

*Thursday,
10th July, 1890*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIX

Jan.-Dec., 1890

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1890

VOLUME XXIX



Published by Authority of the Governor General.



CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1891

*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 Vict., cap. 67.*

The Council met at Viceregal Lodge, Simla, on Thursday, the 10th July,
1890.

P R E S E N T :

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

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

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

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. J. Crosthwaite, C.S.I.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Cattle-tresspass Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Mr. Crosthwaite, the Hon'ble Bábá Khem Singh Bedi and the Mover.

The Motion was put and agreed to.

CENSUS BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to provide for certain matters in connection with the taking of the Census. He said :—

“ In the United Kingdom it has been the custom to pass a special Act in connection with each census, making it obligatory on the persons residing at the time within the kingdom to give the information required, and protecting them in turn against annoying questions not absolutely indispensable. The Act enters also into details of the agency by which the census is to be taken, and of the procedure consequent upon the enumeration.

[*Mr. Hutchins.*]

-[10TH JULY,

" In India it is thought unnecessary to enter into such minutiae, but, when the last census was about to be taken, the Government of the day considered it advisable that the hands of those charged with the operations should be strengthened, and that possible irregularities on the part of the agency employed should be restrained, by a short enactment. This became law under the title of Act XIV of 1880.

" I am glad to say that, so far as misconduct on the part of the census officers and contumacy on that of the community at large are concerned, it was not necessary to have recourse to the penal provisions of the law, save in a very few exceptional cases. Nevertheless, the fact that such occasions did arise makes it impossible to assert that without those provisions the census operations would have been conducted with equal cordiality and absence of friction.

" I therefore propose to ask the Council to re-enact the provisions of the Act of 1880 with a few modifications suggested by the experience of officers who were engaged in the superintendence of the census on the last occasion.

" The Bill, which I now lay on the table, provides first by sections 3 and 4 for the formal appointment of persons to aid in taking the census, investing them, whilst acting in that capacity, with the character of public servants within the meaning of the Penal Code.

" It next provides, by the fifth section, for the enumeration of special aggregates of people by the person in charge of or in authority over those aggregates. Thus, if so required, a military officer will enumerate his regiment; a shipmaster, his crew; a superintendent, the inmates of his asylum, jail, or hospital; and an agent or manager, the persons on the railway premises, plantation or factory of which he is in charge.

" By section 6 District Magistrates are empowered to requisition from landholders, lessees of fisheries and others such assistance as may be needed towards the enumeration of persons on their lands, fisheries, or the like.

" Sections 7, 8 and 9 of the Bill are peculiarly necessary in India, where the vast majority of the population can neither read nor write, and cannot be trusted either to get properly filled up, or even to safely keep in their possession, a document like a census schedule. To guard against the loss of the schedule,

1890.]

[*Mr. Hutchins.*]

or incorrect and incomplete returns, the documents in question will under the procedure laid down in these sections be retained in the custody of census officers, and filled in by them on behalf of the householders residing in the areas of which they are in charge. At the same time the tenth section leaves it to the discretion of the Local Government to adopt, to such extent as it thinks proper, the custom followed in the United Kingdom of throwing upon the householder in person the task of filling up the returns, and on the census officer only that of distributing and collecting the schedules, with the responsibility of seeing that the entries are in accordance with the instructions. On this point a modification has been introduced into the Bill by section 14, which allows the extension of the provisions of sections 7, 8 and 9 even to areas in which there are in force Municipal Acts or rules based exclusively on the English system of enumeration. Even our municipal towns contain a very considerable illiterate population to which, as I have shown, that system is unsuited.

" A second modification will be found in the provisions of sections 9 and 11 with regard to the numbering of houses. This process is indispensable in order that the enumerator may identify each building he has to visit, but at the last census in a few cases it was resisted. In the present Bill, therefore, such opposition has been made penal, but at the same time care has been taken to limit the duration of what some owners may consider the disfigurement of their houses. The numbers must not be removed or obliterated before 31st March.

