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ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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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.

1875.

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1876.

*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 20th July, 1875.

PRESENT :

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

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

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

The Hon'ble Arthur Hobhouse, Q.C.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Ashley Eden, C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble Sir Douglas Forsyth, K.C.S.I.

The Hon'ble T. C. Hope.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill for the improvement of Law Reports. He would explain to the Council, in a very few words, the reason for the introduction of that Bill. The Council would remember that an Act was lately passed with the object of improving Law Reports. One of the sections of that Act was framed for the purpose of giving to decisions of High Courts an extent of authority which they did not possess at the present moment. Well, the Secretary of State, with whom rested the duty of advising the Crown to disallow whatever laws he thought inexpedient, considered that that provision might lead to some embarrassment, and accordingly while he assented to, and approved of, the rest of the measure, he had intimated that he could not allow that particular portion of it to become law. He, however, suggested that, instead of disallowing the whole Act, we should ourselves repeal it, and re-enact such portion of it as was unobjectionable. The Bill he (MR. HOBHOUSE) proposed to introduce was simply for that purpose, and he presumed that the Council would have no objection to re-enact portion of that which they had already enacted.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR A. ARBUTHNOT moved for leave to introduce a Bill to provide Reformatory and Industrial Schools. He said that the subject of the establishment of reformatories had, as the Council were aware, engaged the attention of the Government of India and of the various Local Governments for several years. So far back as 1861, the framers of the Code of Criminal Procedure included in that enactment a section which provided that, in the case of juvenile offenders, it should be competent to the Criminal Courts, on the occasion of sentencing any person under the age of 16 years to imprisonment for any offence, instead of directing that he should be confined in a criminal jail, to direct his confinement in a reformatory.

This law was still in force. Its defect had been found to be that while it had some advantage over the previous law in that it admitted of the separation of juvenile offenders, where a reformatory was available, during the period of their sentences, from adult criminals, still, as a general rule, the periods of those sentences were so brief that very little could be done to carry out the objects with which reformatories were established.

This blot in the legislation of 1861 very speedily attracted the attention of one of the Local Governments, and it was to the credit of the Government of Bombay that, in the year in which the Code of Criminal Procedure became law, they framed a Bill for supplementing the provisions of the Code in that respect, and for providing for the detention of juvenile offenders for periods which might be sufficient to admit of a reformatory system being duly carried out. That Bill, however, was disallowed by the Governor General, and a Bill subsequently framed also by the Bombay Government in the following year shared a similar fate. The main reason given for the disallowance of the former Bill was that it imposed certain penalties which were inconsistent with those imposed by the Penal Code, and that that was a power which it was not desirable to entrust to a local Legislature. The disallowance of the Bill submitted in 1863 proceeded upon very similar grounds. In 1867, the question again came before the Government of India. Representations were made from various quarters as to the want of an effective system of reformatories. The question was very fully considered by the Government, but at that time they did not see their way to any legislation of the description which it was now proposed to resort to. The views of the Government of that day were essentially different from those now entertained on this subject. Objections were felt to the establishment of reformatories in India which at

that time were considered to be insuperable. A circular, however, was issued to the various Governments drawing their attention to the necessity of providing more effective means than then existed in the various central jails and other prisons, for separating juvenile from adult offenders. This reference elicited a representation from the Government of Madras, in which Lord Napier and Ettrick entered very fully into the question, and urged very strongly that the Local Government should be permitted to establish a reformatory at Madras. Lord Napier's proposition did not go so far as the proposals made by the Bombay Government in 1862 and 1863; it did not provide for any change in the law; it merely went to the extent of requesting that the Local Government might be permitted to establish a reformatory in which practical effect should be given to the provisions of the Code of Criminal Procedure. For reasons very similar to those which had led the Government of India in their circular on the subject of providing for the separation of juvenile offenders in jails to object to any attempt at the establishment of distinct reformatories, the Government of India rejected Lord Napier's proposition.

Perhaps he might mention here one or two of the objections which were raised at that time, and, with the permission of the Council, he would read the answers on these points which were given by Lord Napier. One of the objections was that the effect of the establishment of a reformatory would be, to an undesirable extent, to remove juvenile delinquents from the influence of their parents. Another objection was that a reformatory, in the sense in which the term was used in Europe, and in the sense in which those institutions were managed and carried on in England and other civilized countries, could not be effectively managed in India in consequence of the difficulty, in fact impossibility, of imparting sound, moral and religious teaching in an institution of that description in this country. Now, on the first point, in fact on both points, the remarks made by Lord Napier in the minute submitted to the Government of India appeared to him to be deserving of every consideration. Lord Napier said, with reference to the first point—

