

*Friday,
13th February, 1891*

ABSTRACT OF THE PROCEEDINGS
OF THE
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,

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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 under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 13th 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*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

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 Khan Bahádur Muhammad Ali Khan.

The Hon'ble J. W. Quinton, C.S.I.

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.

EVIDENCE ACT, 1872, AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882, be taken into consideration. He said :—

“This Bill has met with a good deal of adverse criticism by those who say with the framers of the Act of 1872—‘We permit evidence to be given of previous conviction against a prisoner for the purpose of prejudicing him ; we do not see why he should not be prejudiced by such evidence if it is true.’

“It seems to me that those who use this argument lose sight of the fact that the object of a criminal trial, according to English law, is not to procure the conviction of the person who happens to be accused of the offence, but to obtain such an investigation of the facts relating to the commission of the offence

[*Sir Andrew Scoble; Mr. Hutchins.*] [13TH FEB., 1891.]

as shall secure the conviction of the person who is guilty of it. For this reason a man is presumed to be innocent until he is proved guilty, and defect of facts is not allowed to be supplied by presumptions, unless those presumptions are such as follow irresistibly from the facts proved. It is alleged that hereby the chances of a criminal escaping punishment are increased; but the contrary course presents greater evils—laxity of the police in tracing out crime, and a disposition on the part of juries and assessors, and even Magistrates and Judges, to jump at a conclusion unfavourable to the prisoner, because, as one of the opponents of the Bill puts it, 'the man is a blackguard, and is therefore likely to act as one.'

"That the Act in its present form is too wide appears to be very generally admitted, and it is said that in practice full effect is not given to its provisions. The Select Committee, in dealing with the Bill, has restored previous convictions to their proper position in the category of relevant facts, and allows them to be given in evidence when they are facts in issue or relevant under the ordinary provisions of the Act. For the mere purpose of prejudice they are excluded.

"The minor provisions of the Bill have occasioned no criticism, and require no further explanation."

The Hon'ble MR. HUTCHINS said:—"I entirely agree with Sir Andrew Scoble as to the general principle which he has enunciated, but there are two points upon which I wish to offer some observations, as they seem to have been lost sight of by many of the authorities who have not received this Bill with approval.

"The first is that the present law regarding the proof of previous convictions is inconsistent. One part of the law says in the most general way and without any exception that in criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant. That is the rule laid down in 1872 by section 54 of the Evidence Act. Subsequently it was found that unskilled tribunals were apt to jump at conclusions adverse to old offenders, and accordingly section 310 was introduced into the Code of Criminal Procedure. This says that in a trial by jury or with assessors, where the accused is charged with an offence committed after a previous conviction, the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted, unless and until he has been convicted of the subsequent offence. In other words, while scrupulously forbidding the jury or assessors to be made acquainted with the

51

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

[13TH FEB., 1891.] [Mr. Hutchins; Sir Andrew Scoble.]

fact that a previous conviction is *alleged*, the law nevertheless allows such conviction to be *proved*; and it makes no attempt to keep back the fact of the previous conviction except in those cases where it has to be formally charged under section 75 in view to the infliction of enhanced punishment. The Bill now on the table modifies both these provisions and will bring them into reasonable consistency.

"The other fact which the opposers of the Bill appear to me to have overlooked is that tendency on the part of jurors and assessors to convict old offenders on insufficient evidence to which I have already alluded. Speaking from many years' experience with juries, I am convinced that this tendency is one of the greatest dangers which beset the jury system in this country. The critics of the Bill say that the fact that the accused is an old offender is always brought out in the police proceedings which the Judge or Magistrate invariably peruses. What then is the use of attempting to conceal it from him? The answer to this is that the risk exists chiefly with regard to what I have ventured to call unskilled tribunals. If Judges and Magistrates alone were concerned I should not greatly object to leave the law as it stands at present; but the law of evidence must be framed on sound and uniform principles. We cannot have one set of rules for skilled officers and another for those who have not had the advantage of any sort of judicial training. Moreover, even with skilled officers it is just as well that the extent to which the former conviction is really a relevant fact, a fact to which they ought to give any weight at all, should be brought prominently before them by a correct rule showing when and for what purpose the former conviction is admissible in evidence."

