Friday,
16th February, 1900

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIX

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OF

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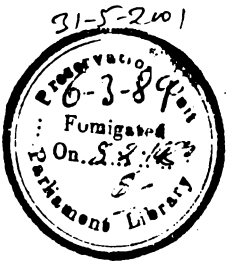

CALCUTTA
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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 & 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 16th February, 1900.

PRESENT:

His Excellency Baron Curzon of Kedleston, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.
His Honour Sir John Woodburn, K.C.S.I., Lieutenant-Governor of Bengal.
The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.
The Hon'ble Sir A. C. Trevor, K.C.S.I.
The Hon'ble Mr. C. E. Dawkins.
The Hon'ble Mr. T. Raleigh.
The Hon'ble Mr. Denzil Ibbetson, C.S.I.
The Hon'ble Mr. P. M. Mehta, C.I.E.
The Hon'ble Nawab Mumtaz-ud-daula Muhammad Faiyaz Ali Khan.
The Hon'ble Mr. J. K. Spence, C.S.I.
The Hon'ble Mr. G. Toynbee.
The Hon'ble Mr. D. M. Smeaton, C.S.I.
The Hon'ble Mr. J. D. Rees, C.I.E.
The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.
The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.
The Hon'ble Kunwar Sir Harnam Singh Ahluwalia, K.C.I.E., of Kapurthala.
The Hon'ble Mr. J. T. Woodroffe.
The Hon'ble Mr. J. Buckingham, C.I.E.
The Hon'ble Mr. H. F. Evans, C.S.I.
The Hon'ble Rai Bahadur B. K. Bose, C.I.E.
The Hon'ble Mr. Allan Arthur.

QUESTIONS AND ANSWERS.

The Hon'ble RAI BAHADUR B. K. BOSE asked :—

"Will the Government be pleased to lay on the table a return giving such information as the Director of Land Records and Agriculture, Central Provinces, may be able to give, without any reference to the district officers, on the points

noted below, regarding districts where the assessment of land-revenue as made under the new settlement is already in force, or has been announced to come into force from the next agricultural year :—

I.—Under the old settlement known as the proprietary settlement—

(*a*) Village assets as per settlement records.
(*b*) Land-revenue assessment.
(*c*) Amount of cesses including the Patwari cess, if any, payable under the terms of the Settlement Engagement.

II.—Village assets as realizable by the malguzars in or about the agricultural year preceding the fixation of rents and other village profits by the Settlement Officer for the purposes of assessment under the new settlement.

III.—Under the new settlement—

(*a*) Village assets as fixed by the Settlement Officer.
(*b*) Land-revenue assessment.
(*c*) Amount of cesses including the Patwari cess."

The Hon'ble MR. DENZIL IBBETSON replied:—"The Chief Commissioner has been requested to supply the information asked for, and it will be laid on the table as soon as received. I wish cordially to acknowledge the consideration which my hon'ble friend Mr. Bose has shown in abstaining from making any demand upon district officers in the Central Provinces at the present juncture."

The Hon'ble RAI BAHADUR ANANDA CHARLU asked:—

"1. Will the Government be pleased to state whether the Reuter's Agency supplies the Government of India and the several Local Governments with copies of the telegrams it supplies to the newspapers in India?

"2. Will the Government be pleased to state whether the said Agency supplies such copies (in case they are so supplied) free of charge or on payment for the same? If the latter is the case, will the Government be pleased to state what is the rate or amount of such payment?

"3. Will the Government be pleased to state whether the said Agency is given, by reason of such messages being supplied, any further concession than is accorded to Press messages generally? If so, will the Government be pleased to state what such further concession is, if any?

"4. Will the Government be pleased to state whether any, and, if so, what, insuperable difficulty exists to preclude the Government from placing before the public, as official communiqués, the telegraphic messages supplied by the said Agency or the substance thereof?

"5. Will the Government be pleased to state whether, apart from, and prior to the dates of, the papers furnished to the members of the Legislative Council, there was any, and, if so, what, correspondence suggestive of, and leading to, the introduction of the Telegraphic Press Messages Bill, now pending before the Council?

