its time in discussing its details.

The PRESIDENT said that any Honorable member could do that now. Besides in practice there was no restriction as to when the principle should be discussed, and when the details; as a matter of fact nothing was more common than for a speaker to object to details when professedly opposing the principle and *vice versa*, it would be quite possible (as had been done in the debate on the Time-Bargains Bill) to oppose a Bill in the fullest manner on considering a mere matter of detail.

His Excellency Sir W. MANSFIELD said that we should discriminate between facilities afforded by purely Government Bills and those introduced by Honorable members on their own account; the Government would never bring forward any measure without having first been fully satisfied as to its necessity. But private Bills might be forced on the Council at any time without sufficiency of information, and any discussion on them might therefore be unsatisfactory and incomplete. It was not, however, desirable to make different provisions in the Rules for Government and private Bills, as it was the wish of the Secretary of State to place all the members of the Council on the same footing in regard to the introduction of the Bills. He (Sir William Mansfield) contended that the proposed plan

if adopted would make the first real discussion on a measure a *bona fide* discussion and not a mere one-sided affair.

The Honorable Mr. INVERARITY said that under these Rules it would ordinarily take 31 or 38 days to pass a Bill through the Council.

His Excellency Sir WILLIAM MANSFIELD said that he did not think 31 or 38 days a preposterously long time for the consideration of an important measure.

The Honorable Mr. FRERE said that as they no longer had stated Sessions, it did not signify how long a Bill was under consideration. There was nothing to prevent several Bills from being introduced at one meeting; and meetings could be called by the President at any time of the year for the disposal of Bills.

The PRESIDENT remarked that three months was the minimum time for the consideration of a Bill by the late Legislative Council of India. He thought that it would perhaps meet the views of the Council if the following changes were made in Rule 20, that in the 3rd line the word "may" be substituted for the word "shall," that in the 4th, 5th, 6th and 7th lines the words "on that Report being presented the principle of the Bill as amended by the Select Committee may be discussed on the second reading," be omitted, and that in their place the following words be substituted; "which when ordered, shall be presented before the Bill is read a second time." These alterations were agreed to.

At the suggestion of the Honorable Mr. INVERARITY, the words "or substance" were omitted from line 2 of Rule 28.

His Excellency Sir W. MANSFIELD said that in line 9 of Rule 32 the words "left to right" should have been "right to left." The change was accordingly made and Sir W. Mansfield explained that the object of the Committee in proposing that the Mover of a motion should be the first to vote on it, and that the other members should vote in consecutive order from right to left was to avoid making any distinction between the members of the Executive Government and the additional members. The old Rule which required that members should vote in order of seniority was open to this objection that members of Government always voted first on every measure.

On the motion of the Honorable Mr. FRERE, the words "to some future day" were substituted for the words "to the next or some other convenient day" at the close of Rule 34.

After the Rules had been amended by the Council, the Honorable Mr. FRERE said that the Select Committee had purposely avoided making any rule in regard to the time when Bills containing penal clauses should be submitted for the previous sanction of the Governor General in Council, in accordance with the recent instructions of Her Majesty's Secretary of State, as the matter was authoritatively settled in Section 43 of the Indian Council's Act, which provided that no such Bills should even come under the consideration of the Council without the previous sanction of the Supreme Government, but he thought it would be advisable that that Section of the Act (43) should be added as a foot note to the Rule 13, that members should have no cause for overlooking it.

The Honorable Mr. ANDERSON said that it was unnecessary, as every man was bound to know the Law.

The Honorable Mr. FRERE then said that he would not press his suggestion.

His Excellency Sir WILLIAM MANSFIELD then said that he would not press the Resolutions of which he had given notice, not because he did not consider the employment of a short-hand writer was required, but because he was aware that there were other objections to the proposition. He thought that there could be no harder work than having to revise one's own speeches; for in revising, it was impossible to remember all the guarding words and expressions that might have been carefully used at the time of speaking, but which would be omitted in a bald précis. So that statements not objectionable at the time when they were made are often made to assume a very offensive form when reported. He could wish that they had a short-hand writer to report their speeches under the supervision of the Under-Secretary, whose time must of necessity be at present much taken up with preparing the Reports,

when he had other work to do. But he had been informed by His Excellency the President that there were practical difficulties in the way, which could not easily be met.

The PRESIDENT said that the occasions were rare when a short-hand writer would be required. In general all that was wanted was an abstract of what was said by each speaker. Very few speakers would like to see their speeches verbally reported, and an ordinary short-hand writer who did not understand the subject under discussion would very often fail in giving the real substance of a speech. There would besides be a great practical difficulty in the way of their obtaining short-hand writers. Even in Calcutta this difficulty was felt, and though the Council of the Governor General had secured the services of a very able and competent short-hand reporter, it was still found that it was only when the speeches were on subjects with which he himself was conversant that his power of short-hand reporting obviated the necessity for members revising the reports of their own speeches whenever the subject was not familiar to him. Speakers found that it was a more satisfactory plan to revise the reports of their speeches that had been prepared by him in the ordinary manner.

The Honorable Mr. ANDERSON concurred with the President in thinking that it would be difficult to get a good short-hand reporter in India.

The Honorable Mr. ROBERTSON remarked that short-hand writing was a very difficult accomplishment to learn, and after it had been acquired, it took the writer several years to read his own writing.

Sir W. MANSFIELD added that he thought there would be no insuperable difficulties presented in a plan which should give a Clerk to the Under-Secretary who should have achieved the accomplishment of short-hand writing. An addition to the wages of an ordinary Clerk would ensure this, and the Clerk when the Council was not sitting, would do his ordinary work. In this manner at small expense his object would be accomplished and the Under-Secretary would be provided with an efficient and proper aid in the preparation of his Reports. The drawing up of the Reports would still rest with the Under-Secretary, who would however be provided with the reasonable aid he did not now possess. He thought that this matter should be left to Mr. Birdwood to organize, and he trusted the subject would not be forgotten.

The President said that there were no Bills that were as yet ready to be placed before the Council. The Draft Survey Bill was still under the consideration of Government, and would not probably be in a sufficiently matured state for introduction for some months. Probably the next business that they would have to take in hand would be the consideration of the Time-Bargains Bill; but as that would not be for some weeks, he would not fix any day for the next meeting.

The President adjourned the Council *sine die*.

By order of His Excellency the Governor in Council,

H. BIRDWOOD,

Under-Secretary to Government.

Poona, 24th September 1863.