

*Thursday,
22nd February, 1894*

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

LAWS AND REGULATIONS

Vol. XXXIII

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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 22nd February, 1894.

PRESENT :

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

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

His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Westland, C.S.I.

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

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble C. C. Stevens.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Mahārājā Partab Narayan Singh of Ajudhiā.

QUESTION AND ANSWER.

The Hon'ble MAHARAJA PARTAB NARAYAN SINGH OF AJUDHIA
asked :—

Whether the Government will allow grade promotions in the subordinate judicial and executive branches of the Provincial Service in the event of temporary vacancies, as is done in the case of certain services enumerated in Part II, Chapter VI, section 1, of the Civil Service Regulations.

The Hon'ble SIR ANTONY MACDONNELL replied :—

“ The various services under the Government have different rates of pay and different rules as to grade promotions. The rates of pay in the services to which the Hon'ble Member refers are affected by limitations as to grade

80 *QUESTION AND ANSWER; AMENDMENT OF CODE OF
CIVIL PROCEDURE AND INDIAN LIMITATION ACT, 1877.*

[*Sir Antony MacDonnell; Dr. Rashbehary Ghose; [22ND FEBRUARY, 1894.
Mr. Lee-Warner.]*

promotions; and the Government of India cannot consider the question of removing the limitations without reopening the whole question of rates of pay. This the Government, as at present advised, see no reason to do.

"I may mention, with reference to the Provincial Executive Service of the Province from which the Hon'ble Member comes, that there has been within the last few months a revision of grading to the advantage of the members of that service."

CODE OF CIVIL PROCEDURE AND INDIAN LIMITATION ACT,
1877, AMENDMENT BILL.

The Hon'ble DR. RASHBEHARY GHOSE presented the Report of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877. He said :—"No substantial alterations have been made by the members of the Select Committee in the Bill as it was originally introduced. The nature of the comparatively slight amendments which have been made is explained in the Report of the Committee, and I have nothing to add to it. I will only mention that the Hon'ble Mr. Lee-Warner, one of the members of the Select Committee, has appended to the Report a note, which I may venture to call a note of discord, but happily not of a very harsh or dissonant nature. It would be premature to discuss that note at the present stage. Any recommendations which the Hon'ble Member may think it proper to make will doubtless be discussed in due course when he brings them forward in Council."

The Hon'ble MR. LEE-WARNER said :—"With reference to the remark made by the Hon'ble Dr. Rashbehary Ghose as to the 'note of discord' which I have felt it my duty to strike in connexion with this Bill, I would ask permission to offer a few observations, and to put a question to the Hon'ble Mover before he proceeds to ask this Council to consider this Bill. That question is, whether it is not wiser to consult the Local Governments on the question whether this Bill will best meet the great evil which it is intended to cure. On the 8th of March last the Hon'ble Member with his usual fairness and fullness described the position thus: 'It is a well-known fact that immoveable property put up for sale in execution of a decree seldom fetches an adequate price.' To cure that great evil we have this Bill, and the Select Committee refer to the opinions of the Local Governments upon it in these terms."

*AMENDMENT OF CODE OF CIVIL PROCEDURE AND INDIAN
LIMITATION ACT, 1877; AMENDMENT OF CODE OF CRI-
MINAL PROCEDURE, 1882, AND INDIAN PENAL CODE.*

22ND FEBRUARY, 1894.] [*The President; Mr. Lee-Warner; Sir Alex-
ander Miller; Dr. Lethbridge.*]

His Excellency THE PRESIDENT said :—" I beg to call the Hon'ble Mem-
ber's attention to the fact that the Rules for the Conduct of Business lay down
that the consideration of the Report of the Bill should be taken after it is in the
hands of the Council."

The Hon'ble MR. LEE-WARNER said :—" I would ask then, my Lord,
whether I may put the question under Chapter II, rule 10, of the Council
Rules."

His Excellency THE PRESIDENT said :—" I do not think that it would be
in order to discuss that question at the present stage. If necessary, it could be
put forward as an amendment and discussed when the Report is taken into
consideration by the Council."

The Hon'ble SIR ALEXANDER MILLER said :—" The most convenient way,
as His Excellency suggests, would probably be that when the Hon'ble Dr. Rash-
behary Ghose proposes to take the Bill into consideration the Hon'ble Mr. Lee-
Warner should move, by way of amendment to that motion, that the Bill should
be referred back to Local Governments."

The Hon'ble MR. LEE-WARNER said :—" I shall readily adopt the course
indicated by Your Lordship. My only fear was that I might at that stage be
obliged, as the Hon'ble Dr. Rashbehary Ghose hinted, to move a specific
amendment to the Bill itself, which without the opinions of the several Local
Governments I am unable to do."

**CODE OF CRIMINAL PROCEDURE, 1882, AND INDIAN PENAL
CODE AMENDMENT BILL.**

The Hon'ble DR. LETHBRIDGE moved that the Bill to amend the Code
of Criminal Procedure, 1882, and the Indian Penal Code be taken into con-
sideration. He said :—

" My hon'ble friend Sir Philip Hutchins, in asking for leave to introduce this
Bill, pointed out that it was necessary to strengthen the hands of the British
authorities in dealing with dacoits who, having committed dacoity in Native
States, were sheltered in British territory with the connivance of British subjects.