"6. Will the Government be pleased to place the said correspondence, if any, on the table, or state what objection, if any, exists to preclude their doing so?"

The Hon'ble MR. DENZIL IBBETSON replied:—

"1. The answer to the first question is in the affirmative.

"2. A payment of Rs. 1,200 per mensem is made by Government to the Agency on account of the messages supplied to the Government of India and the several Local Governments.

"3. The Agency's messages to Press subscribers are transmitted inland at deferred press rates, although treated as urgent. This concession was made in 1895 on the general grounds of the great importance of foreign telegraphic news, both to Government and to the public, and in return for an engagement on the part of Reuter that the amount of news provided should not fall below 57,600 words in the year, as compared with the number of 28,800 which had been stipulated in the previous contract. This arrangement has no direct connection with the system under which the Agency supplies messages to the Government of India and Local Governments.

"4. The telegraphic messages supplied by Reuter's Agency to Government are supplied on the condition that the officers receiving them shall not publish them, either by circulating them or posting them up in any place of public resort or in any other way, and the Government of India are therefore precluded from placing them, as official communiqués, before the public. The messages are not, in fact, the property of Government, as the question seems to infer. The Government merely pays a certain annual sum for the early receipt of the messages under specified conditions.

"5 and 6. The introduction of every Bill must necessarily be preceded by correspondence, since, except under very special circumstances, the previous sanction of the Secretary of State is obtained to its introduction. But it is the established practice of the Government of India to treat all correspondence prior to the introduction of a Bill as confidential, and to depart from this rule, in the present instance, would create a precedent for which there does not, in the circumstances of the case, appear to be any sufficient justification. All the correspondence that has taken place since the Bill was introduced has already been communicated to the Council."

WHIPPING BILL.

The Hon'ble MR. IBBETSON moved that the Report of the Select Committee on the Bill further to amend the Whipping Act, 1864, be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. WOODROFFE said:—"Before moving the amendment which stands in my name, I ask permission to omit from that amendment the words 'or attempt to commit' in the fifth line."

His Excellency THE PRESIDENT said:—"The Hon'ble Mr. Woodroffe asks for permission to omit certain words from the amendment which he proposes to move. If Hon'ble Members have no objection to make, I have none to make myself."

The Hon'ble MR. WOODROFFE then moved that after clause 1 of the Bill, as amended by the Select Committee, the following clause be inserted and the subsequent clauses be renumbered:—

VI of 1864. III of 1895. "2. After section 4 of the Whipping Act, 1864, as amended by the Indian Criminal Law Amendment Act, 1895, the following shall be added, namely:—

'4A. Whenever any Local Government has, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declared the provisions of this section to be in force in any local area within its province, any person in that local area, who, being a member of an assembly of two or more persons, the common object of which assembly is to commit rape as defined in section 375 of the Indian Penal Code, abets, commits or attempts to commit such offence, may be punished with whipping in addition to any other punishment to which, for such abetment, offence or attempt, he may be liable under the said Code.'"

XLV of 1860.

He said:—"The punishment of whipping—I do not speak of correction with a birch rod or cane properly administered to youthful delinquents—the most ignomi-

nious perhaps now in existence in any civilized state, should, I venture to think, be inflicted only upon offenders, upon whom whipping while acting as a deterrent, one of the objects of punishment, should not subject them to such an amount of degradation as would destroy every chance of reformation, another and more important object of punishment. To satisfy this condition the offender who can with propriety be whipped must have committed offences of great moral turpitude, offences which by their very nature mark out the offence as one devoid of all the nobler qualities of manhood, one whom whipping cannot degrade.

"Of such a character is the offence proposed to be dealt with in the proposed new section when committed under the circumstances therein described. So committed the offence is of a peculiarly brutal and inhuman character, wanting, in many instances, even the poor palliation of overmastering desire, and presenting, in its most loathsome, its most despicable aspect, the tyranny of numbers over a weak and defenceless woman to her utter and irreparable injury. Entertaining these opinions I need hardly say how completely I agreed with the recommendations of the Hon'ble the Chief Justice of Bengal and such of the Hon'ble Judges, his colleagues, as with him concurred in the minute of Mr. Justice Wilkins upon the advisability of extending the provision of this Act to what is known as gang-rape. Among the learned Judges who concurred in his recommendation I note especially Justices Ghose and Banerji, Judges of wide experience and, from their knowledge of the people of this country, competent to assist the Legislature in providing a remedy for this growing and most grievous offence.