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.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, be taken into consideration. He said :—

"As originally drafted, this Bill proposed, in accordance with a suggestion

[*Sir Andrew Scoble ; Mr. Hutchins.*] [13TH FEBRUARY,

made by the Judges of the High Court of Judicature for the North-Western Provinces, to authorise a Magistrate, in any case in which a person accused before him of any offence triable summarily under Chapter XXII of the Criminal Procedure Code was discharged or acquitted, to direct the payment by the accuser to the accused of compensation not exceeding fifty rupees, if the Magistrate was satisfied that the accusation was frivolous or vexatious.

"The object of the Bill has been generally approved by the authorities consulted, but it has been pointed out that it would be much more effectual to check the evil against which it is directed, if its scope were extended so as to legalize the grant of compensation by a Magistrate in every case which he is empowered to try, as distinguished from cases triable only by a Court of Session or a High Court. This suggestion has been so generally made, and is supported by such forcible reasons, that it has been adopted by the Select Committee and the Bill amended accordingly.

"Upon another point also the original draft of the Bill has been modified. In order to prevent hasty and inconsiderate awards of compensation, it was provided that a complainant or informant should be called upon to show cause why compensation should not be directed to be paid. But the objection has been raised that this provision is likely to be construed as directing a separate enquiry, involving adjournments of the case, the calling of witnesses, and consequent delay and expense, entirely out of proportion to the merits. The Select Committee considered that sufficient guarantees against any abuse of the power which the Bill is intended to confer upon Magistrates will be provided by requiring the Magistrate to record and consider any objection which the accuser may urge against compensation being awarded, and to state his reasons in writing when he considers there is sufficient ground for awarding compensation. The provisions of the Bill as to appeals remain unaltered."

The Hon'ble MR. HUTCHINS said :—"This Bill is not unlikely to have a considerable effect on the administration of justice and the statistics of crime. I wish therefore to make a few remarks in support of my hon'ble friend's motion and in further explanation of the extension of the scope of the measure which the Select Committee has recommended.

"I think there is no room for any difference of opinion regarding the main propositions on which the Bill is based. Frivolous and vexatious complaints are of daily occurrence, and have been justly described as one of the curses of the country. It is futile to expect the injured persons to undertake an elaborate

1891.]

[*Mr. Hutchins.*]

prosecution in a totally fresh proceeding: they have generally had enough of the Law Courts by the time they have secured their own acquittal: hence convictions under section 211 of the Penal Code are so rare that they have little effect in stopping false accusations. Some prompter remedy and more effectual check is urgently demanded, and the law has already indicated the direction it should take. For in what are called summons-cases it provides that, if after trial the Magistrate finds that the charge was frivolous or vexatious, he may then and there make an award of compensation. Everyone, I think, agrees as to the expediency of extending this power, and the only question is how far the extension should go. The Bill as originally drafted restricted it to cases in which the offence charged was summarily triable under section 260: as now amended it excludes only those grave offences which are triable solely by a Court of Session.

"My hon'ble and learned friend has told us that the opinions on the Bill received from the various Local Governments and Administrations exhibit a remarkable consensus that the Bill as framed did not go far enough, and after full consideration and discussion the Select Committee has come to the same conclusion. It seems to us that whenever a Magistrate has tried a case, and the result of his enquiry is to fully satisfy him that the charge was vexatiously brought, he ought to be competent to require the accuser to make some amends to the person wrongfully accused, and that nothing short of this is at all likely to prove an effectual check on the pernicious and very prevalent practice of resorting to the Criminal Courts in order to harass an adversary.