" It was proposed to effect this object by extending the meaning of the
word 'offence' in certain sections of the Penal and Procedure Codes, so as to

[*Dr. Lethbridge.*]

[22ND FEBRUARY,

include certain acts committed outside British India, and to declare that they shall be deemed to be offences equally with similar acts committed in British India for the purpose of bringing to justice persons who are guilty of criminal acts or omissions in relation to them. It was further proposed to explain more exactly what is meant by the term 'harbouring,' and to provide, by the addition of a new section to the Indian Penal Code, for the punishment of any British subject who, knowing or having reason to believe that certain persons are about to commit dacoity or have recently committed dacoity, harbours them. The new section further provides that it is immaterial whether the dacoity is intended to be committed or has been committed within or without British India.

"The Bill prepared on these lines and introduced in August last has been carefully examined by Local Governments and by a large number of selected officers to whom it has been referred for opinion. Ample time has also been given for its full consideration by the public. I am glad to find from the replies and opinions which have been received that it has met with a favourable reception, and that the Select Committee has had placed before it many important and valuable suggestions for improving the drafting of the Bill and increasing its usefulness.

"At the last meeting of this Council I had the honour to present the Report of the Select Committee on the Bill and to lay on the table the draft Bill which the Committee now submits for the acceptance of Your Lordship's Council. It only remains for me to explain as briefly as I can the leading features of the measure as amended in Select Committee. The Bill, as it was originally drafted, was framed so as to deal only with the offences of murder and dacoity, the latter including such acts as making preparation for or attempting to commit dacoity. But the Hon'ble Member who introduced it explained that, if after consideration it was decided to retain the clause added in 1886 to section 216, it would be necessary to extend the meaning of the term 'offence' in the other sections so as to make it cover some of the more heinous offences. When the opinions of the Local Governments were received, it was found that many of the officers consulted were in favour of extending the provisions of the Bill to a larger number of the more serious offences, including such crimes as poisoning for the sake of gain, kidnapping, cattle-lifting and counterfeiting coin, etc. The Select Committee, after considering these opinions, accepted the suggestion that the provisions of the Bill should be enlarged, but, on examin-

AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882, 83
AND INDIAN PENAL CODE.

1894.]

[*Dr. Lethbridge.*]

ing the enlarged list of crimes that it was proposed to include in the Bill, it was found impossible to add to the existing list of offences already enumerated in section 44 of the Code of Criminal Procedure without amending the substantive section itself; and this the Committee considered was outside the scope of the present measure. Let me explain this point more clearly: under section 44 of the Code of Criminal Procedure as it stands at present, every person in British India is bound to give information of the commission of, or of the intention to commit, by other persons in British India certain offences which are specified in that section. If we extend this obligation to offences committed or about to be committed out of British India, it is hardly reasonable to require that British subjects shall give information in regard to a number of offences in Native States which, if they had been committed in British India, they would not be bound to report. Although, therefore, there are many serious offences which we should have liked to have included in this measure, our power to extend the provisions of the Bill is limited to the crimes already specified in section 44 of the Procedure Code. In making our selection from the offences there enumerated, we have for obvious reasons omitted to include all the offences against the State provided for in sections 121 to 130, Indian Penal Code, and section 303, which relates to murder committed by a life-convict, and section 456, Indian Penal Code, which refers to the simplest form of lurking house-trespass and house-breaking by night committed by the ordinary thief. With these exceptions, we have incorporated in sections 1 and 2 of the present Bill, which are intended to amend sections 44 and 45 of the Code of Criminal Procedure, all the offences already enumerated in the former section. Correlative to these sections of the Procedure Code, which it is intended to amend, are sections 176, 177, 201, 202 and 203 of the Penal Code, which provide for the punishment of persons who in breach of this obligation to report either omit to give information or substitute false or misleading information, or cause evidence to disappear in order to screen the offender. In amending these sections by sections 5 and 6 of this Bill, the offences enumerated in sections 1 and 2 are, as a matter of course, repeated.

“ There are two sections, 212 and 216, of the Indian Penal Code which are aimed at harbourers. In regard to section 216, which relates to the harbouring of escaped prisoners and offenders ordered to be arrested, it was found necessary in 1886 to make it penal to harbour persons who had been convicted of, or ordered to be arrested for, offences in Foreign States. Act X of 1886, by which this, important clause was added to section 216, gave the word ‘ offence ’ a very

84. *AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882,
AND INDIAN PENAL CODE.*

[*Dr. Lethbridge.*]