"From Mr. Justice Wilkins' minute I read the following extract:—

'There is one offence which I think certainly calls for an extension of the provisions of section 2 of the Act (VI of 1864); I refer to what may be called 'gang-rape,' when a number of men join together to violate a woman. The offence is prevalent only in certain districts of Eastern Bengal—notably in Mymensing, and I think that any of the Judges of this Court who has sat on the Criminal Bench during the last three years, will support me in my assertion that it is an offence committed in a peculiarly brutal and inhuman manner. The perpetrators, in the cases which have come before me, have always been Mahomedans of the lower classes; their victim is generally a young married girl; they wait till she is left unprotected by the absence of her husband or her parents; and they then attack her and forcibly carry her off. The motive is not always the same; at times, it is revenge; at times merely the gratification of their own passions. But the consequences to their victim are, of course, terrible and irreparable. The crime is, apparently, not on the decrease, and seems to have sprung into existence of late years. It would very probably be at once suppressed, as 'garrotting' was in England, if one or more of the guilty parties were to be subjected to a well-deserved, if severe, flogging.'

"The minutes of the Hon'ble Judges to which I have referred are not unnaturally confined to the commission of the offence in Bengal where, I am relieved to find it stated, it is more or less restricted to the Eastern districts of that province. A recent trial in Burma has, however, disclosed the fact that this offence is not unknown in other parts of this Empire, and that, with shame be it confessed, offenders of the inhuman and brutal type proposed to be dealt with, may perhaps be found even in the ranks of the British Army.

"The proposed section leaves it open to the Local Governments to extend its provisions, with the previous sanction of the Governor General in Council, to any local area within these provinces. In view of the deliberate opinion of so many of the Judges of the High Court at Calcutta, I venture to express the hope that His Honour the Lieutenant-Governor of Bengal will be among the first to use the powers, which, if the proposed new section is approved of by this Council, will be placed in his hands."

The Hon'ble MR. IBBETSON said:—"My Lord, I support this amendment. The general suggestion, backed by the weighty authority of several Judges of the Calcutta High Court, was one of those which were considered by the Select Committee, and are referred to in paragraph 5 of their report. They did not feel themselves able to act upon it, partly because they regarded it as not falling within the scope of the Bill as referred to them, and, partly because they were of opinion that it was unsafe to accept the suggestion without consulting the Local Governments. Our experience in the matter of the 'rioting' section which has now been expunged from the present Bill, shows how exceedingly necessary such consultation is, even in so apparently small a matter as that before us; and I should have been unable to accept any proposal to add the offence which is defined in the amendment to the list of offences punishable with whipping throughout India, without allowing to Local Governments the opportunity of expressing an opinion upon it. But the addition of the first three lines of the amendment, which the honourable and learned Mover has accepted, entirely meets this objection. I agree that no more brutal or inhuman crime than that described by the Hon'ble Mr. Woodroffe can well be imagined, and I heartily support the motion."

The Hon'ble RAI BAHADUR ANANDA CHARLU said:—"I am no believer in the rod as an instrument of good. Its use is degrading and humiliating, and it destroys all sensitiveness to shame and all sense of self-respect, no less in the juvenile than in the adult. But the classes to whom the amendment relates are beasts in human shape. To them my remarks do not apply. As to them,

therefore, I cordially support the Hon'ble Advocate General's amendment as to what I may call gang-rape."

The Hon'ble MR. REES asked :—"Do we speak to the amendment now and to the principle of the Bill afterwards?"

His Excellency THE PRESIDENT replied :—"Yes, speeches can be directed only to this amendment now, and speeches on the principle of the Bill can be made on the motion that the Bill be passed."

