

*Friday,  
6th February, 1891*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
LAWS AND REGULATIONS

**Vol. XXX**

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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,

1891

VOLUME XXX



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1892

*Abstract of the Proceedings of the Council of the Governor General of India,  
assembled for the purpose of making Laws and Regulations under the pro-  
visions of the Act of Parliament 24 & 25 Vict., Cap. 67.*

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The Council met at Government House on Friday, the 6th February, 1891.

**PRESENT:**

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

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 P. P. Hutchins, C.S.I.

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

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble Khan Bahádur Muhammad Ali Khan.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

The Hon'ble J. L. Mackay, C.I.E.

**NEW MEMBER.**

The Hon'ble MR. MACKAY took his seat as an Additional Member of Council, *vice* Sir Alexander Wilson, resigned.

**INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.**

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Christian Marriage Act, 1872, be taken into consideration. He said:—

“ This Bill, as the Council may remember, owed its origin mainly to suggestions made by the Conference of Anglican Bishops of India and Ceylon held in January, 1888. In introducing it I took occasion to say that it was not the intention of Government to re-open the whole question of Christian marriages in India, and

I deprecated the extension of the discussion, which the Bill was sure to occasion, beyond the limits of the amendments contained in the Bill itself. The Select Committee, to which the Bill was referred, after carefully considering the opinions and proposals submitted to it, arrived at the conclusion that, as the Indian Christian Marriage Act is not at present under general revision, it was better to steer clear of subjects of controversy, and the Bill which I now submit for consideration consequently contains but little new matter.

"There is, however, one important omission. The Bill, as originally drafted, contained a clause providing that before an episcopally ordained clergyman could be permitted to solemnize a marriage within the limits of a diocese he must be acting as a minister with the previous consent in writing of the Bishop of the diocese. This alteration of the law, which was designed to prevent scandal, has been objected to on various grounds, of which I will state two—first, that it assigns to Bishops in India an entirely new legal status with regard to the non-official clergy, who might be compelled under it to obtain a license not merely to solemnize marriages but even to officiate in any other capacity in the diocese—a result which was certainly not contemplated; and, secondly, that, while it would no doubt be beneficial to prevent the evil referred to, the even innocent omission to obtain the Bishop's previous written consent would have the effect of invalidating the marriage, and possibly rendering its offspring illegitimate. The Committee, therefore, recommend that the clause be omitted, as likely to create greater difficulties than those which it was its purpose to remove.

"In a letter from the Revd. Dr. Laing, the Moderator of the Presbyterian Church in Canada, to the Secretary of State for India, it was pointed out that the Indian Christian Marriage Act makes no provision for the marriages of Christian subjects of Native Princes, and such an amendment of the law was solicited 'as will remove all disabilities and uncertainties which deprive all European and Eurasian members of the Presbyterian Church of the rites of the said Church in respect to marriage, and as will also remove the seeming slur cast on ministers labouring in Native States who are permitted to marry as registrars only.' Similar representations have been made by members of other religious bodies, who claim that their ministers should be placed on the same footing in regard to the solemnization of marriages as episcopally ordained clergymen and ministers of the established Church of Scotland. I need, perhaps, scarcely say that the Government of India desires to draw no invidious distinctions, and that the exception made in favour of the clergy of the Churches

of England, Scotland and Rome rest not upon any recognition of them as State Churches, but upon the fact that the 'rules, rites, ceremonies and customs' of those Churches in regard to marriage are laid down by authority, and their ministers are subject to established ecclesiastical discipline, which is not the case in regard to the members of voluntary religious societies, who can only be made amenable to the municipal law, which, while insisting on certain civil formalities being observed in regard to marriages, leaves the religious ceremony to the option of the parties. As regards the Christian subjects of Native States, this Council has no power to legislate; but the influence of the Government has been, and will continue to be, used to procure for them the same advantages as are enjoyed by their brethren in British India. The Select Committee has, however, given power to the Governor General in Council in section 1 of the revised Bill to grant licenses to ministers of religion in Native States to solemnize marriages between Christian subjects of Her Majesty resident in such States. In the same section we have taken the opportunity to get rid of Act XIV of 1884 by incorporating its provisions, and to remove all possible room for doubt as to the validity of existing licenses.

"The Senior Chaplain of the Church of Scotland at Bombay complains that, although he and his brethren have been placed generally on the same footing as episcopally ordained clergymen under the Act, they have not been relieved from the restrictions as to the time for solemnizing marriages, as has been done in the case of clergymen of the Church of England and Roman Catholic priests; and he asks for relief on the ground that in this respect they have the most perfect freedom under the laws of their Church and nation. There is no doubt that this is the case; and the Select Committee have accordingly given effect to the Revd. Mr. Greig's request in sections 2 and 7 of the revised Bill.

"In section 3 we have substituted the words 'where worship is generally held according to the forms of the Church of England' for the words 'belonging to the Church of England,' which is an ambiguous expression.

"In section 4 we have provided for the keeping of register-books either in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized. This is, we think, preferable to the vernacular language of the registrar, who may not be a native of the district, and, if a missionary, may possibly be a German or a Pole.

