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COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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 Simla on Thursday, the 29th August 1872.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G. M. S. I.,
presiding.

His Honour the Lieutenant-Governor of the Panjáb.

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

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

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble R. E. Egerton.

ACT V OF 1872 AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend Act No. V of 1872 (*to remove doubts as to the Jurisdiction of the High Court of Bombay over the Province of Sind*).

INDIAN EVIDENCE ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872. He said that, in considering the Bill, the Committee had proceeded on the principle that, under the circumstances, it was no part of their duty to alter any part of the Act on the score of principle, but only to effect such alterations as they believed the draftsman would have made if his attention had been called to them.

The principal reason for passing the present Bill into law before the 1st September was this :—Act I of 1872 repealed *in toto* a prior Act, XV of 1852 ; and one of the sections of that Act was as follows :

“ XII.—All Her Majesty's Courts within the British territories under the government of the East India Company, and every Judge and Justice of such Courts, and every officer, Commissioner, Arbitrator or other person now or hereafter having, by law or by consent of parties, authority to hear, receive and examine evidence, with respect to or concerning any suit, action or other proceeding in any of such Courts, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.”

Now, that was a positive enactment, in the clearest possible terms, purporting to confer upon certain tribunals and officers power to administer oaths. *Prima facie* if that power were removed from the Statute-book, and nothing put in its place, it would cease to exist. The question then was, whether the power could be derived from any other quarter. For the purpose of determining this question, it had been necessary to read five Acts of Parliament and ten Charters, and to read some of these documents very carefully, since they were framed on the most perplexing of all principles, the principle of declaring void all previous inconsistent provisions. So that you had to read through the whole document to see what was and what was not inconsistent. The result was, as well as he (MR. HOBHOUSE) could make out, that the power of administering an oath would remain with the High Courts, but would not remain with the Commissioners and Arbitrators therein mentioned. It was, therefore, important to leave upon the Statute-book as clear and extensive an authority as that which was taken out of it, and the simplest way of doing that in the present emergency was by continuing the existence of that section. When the time came for dealing with that matter finally, the proper place for it would be found in an Act relating to the subject of oaths and affirmations, rather than in one relating to the general subject of evidence.

MR. HOBHOUSE thought it right to mention to the Council that he had received a telegram from Mr. H. S. Cunningham, desiring that the passing of the present Bill might be postponed until some further communication was received from him. Mr. Cunningham intimated that he did not think it necessary to continue the section just discussed, and that there were other defects in the Bill. MR. HOBHOUSE thought it right that the Council should decide for themselves in this matter after hearing the reasons for passing the present Bill. Unquestionably, the assistance of the gentleman who had had a great share in preparing the Act, would be most valuable in any amendment of it. He probably understood the Act far better than any of the Council, and was aware of many things to which attention had not been called. MR. HOBHOUSE most sincerely regretted that, in his judgment, pressure of time prevented their receiving Mr. Cunningham's assistance. He (MR. HOBHOUSE) had previously shewn the kind of embarrassment which might arise from the present condition of things. He would now try and explain the degree of it. Previously to this year, the incapacity to administer an oath would have vitiated many legal proceedings. But in the present year, an Act (No. VI of 1872) was passed, which had two objects—one was to respect and bind the conscience of witnesses, and the other, to prevent the entire vitiation of legal proceedings by omissions and irregularities in the administration of oaths. The first object had nothing to do with the present question. An oath was an oath, whatever might be the form of it, and the person who administered it must be duly qualified to do so. The second object was important,

because it diminished the mischief which might arise from the incapacity of the Judge to administer an oath. But it did not prevent the administration of an oath by such incapable person from being an irregularity. Nor was it easy to say how a Judge, upon being pressed with such irregularity, would deal with the case. Certainly, many a Commissioner and Arbitrator would say, "inasmuch as no objection is made by the witness, and as an oath is the regular form of proceeding, and as I have, by express legislation, been made incapable to administer one, I decline to go on with the case." Besides this, the Act in question did not affix the penalties of perjury to the giving of false testimony under such circumstances. On this point, sections one hundred and seventy-eight and one hundred and seventy-one of the Penal Code shewed the importance attached to the legal administration of an oath by duly authorized persons.

For the foregoing reasons, Mr. HOBHOUSE could not help thinking that we should be running some appreciable risk of disturbance of judicial proceedings if we did not pass this Bill into law by the 1st September, on which day Act I of 1872 was to come into force, whereas no possible injury would be done by continuing the section in question, the only suggestion against it being that it was useless.