The Hon'ble MR. REES said :—"My Lord, the section proposed by my hon'ble friend Mr. Woodroffe is permissive, and can thus be applied by any Local Government, with the previous sanction of your Excellency in Council, to the locality in which this crime is prevalent. For I hope and believe for the credit of India that it is peculiar to Mymensing. Since the amendment is moved, no one is likely to vote against its adoption. Certainly, I would not. But there are others of equal importance. The Select Committee advisedly limited the present Bill to the matters with which it deals, though it obviously recognized the necessity for other amendments. When Mr. Justice Prinsep was a member of this Council, he used to urge the inconvenience of these piecemeal legislative patches, and once he drew up a list of enactments, showing what a very large proportion were mere amendments. I do not know that periodical amendment is less admirable in a Legislature than in an individual, but Sir Henry Prinsep preferred to find a place for a more comprehensive, and, therefore, a more glorious, repentance, in a revising and consolidating statute. I hope such revision and consolidation of the Whipping Act will not be long deferred, and meanwhile vote for this amendment, as it deals with one matter, but not, I think, with one of the most pressing matters, which call for action. I understood the hon'ble and learned Advocate General to express the same opinion I now express in his speech, when we last met, upon the Transfer of Property Act, and I believe he has only departed from the sound position he then took up, owing to his indignation at the horrible character of the crime of gang-rape."

His Honour THE LIEUTENANT-GOVERNOR said :—"My Lord, I had not had the advantage of seeing the opinion of the High Court, when I was called upon to submit my own opinions on this Bill to the Government of India. But the suggestion to which effect is given in this amendment had been presented to me, and I refrained from proposing this addition to the penalty that is prescribed for rape. The penalty which is prescribed by the Penal Code

for rape is the heaviest penalty that is imposed on any offence that is short of actual murder. The penalty for rape is transportation for life. I had no doubt, and I have no doubt, that the Hon'ble High Court and the Sessions Judges who are subordinate to it, will avail themselves of all the discretion that is given them by the law in inflicting exemplary punishments, whenever and wherever the state of crime calls for it. Our difficulty in dealing with this particular class of crime, in Bengal at least, lies not in the inadequacy of the punishment but in the inadequacy of the evidence that is brought to prove the alleged crime. The cases, I am informed, are unfortunately extremely frequent in which the charge of rape is brought simply to cover and conceal detected adultery, and the cases are often of great difficulty and doubt. These were the reasons which led me to hesitate as to whether the addition to the already heavy punishment prescribed for rape was necessary or expedient, but I admit that the Hon'ble Judges of the High Court have had far longer and more minute opportunities of judging of these cases than I have, and in deference to their authority, which no one will admit more readily than I to be of the highest, I offer no objection to the amendment."

The Hon'ble MR. WOODROFFE said:—"Though I confined my observations to this particular amendment, it is not to be understood that I am not largely in accord with the opinions expressed by the Hon'ble Mr. Rees. It does seem to me that there exists a necessity to consolidate and amend the whole law of whipping. The original Act has almost disappeared from the Statute Book. Even the preamble has been altered and sections have, from time to time, been changed till it is more difficult to find out what the law is than to administer it when found out. In strictness the Whipping Act of 1864 as amended from time to time forms part of the Penal Code, and my hope is that, this amendment, which I have proposed, may hereafter find its proper place, in some amending and consolidating Act, if not in an amendment or consolidation of the Penal Code which, I understand, is before the Council."

His Excellency THE PRESIDENT said:—"In putting the new clause I would remind Hon'ble Members that the words 'or attempt to commit' in the 5th line have already, on the motion of the Hon'ble Mr. Woodroffe, which has been accepted by this Council, been expunged."

The motion was put and agreed to.

The Hon'ble MR. MEHTA moved that for clause (*b*) of section 5 of the Whipping Act, 1864, as proposed to be substituted by clause 2 of the Bill, as amended by the Select Committee, the following be substituted, namely :—