"Section 5 carries out the recommendation of the Conference of Bishops that a person intentionally taking a false oath, making a false declaration or

signing a false notice or certificate, for the purpose of procuring a marriage or license of marriage, should be rendered liable to punishment under the Indian Penal Code.

"In section 6 provision is made against the solemnization of marriages by unauthorized persons: and in section 8 a discrepancy between sections 52 and 72 of the Act has been corrected.

"By section 9 a penalty is imposed on persons licensed to grant certificates of marriages of Native Christians who without just cause refuse, or wilfully neglect or omit, to perform their duties under the Act. Section 10 is designed to remove a difficulty occasioned by the geographical position of such States as Travancore and Cochin.

"It will be seen from this enumeration that the Select Committee has felt itself at liberty only to accept such of the numerous suggestions laid before it as tend to the smoother and more efficient working of the Act as it stands. We were asked to do much more—to frame, for instance, a table of prohibited degrees of kindred and affinity for Native Christians, to extend the expression 'Native Christians' to all descendants of natives of India converted to Christianity, and to define with precision the personal law applicable to parties seeking to be married under the Act. To have entered upon the enquiries necessary for the determination of such points would have been beyond our province, and could have led to no satisfactory conclusion. Of all kinds of legislation, that in regard to marriage is probably the most difficult, and the most far-reaching in its effects. The Act of 1872 was to some extent a compromise; and little is to be gained, though much might be lost, by disturbing it. I hope the Council will be satisfied with the moderate amendments which have now been introduced, and will not re-open the flood-gates of controversy in regard to its merits or defects as a whole."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

AMENDMENT OF INDIAN EVIDENCE ACT, 1872, AND CODE  
OF CRIMINAL PROCEDURE, 1882; AMENDMENT OF CODE  
OF CRIMINAL PROCEDURE 1882; OUDH COURTS. 45

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[*Sir Andrew Scoble.*]

INDIAN EVIDENCE ACT, 1872, AND CODE OF CRIMINAL PRO-  
CEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh, and alter the Law with respect to Second Appeals and other matters in that Province. He said :—

"The judicial organization of the Province of Oudh, as established by Act XIII of 1879, constitutes the Court of the Judicial Commissioner the Chief Appellate Court, besides vesting in that officer large powers of supervision over subordinate Courts. The course of time has shown that these duties are beyond the powers of a single officer to perform; and in 1885 an Act was passed providing for the temporary appointment from time to time of an additional Judicial Commissioner to assist in disposing of the work. This expedient has been found unsatisfactory, and the object of the present Bill is to provide a Court consisting of two Judicial Commissioners which it is hoped will prove adequate to the growing necessities of the Province. It is intended that for the disposal of certain classes of cases the two Judges shall sit together, and that in case of difference of opinion reference may be made to the High Court of Judicature for the North-Western Provinces.

"Opportunity has also been taken in this Bill to bring the law in regard to second appeals into conformity with that in force in India generally. The expediency of this was strongly pressed by the Local Government in 1879, and Sir Auckland Colvin now endorses the opinion of all who have been consulted on the subject that the law should be so far altered as to admit of the right of second appeal from concurring judgments, which at present in Oudh does not

[Sir Andrew Scoble.]

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exist.' It is clearly desirable that peculiarities of local procedure, which have ceased to answer their purpose, should be got rid of, and I trust that the effect of this Bill will be to provide for Oudh a Court which will not only be able to dispose satisfactorily of the current work, but will also, in Sir Auckland Colvin's phrase, 'improve the quality of the law administered.'"

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 North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

### BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the Law of Evidence with respect to Bankers' Books. He said:—

"Under the Indian Evidence Act, it is required that, except in certain specified cases, documents must be proved by primary evidence; and, in a case tried recently in the High Court at Calcutta, the inconvenience of this rule, in regard to entries in bankers' books, was strikingly illustrated. The Chamber of Commerce has applied to the Government of India to extend to banks in India the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11), by which a relaxation of the rule has been permitted in England, and which provides that a copy of any entry in a banker's book which has been proved to have been examined with the original entry and to be correct shall in all legal proceedings be received as *prima facie* evidence of such entry and also of the matters, transactions and accounts therein recorded.

"The object of this Bill is to give effect to the recommendation of the Chamber."

The Motion was put and agreed to.

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



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[*Sir Andrew Scoble; Sir David Barbour.*]

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.

## SUNDRY BILLS.

The Hon'ble SIR ANDREW SCOBLE also moved that the Hon'ble Mr. Mackay be substituted for Sir Alexander Wilson as a Member of the Select Committees on the following Bills, namely:—

Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India;

Bill to amend the Indian Factories Act, 1881;

Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Mackay be substituted for Sir Alexander Wilson as a Member of the Select Committees on the following Bills, namely:—

Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*);

Bill to amend the Indian Merchant Shipping Act, 1880;

Bill to amend Act X of 1841 (*Registration of Ships*);

Bill to amend and supplement the Indian Ports Act, 1889.

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th February, 1891.

S. HARVEY JAMES,

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

FORT WILLIAM;  
*The 11th February, 1891.*