[22ND FEBRUARY,

wide signification, and provided for the punishment of persons who harboured those convicted of or charged with crimes which were covered by the list of offences mentioned in the law relating to extradition and the Fugitive Offenders Act. When this amendment to section 216 was made it would appear to have been overlooked that some amendment to section 212 was also necessary. In this present Bill, as originally drafted, it was proposed to cut down the clause framed in 1886 so as to include only murder and dacoities, and to have an amendment making this restricted application of the term 'offence' applicable also to section 212. This proposal has not been generally accepted, and it has been pointed out by Sir Dennis Fitzpatrick and others that there was no object to be gained by the restriction proposed in section 5 of the original Bill, nor was it necessary to make the term 'offence' here used correspond with its meaning as used in the other sections of the Bill. It has been represented that the list of crimes in respect of which it is made a penal offence to harbour a person who is known to be an offender who has escaped from custody either before or after conviction may well be a longer list than that of crimes which all classes of the community are bound under the law to report. The Select Committee accepted this view of the subject and decided to omit all reference to section 216 of the Code of Criminal Procedure in the Bill now before the Council. In respect to the further suggestion made by many of the officers consulted, that a clause similar to that passed in Act X of 1886 amending section 216 should be added to section 212, the Select Committee was asked to consider whether there was not a substantial difference between section 212, which refers to harbourers of offenders not yet arrested or ordered to be arrested, and section 216, which refers to harbourers of escaped prisoners or offenders specifically ordered to be arrested, and, if there was a substantial difference, whether it would not be well to limit the term 'offence' in the amending clause of section 212 to the more heinous offences. The Committee considered that there was a difference, and we have endeavoured to give effect to this suggestion and to the desire for uniformity by enumerating in the amending section 7 of this Bill which is to be added to section 212 only those offences which have been entered in all the other sections. In my opinion all the power that it was necessary for us to obtain to provide for the peace and welfare of the Native States on the borders of British districts has been obtained by this amendment, and we have avoided the danger of including a long list of offences which, to say the least of it, might have given rise to differences of opinion between the officers of British districts and the Durbars of Native States.

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*AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882, AND 85
INDIAN PENAL CODE; OBSOLETE ENACTMENTS (BOMBAY).*

1894.] [Dr. Lethbridge; Sir Alexander Miller.]

"It has been pointed out by the Punjab Government, and some of the officers consulted by it, that if it is intended to make prosecutions for harbouring more effective and to bring home the offence to the person charged with harbouring, the power now possessed by the British police under section 54 of the Code of Criminal Procedure of arresting a criminal without a warrant in certain cases should be extended to persons who are charged with the commission in Native States of cognizable and extraditable offences. This suggestion has been adopted and embodied in section 3 of the present Bill.

"In section 8 will be found redrafted the section (216A) which it is proposed to add to the Indian Penal Code for the punishment of persons harbouring dacoits and robbers who have assembled together to commit dacoity or robbery but have not yet carried out their purpose. It has been found necessary to add the crime of robbery to this section to bring it more into accordance with the rest of the provisions of this Bill.

"To make this new section correspond with existing sections 212 and 216 and to comply with what is a fixed principle of English law that the wife who harbours her husband is not in these cases a free agent, exceptions have been made in favour of the husband or wife of the offender.

"Since section 216A is a new section of the Indian Penal Code, the law requires that it shall be inserted in Schedule II of the Code of Criminal Procedure. This has been provided for in section 4 of the Bill.

"It has frequently been represented by officers who have had to administer the law that the word 'harbouring' should be more clearly defined. This the Select Committee has endeavoured to do in the proposed clause 216B."

The Motion was put and agreed to.

The Hon'ble DR. LETHBRIDGE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to repeal certain obsolete enactments and to amend certain other enactments be taken into consideration. He said:—"This is, practically, a purely formal Bill, and it has not therefore been thought necessary to send it to a Select Committee.

86 *OBSOLETE ENACTMENTS (BOMBAY); AMENDMENT OF
CODE OF CRIMINAL PROCEDURE, 1882.*

[*Sir Alexander Miller ; Sir Antony MacDonnell.*] [22ND FEB., 1894.]

"The Bill has been settled with the consent of the Bombay Government, and its only object is to clear the way for publishing a new edition of the Bombay Code, in order that these enactments may not have to be reproduced in that Code and re-published."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that in Part I of the first schedule annexed to the Bill the entry relating to Bombay Regulation II of 1827 be omitted. He said :—"Practically the Regulation is obsolete, but it has been pointed out by the Bombay Government that it has been incorporated in the clause—section 56—of a later Regulation, and that therefore it would be inconvenient that it should be repealed—because it would be necessary by other legislation to provide for the matters for which section 56 now provides. For this reason I now ask, at the request of the Bombay Government, that the entry in question should be omitted."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed. He said :—"I may call the attention of Hon'ble Members to the fact that in the schedule of the Bill there is a column—No. 5—explaining the various proposals and the reasons why certain provisions are included in the Bill ; but that is no part of the Bill itself, and therefore in passing the Bill all these remarks will disappear."

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Bill to amend the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Dr. Rashbehary Ghose, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Stevens and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 1st March, 1894.

S. HARVEY JAMES,

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

CALCUTTA ;
The 28th February, 1894. }