"Any offence punishable under any other law with imprisonment, which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf;"

and that the proviso to the said section be omitted. He said :—"The amendment which I propose is calculated to achieve the very same object as the section now stands. The only difference will be that that object will be attained not in a wholesale and indiscriminate fashion but with care and deliberation. It has been pointed out by the experienced Indian Judges of the High Court of Calcutta that, according to native sentiment, whipping is a far more degrading and hardening punishment than that of imprisonment. I think they have described the native sentiment in this respect correctly. At the same time, I am bound to confess that there is a great deal of force in the argument that it was much better not to subject juvenile offenders to the demoralising influences of a jail life. It is therefore most important, taking both these arguments into consideration, that the way in which we proceed in this matter should be as deliberate as possible. The section as it now stands is capable of doing one thing more than is generally supposed. It is said that no Magistrate would inflict whipping unless he was prepared to inflict imprisonment in its stead. But, my Lord, it seems possible that Magistrates will sometimes go beyond that; where they could possibly have inflicted a fine, they might in its place inflict whipping. I would put a concrete instance, suggested by the papers submitted to the Select Committee, as illustrating what I say. There is a very common offence known in this country as commission of nuisances. It is possible no Magistrate would inflict imprisonment if the juvenile offender is convicted on that section, but it is very possible that he would inflict whipping in lieu of fine, under the belief that, so far as the juvenile offender himself is concerned, he would not be punished by a fine which his friends would pay. If we remember the state of native society, and the common practice of parents to send children on to the street, the result would be that, not only will the children be punished for the sins of their parents, but the parents themselves would escape scot-free, because they have escaped the fine which they would otherwise have paid. It is not at all improbable that cases of whipping of that character will occur, and it therefore seems to me that we should proceed with care and deliberation in saying what offences only should be brought under clause (*b*). That there are cases which ought to be excluded from the purview of clause (*b*) is apparent from the

admission involved in the proviso which has been appended to that clause, which gives power to the Governor General in Council to exclude such offences as he may think not fit to be included in the operation of that clause. It seems to me the safer course will therefore be to ask the Governor General to go carefully through the infinite variety of local and special laws, which, so far as moral turpitude is concerned, many of them are only conventional offences, than that the door should be shut after the mischief is done. As the clause now stands in the amended Bill, it is only after the mischief is done that the local or special law may be excluded."

The Hon'ble MR. IBBETSON said:—"My Lord, I feel bound to oppose this amendment, because it seems to me to conflict with the general principle upon which the law regarding the whipping of juveniles is based. I think that the Hon'ble Mover has failed to distinguish between the principle upon which we whip an adult and the principle upon which we whip a juvenile. In the case of the adult our object is to inflict upon a hardened or degraded criminal what is probably the only punishment which he really dreads—to impose upon him a penalty more severe than that of imprisonment. We regard the offence committed as an index to the character of the offender, and select certain offences as proper to be punished by whipping. The case of the juvenile is widely different. Here our object is to save him from the contamination of prison life—to impose a penalty which is less severe and less injurious to him than that of imprisonment. We are concerned with the age rather than with the character of the offender, and we regard, not the offence which he has committed, but the punishment which is to be inflicted upon him. To attain our object, therefore, it is necessary to legalise whipping as a possible alternative to imprisonment in the case of all offences for which imprisonment may be inflicted. The Bill, indeed, in the proviso to the amended section 5, empowers the Governor General in Council to exclude any offences which he may think fit from the operation of the section. But the rule, to which exceptions are thus allowed, is to be that if an offence is properly punishable with imprisonment, it is, in the case of a juvenile, still more properly punishable with whipping. The motion before us would reverse this order, and make what is now the rule, the exception.

"It is not proposed to make whipping compulsory for any offence. The words of the Bill are "may be punished," not "shall be punished." There are, no doubt, numerous individual cases in which a juvenile offender becomes liable to imprisonment under the Criminal law, but in which it would obviously be improper to whip him. But in such cases it would generally be still more improper to imprison him. We already trust to the discretion of our Magis-

trates in the matter of imprisonment, and I think we may safely do so in the matter of whipping also. As a fact, the general experience is that they are not too ready, but too unwilling to inflict corporal punishment."