“ I cannot help remarking respectfully that this feature in the reformatory system, which the Government of India deprecate, is exactly the feature which European philanthropists desire. It is considered in Europe that one of the greatest benefits which can be extended to the juvenile criminal in most instances is to be separated from early associations and from parents who are often his instructors in crime, and who live by the fruits of his iniquitous industry. Crime is hereditary, it goes down from generation to generation, and the reformatory is the beneficent power that breaks the chain of transmitted guilt which weighs upon a family once embarked upon this fatal course. I cannot state from personal knowledge to what extent criminality is propagated by parental teaching in this Presidency. The ancient murdering and thieving castes are

no doubt much broken; still, in the country of Thugs, Maravers, Dundassies, Pullers and Kullers, a hereditary character must be more deeply stamped on crime than in England. The opinion of Captain Drever quoted above is conclusive for Presidency towns. I cannot but think that maturer reflection, and a particular consideration of the physiognomy and history of crime in India, may induce the Government of India to modify their fourth objection to the institution of reformatories."

On the other point, the difficulty of imparting moral and religious teaching, Lord Napier wrote:—

"The absence of moral and religious teaching in a juvenile reformatory would be undoubtedly a serious want. Religious teaching in connection with the superstitions of India is, of course, out of the question; and it must be conceded that moral teaching loses much of its force when not associated with the influences of Christianity. Nevertheless, I am not prepared to admit that all direct moral teaching must be banished from an Indian reformatory. Some of the principles of morals are common to all civilized nations, and may be impressed on the mind as maxims of prudence and honour. Indian children may be convinced that it is their interest not to steal, though their Gods have not said 'thou shalt not steal'; or they may be taught to aspire to what is high and good. The Muhammadan religion comprises all the elements of morality except one. It would not be difficult to compile books of morals, acceptable to both Hindus and Mussulmans, impregnated with much of the spirit of the Gospel, without its dogmas. But, granting that I am mistaken, and that direct moral teaching is impracticable in an Indian reformatory, there still remains the invaluable force of indirect, insensible, practical discipline—perhaps more powerful than preaching and teaching on the human heart—the habits and lessons of obedience, cleanliness, punctuality, industry and economy which may all conduct the criminal child in India, as well as in England, to a better stage in life."

This representation was, however, ineffectual, and up to this period nothing had been effected in this direction at Madras. At Bombay, however, the Local Government had not relaxed in their efforts, notwithstanding the rejection of the Bills which they submitted in 1862 and 1863.

There were, in the Presidency of Bombay, two institutions which were carried out with objects analogous to those sought to be obtained by the Bill which he now moved for leave to introduce.

One was the David Sassoon Institution. From a recent report, which he had seen within the last few days, he found that during the past year that institution contained no less than 130 inmates and appeared to have been worked efficiently and well. There was also in Bombay another institution, not actually a reformatory, but a juvenile prison, under the direction of the Government, which was maintained at Poona, and which contained some 50 inmates, in which, although the designation of reformatory had not been

attached to it and although it laboured under the defect common to every institution of the kind which could be established in India under the existing law, appeared to be effecting some amount of good. He had read a report on this institution by the Inspector General of Jails in Bombay in which he drew attention to the defect to which he (SIR A. ARBUTHNOT) had alluded. The Inspector General said—

“ If possible, the sentences of juveniles should be proportioned to their age, *e.g.*, a boy of ten, if sent to the reformatory, should be sentenced to such a term as would enable him to learn his trade, and be strong and independent enough to earn his livelihood on discharge, while a boy of fifteen need only be sentenced to a year or more, as it is not advisable to keep grown-up boys almost men, in the reformatory.”

That remark had reference to the defect to which he had alluded, and which defect it was proposed to remedy in the Bill which he desired to bring before the Council.

More recently, the subject had attracted the attention of the Lieutenant-Governor of Bengal, and from the papers which had come before SIR A. ARBUTHNOT, he observed that it had also engaged for some time past the attention of His Excellency the President. Sir Richard Temple had proposed to legislate locally, but on examination of the law, it was found that the Bill which he proposed, and indeed any Bill which could effect the object that he had in view, would interfere with certain provisions of the Code of Criminal Procedure, and that was a Code which, having been passed since the enactment of the Indian Councils' Act, the local Legislatures could not alter or amend. Further, it might be said that the question was essentially an Imperial one. It was as Imperial as any other question connected with prison discipline, or indeed with any of our penal laws. Therefore it had been determined, with the consent of the Secretary of State, to resort to Imperial legislation for the purpose of removing the defect in the existing law to which he had referred. If permission to introduce the Bill were now given, it would be his duty, when introducing it, to draw attention to its leading provisions.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Sir Andrew Clarke and the Hon'ble Sir D. Forsyth be added to the Select Committee on the Bill

to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

The Motion was put and agreed to.

The Council then adjourned to Thursday, the 5th August, 1875.

WHITLEY STOKES,

*Secretary to the Government of India,
Legislative Department.*

SIMLA;

The 29th July, 1875.

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