" The Bill contains only one other new penal provision, and this has been rendered necessary by several instances which occurred at the last census, and more especially in parts of the country where it was very difficult to obtain an adequate supply of census officers. An enumerator or supervisor, after having undertaken duties in a certain area, was found at the last moment to have departed to a distant place without informing the official responsible for arranging for agency of his intended absence, and of course without providing a substitute for his work on the census night. Such neglect of duty will now be punishable unless some sufficient excuse can be established. The other penal provisions contained in section 11 are the same as in the Act of 1880.

" And the last remark applies to the rest of the Bill. Section 12 re-enacts the safeguard provided by the Act of 1880 against the reckless initiation of prosecutions in connection with the census; whilst, to guard against false entries

[*Mr. Hutchins; Sir Andrew Scoble.*]

[10TH JULY,

from interested motives, section 13 provides that no entry shall be admissible as evidence in any litigation, thus precluding the attainment of the end for which such entries would ordinarily be made, but it allows the record to remain evidence for the purposes of the administration of the census."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to amend the Indian Christian Marriage Act, 1872. He said :—

"The Indian Christian Marriage Act was passed in 1872, after very careful deliberation, and it is not without reluctance that I invite the Council to reconsider a measure which affects such important interests and is so calculated to open the floodgates of controversy. But the amendments which I have to propose are supported by such weighty authority, and tend so completely to strengthen the safeguards which the Act provides against irregular marriages, that I hope they may be accepted without giving rise to unprofitable discussion or the assertion of claims which it would be contrary to the policy of Government to recognize.

"The Bishops of the Church of England in India and Ceylon, at a Provincial Conference held in January, 1888, made two suggestions for the amendment of the Act, the first of which was designed to guard against the possibility of a marriage being solemnized by a person who, though episcopally ordained, does not hold the Bishop's license to officiate in the diocese; and the second to render persons taking a false oath before a Surrogate appointed by a Bishop to issue marriage licenses liable to punishment under the Penal Code. The first of these proposals is carried into effect in section 1 of the Bill, and is clearly desirable for the prevention of scandal. To the second proposal a wider application has been given in section 4 of the Bill, which provides that where an oath, declaration, notice or certificate is required by the Act, or by any rule or custom of either the Church of England, the Church of Scotland or the Roman Catholic Church, the

1890.]

[*Sir Andrew Scoble.*]

penalties of perjury shall attach to any person intentionally making a false oath or declaration, or signing a false notice or certificate, for the purpose of procuring a marriage or license of marriage.

"Sections 2 and 5 of the Bill are intended to remove ambiguities which have been found to exist in sections 11 and 68 of the Act.

"The object of sections 3 and 6 is to introduce greater regularity into the record of marriages of Native Christians performed under Part VI of the Act. As the law now stands, such marriages may be solemnized by persons licensed under section 9 to grant certificates of such marriages; but the person so licensed, and celebrating such a marriage, is not required to grant a certificate except upon the application of one of the parties to the marriage, and on payment of a fee, and is only bound to keep a register-book of the marriages in respect of which certificates are granted. It has thus come to pass that, in cases of bigamous or other irregular marriages, no certificate is applied for, and no record is consequently made. To check these loose practices, which are not of uncommon occurrence, section 3 of the Bill provides that registers of all marriages so solemnized by such licensed persons shall be duly kept, and section 6 enacts a penalty for failure in this or any other duty prescribed by the Act.

"The seventh section of the Bill is framed to get over a difficulty which has arisen from the wording of section 86 of the Act, in which powers are conferred on the Governors in Council of Madras and Bombay with respect to Native States situate within the local limits of those Presidencies. It is contended that States like Travancore and Cochin are outside rather than within the local limits of the Presidency of Madras, and the Bill accordingly extends jurisdiction to States bordering on as well as those situate within the limits of a Presidency."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th July, 1890.

S. HARVEY JAMES,

Secretary to the Government of India,

SIMLA;

The 11th July, 1890.

Legislative Department.