The Hon'ble MR. WOODROFFE said:—"I support the amendment of the Hon'ble Mr. Mehta. I do not think the Hon'ble Mr. Ibbetson's reasons for opposing this amendment touch the matter of the Mover's speech at all. It is distinctly admitted that the whipping which is administered to juvenile offenders is punishment not correction, punishment of a penal character inflicted, no doubt, with less severity upon them than upon adults. My Lord, clause 2 of the Bill as amended leads us into a wilderness of law, where it is difficult to ascertain, amidst the vast mass of these various legislative enactments, those under which whipping is an appropriate punishment. It has been pointed out by one of the Hon'ble Judges of the Madras Court that in the vast majority of offences under special and local laws punishable with imprisonment it is not advisable that sentences of whipping should be passed. It is stated, in the papers that have been circulated to Council from Hyderabad, that:—

'There are, no doubt, many offences under special or local laws in which the sentence of whipping may be administered to juvenile offenders. But there are many more in which the sentence of whipping would be improper. If a young boy of 15 who has inherited from his father a gun, for which the father held a license, does not renew the license after the father's death, he becomes guilty under clause (*f*), section 19 of the Arms Act, XI of 1878. The offence is punishable with imprisonment. It would be unjust to punish the young man with whipping. Similarly, if a boy, having cattle in his possession, allows them to trespass into a reserved forest, he is guilty of an offence under section 25 of the Forest Act, VII of 1878, punishable with imprisonment. Instead of making by law all offences punishable with whipping and leaving it to the Executive Government to determine in what cases such punishment may not be awarded, the proper procedure on well recognized principles is, in my opinion, for the Legislature itself to determine in what cases such punishment may be allowed. The proposed addition to section 5, therefore, requires to be differently drawn.'

"The Hon'ble Mover of the amendment does not go to the full length of the writer of this minute, because, as I understand him, he proposes to leave it to the Executive Government to determine, by notification in the first instance, what offences should be punishable with whipping among those other laws. For myself I should have preferred those offences determined by the Legislature. But if this is not to be, let us have at least a notification now specifying the offences under these other laws punishable with whipping rather than several notifications hereafter specifying offences not so punishable. The sentence of whipping is irreparable. Once done, it cannot be undone. The conviction may be reversed, the whipping cannot, and having in view the numberless cases in which—one

is mentioned, for instance, in the papers which have been submitted from the Assam Government—juvenile offenders have been improperly whipped, it appears to me sufficient to show that it is eminently desirable that the offences which are to be punished by whipping should in the first instance be examined into and publicly notified by the Governor General in Council. The case there mentioned is a case, known to the Chief Commissioner, in which the officer who had witnessed the offence, one of a trivial character, himself not only arrested, tried and convicted the offender, but also inflicted the corporal punishment with his own hand. Among the reports of the Calcutta cases I find another instance of the like improper procedure. There in a summary trial, held by a Magistrate, who was himself the principal witness, time to adduce evidence for the defence was refused, and a non-appealable sentence including stripes, which were inflicted, passed. The High Court set the whole conviction aside. Of course, the punishment of whipping could not be undone.

"There would be no difficulty, it seems to me, if action were taken by the Executive in the manner in which it is proposed by the Hon'ble Mover of this amendment. Among these various laws, my Lord, there are the Post Office Act, the Telegraph Act, the Railways Act, the Arms Act, the Forests Act, the Excise Act and the Christian Marriage Act. It has been said by the Hon'ble Mr. Ibbetson, that we do not say he "shall" be whipped, but that he "may" be whipped. Is it desirable that this large option should be left to the magistracy of this country—many of them, no doubt, distinguished by integrity, by learning and by a sense of justice, but amongst whose numbers, unfortunately, there are to be found many who are wanting—I will not say in law, but even in the prime necessity of common sense—and who punish, without rhyme or reason, ignorantly and sometimes even improperly? Is it advisable to permit them to wander without a guide amidst this maze of "other laws", to give them, without a note of comment on all these divers laws, the power of inflicting thereunder a punishment which cannot be undone? It is, I submit, better that the door should be shut before the horse is stolen, and that it is no use to say that we should let these Magistrates exercise their own free and uncontrolled discretion as to whether they shall, or shall not, whip; and that when there comes an outcry against some glaring instance of wrong, the Executive shall then step in and declare that it shall no longer be done. That, my Lord, will not heal the wounds of those who have been punished injudiciously or improperly. It is always a question whether whipping is a punishment appropriate to the offence, and there are here a variety of offences for which certainly whipping is not appropriate. But being punishable by imprisonment if

the law passes as it stands at present, each and every one of those persons may be whipped, and whipped, without redress. For these reasons I have great pleasure in supporting the Hon'ble Mr. Mehta's amendment."