"The power is a summary one in one sense, because it is exercised then and there, and upon a person who is not formally put on his trial or sentenced; but the award is to be subject to appeal whenever there would have been an appeal if he had been tried and sentenced to pay the money as a fine. He and his witnesses will have been fully heard, and there will be nothing summary in the way the evidence is recorded, unless indeed the false complainant has himself chosen to make the trial a summary one by alleging an offence which falls under section 260. There is therefore no real reason for restricting the power to complaints of offences mentioned in section 260, and to do this would merely afford a loophole to the ingenuity of those false complainants whom we wish to check.

"My meaning will, perhaps, be made clearer if I give a practical illustration. Theft is an offence summarily triable, but robbery, which is theft coupled with violence, is not. Now, one of the commonest of all false charges is robbery.

There is perhaps an altercation and a slight scuffle, and one man rushes off to the station-house or the Magistrate, and swears that his antagonist assaulted him, knocked off his turban, which had a few annas knotted in the corner, and made off with it. Had he simply alleged a theft of the turban he might have been required to pay compensation under the Bill as originally framed, but by formulating his complaint as one of robbery he would have practically secured himself against punishment. We should not put it in the power of false complainants to evade their liability to prompt retribution by a judicious selection of a particular section of the Penal Code.

"It is true that this argument, if pressed to its full extent, would prevent the exclusion even of offences which can be tried only by a Court of Session; but there are several grounds upon which these can be distinguished. The Magistrate in these cases does not *try* the offence charged: he simply holds a preliminary enquiry which is in no way conclusive: but where the offence is triable by a Magistrate, if it comes before a first class Magistrate he will fully try it, while if it comes on for hearing before a Magistrate of a lower grade there will be an appeal against any award which he may make. Again, complaints of offences falling within the exclusive jurisdiction of a Sessions Court are comparatively rare. And yet, again, such offences are of so heinous a character that persons falsely accused of them ought perhaps to be compelled to prosecute their accusers formally: at all events we should not promote any measure which may in any way tend to prevent such accusers from being prosecuted to condign punishment.

"Before I conclude I may refer briefly to two objections which have been raised to the Bill as originally framed and which of course apply still more strongly to the extended measure. It is said, in the first place, that there is a danger that the power may be used by a careless or hasty-tempered Magistrate so as to injure innocent accusers. The same possibility exists under the Code as it stands at present, but I have not heard that any bad consequences have resulted: on the contrary, the general complaint is that the power of awarding amends is not exercised at all, not that it has been in any way abused. We have eliminated some of the existing risks by providing an appeal in the case of Magistrates not of the first class. We can, I think, trust our first class Magistrates. They well know that there is a very wide difference between refusing to act on evidence because it is not above suspicion and finding affirmatively that the charge which it supports was frivolous or vexatious. If by any chance a Magistrate should go wrong on this point the High Court can require him to submit

[13TH FEB., 1891.] [*Mr. Hutchins; Sir Andrew Scoble.*]

an affirmative finding. I may remind the Council that a power co-extensive with that now proposed to be given was vested in Presidency Magistrates by section 242 of the Presidency Magistrates Act of 1877.

"The other objection rests on the second section of the Penal Code, which says that every person shall be liable to punishment under that Code, and not otherwise, for every act contrary to the provisions thereof. As to this it is only necessary to say that an award of amends is not the same thing as punishment, and does not in any way prevent the person who has paid the compensation being brought to justice under the Penal Code. If the argument were a sound one the existing provision in the Procedure Code which this Bill is to supersede would itself be inconsistent with the Penal Code, and the section in the Presidency Magistrates' Act to which I have just alluded would have been equally inconsistent."

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.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh, and to alter the Law with respect to Second Appeals and other matters in that Province, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Law of Evidence with respect to Bankers' Books be referred to a Select Committee consisting of the Hon'ble Messrs. Bliss, Nugent and Mackay and the Mover.

The Motion was put and agreed to.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Mackay be added to the Select Committee on the Bill to amend the Inland Steam-vessels Act, 1884.

The Motion was put and agreed to.

The Council adjourned to Friday, the 20th February, 1891.

S. HARVEY JAMES,

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

FORT WILLIAM;
The 18th February, 1891. }