With regard to the other amendments, he would not remark upon them in detail. They would all speak for themselves, and were intended to cover obvious defects and slips either of writing, or of printing, or of drafting. We had now received several criticisms on Act I of 1872, and there was little doubt that, after it had been tested in actual practice, it would, like most laws of great magnitude and difficulty, and especially those passed on subjects new to legislation, require amendment in several particulars. Probably, in the course of a couple of years, it would be necessary to pass another amending Act, and the suggestions of Mr. Cunningham would be most valuable for that purpose. Mr. HOBHOUSE, therefore, thought proper that the better plan would be, not to have any further delay at present, but to keep a careful record of all suggestions sent in, and to use them when the time was ripe.

He also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT said that, in his opinion, Mr. Hobhouse had shewn sufficient cause for suspending the Rules in the present case. His Excellency accordingly declared the Rules suspended.

The Hon'ble Mr. HOBHOUSE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE then moved that the Bill be passed.

The Motion was put and agreed to.

DEFINITION OF COIN AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the definition of "Coin" contained in the Indian Penal Code, be taken into consideration. The Committee had made no change in the Bill, which was simply intended to correct a slip in the drafting of the Code and thus to render penal the counterfeiting of the coin of Native States.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill be passed.

The Motion was put and agreed to.

BOMBAY REGULATION XIII OF 1827, SECTION 34, CLAUSE 9,
REPEALING BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to repeal Bombay Regulation XIII of 1827, section thirty-four, clause nine, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He had already explained the object of this Bill.

The Motion was put and agreed to.

TRANSHIPMENT OF GOODS BILL.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to amend the law relating to the Transhipment of Goods imported by Steamer, and moved that it be referred to a Select Committee with instructions to report in two months. He said that under the provisions of Act XX of 1867, the Chief Customs Officers in the ports of Calcutta, Madras or Bombay might, under certain circumstances, and subject to rules issued by the Local Government, grant leave to tranship goods imported by steamer, without payment of duty and without the security required by section one hundred and ten of the Consolidated Customs Act.

It was desirable that the Government should have the power to authorize the same practice in Aden, Karáchi, the ports of Burma and elsewhere; and the present Bill accordingly repealed Act XX of 1867, and re-enacted its provisions making them applicable to those ports, as well as to Calcutta, Madras and Bombay, and such other ports as the Government of India might notify in the Gazette.

Power was also given to prohibit the transhipment of any specified class of goods; and the Bill contained a clause declaring that opium imported by sea might, if the Local Government thought fit, be re-exported on payment of a duty equivalent to the fee which would have been payable if it had been transhipped.

The Motion was put and agreed to.

SEPOY LUNATICS' BILL.

Major-General the Hon'ble H. W. NORMAN moved that the Report of the Select Committee on the Bill to provide for the admission of Native Military Lunatics into Asylums be taken into consideration.

The Motion was put and agreed to.

He also moved that in section two, line seven, for the word "wherein," the words "or force, in which" be substituted; and for the last word in the same section, that the word "serving" be substituted. This amendment was necessary, in order to make the Bill clearly apply to the Panjáb Frontier Force, the Haidarábád Contingent, and Divisions formed for field service.

The Motion was put and agreed to.

He also moved that in section four, line five, after the word "district," the words "or force" be inserted.

The Motion was put and agreed to.

PANJAB MUNICIPALITIES BILL.

The Hon'ble MR. EGERTON moved for leave to introduce a Bill to consolidate and amend the law for the appointment of Municipal Committees in the Panjáb.

He said that Act No. XV of 1867, regulating the appointment of Municipal Committees in the Panjáb, and for empowering Municipal Committees, with the sanction of the Local Government, to raise funds for municipal purposes by local taxation, had been enacted for five years, which expired on the 1st of March 1872.

Its duration was then extended for one year by Act II of 1872.

The object of continuing the Act of 1867 for one year, was to allow time for considering the subject more fully than was possible when the subject was under discussion in Calcutta, and also that His Honour the Lieutenant-Governor of the Panjáb might be present in Council when the Bill was brought forward. The opinion of the Panjáb Government in regard to the general working of the Act of 1867 was communicated to the Council before Act II of 1872 was passed.

The law had worked well, and it was not proposed to alter it materially in any particular. Provision would be made for control of taxation by the

Government of India, which Act XV of 1867 does not contain, and certain alterations which five years' experience had shewn to be necessary would be proposed.

The rules under which the Act of 1867 had been worked would be printed as an annexure to the Bill, in order to show how the powers conferred upon the Local Government had been exercised.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to repeal Bombay Regulation XIII of 1827, section thirty-four, clause nine—the Hon'ble Sir R. Temple, the Hon'ble Mr. Bayley and the Mover.

On the Bill to amend the law relating to the transhipment of goods—the Hon'ble Messrs. Hobhouse and Bayley and the Mover.

The Council then adjourned till the 5th September 1872.

SIMLA;
The 29th August 1872. }

WHITLEY STOKES,
Secretary to the Government of India.