The Hon'ble MR. BOSE said:—"The law as it now stands does not contemplate the suspension of the sentence of whipping pending an appeal; so that an acquittal in appeal is nugatory so far as the carrying out of the sentence is concerned. The degradation and marks of infamy resulting from the punishment abide, even though the person punished be ultimately found innocent. Such being the case, this mode of punishment should not be extended to any new class of offences, except after fullest consideration. As the clause stands, an indefinite class of offences is brought within the Act, without any previous examination of the propriety of such an inclusion. The existence of the proviso involves an admission that there may be certain offences covered by the clause, which should not be so covered. It is but reasonable that the necessary discrimination between those offences which are proper subjects for inclusion and those which are not, should be made before the law is made to apply to any particular class of offences. Speaking generally, the Governor General in Council will not exercise the power of exemption under the proviso unless moved by the Local Government, which again in its turn will not take any action unless moved by the district officers. These latter would only act, when some case of exceptional hardship would arrest their attention or be brought to their notice. Thus it will be long before effect will be given to the proviso. In the meantime, the Act will continue to operate in cases where its application may ultimately be found to be improper. Such cases could easily be mentioned, as, for instance, offences provided for by the Cattle Trespass Act and the Acts intended to protect the public revenues. These offences need not necessarily involve any moral turpitude. I beg therefore to support the amendment."

The Hon'ble Mr. EVANS said:—"To appreciate rightly the question raised by the amendment before the Council, it is necessary to bear in mind the clear distinction in the manner in which the Whipping Act in its present form deals with adult offenders from that in which it treats juvenile offenders. Not only is the punishment of whipping inflicted on an adult very different to the whipping of a juvenile offender: but with regard to adult offenders it is recognised that to determine whether whipping is a suitable punishment, it is to the nature and character of the offence that regard must primarily be had, and for this reason certain offences were selected as properly punishable with whipping, and power was given to the Courts to inflict that punishment

if they should think it advisable in any instance. In regard to juvenile offenders, the case is altogether different. Section 5 of the Act prescribes whipping as an alternative punishment for juvenile offenders, not for certain selected offences, but for all offences under the Penal Code—making no distinction in regard to the offences: because it was held that whipping would be, for many reasons, in many instances, a more suitable punishment than imprisonment for juvenile offenders, whatever was the offence committed. The proviso attached to clause (*b*) of the new section 5 is based on the assumption that *primâ facie* all offences punishable with imprisonment should be made punishable with whipping in lieu of imprisonment, and this assumption seems to me the only one consistent with the principle on which the law as it at present stands is based.

"The Hon'ble Member who has moved the amendment is of opinion that the large number and diversified character of the special and local laws renders it inadvisable to make offences by juvenile offenders under them generally punishable with whipping: and the Hon'ble Member is apparently apprehensive that whipping will be inflicted as a punishment for offences which it would be an obviously inappropriate penalty. But in the case of juvenile offenders, as was felt by the framers of the Whipping Act, it is not so much the character of the offence as the circumstances of the offender, such as his age, previous history, social rank, which determine, in each instance, the question whether whipping should be substituted for imprisonment as less injurious to the offender's moral character. It is not thus by the exclusion of offences under this or that special law that sound judgment in passing sentences of whipping can be secured. For that we must look to the Courts. The majority of the Criminal Courts are presided over by gentlemen who are natives of the country, and as such in the best position to distinguish cases in which whipping would be an unsuitable punishment. In spite of the opinion expressed by the Hon'ble Mr. Woodroffe, I venture to say that the experience of the 35 years during which the Whipping Act has been in force, warrants us in looking with confidence to the same judgment and discrimination on their part in dealing with offences under other laws as they have shown in dealing with offences under the Penal Code.

"For these reasons, I am of opinion that it is quite sufficient that power should be issued for the Governor General in Council to exclude from the application of clause (*b*) such offences as experience will show call for such exceptional treatment. I am therefore unable to support the amendment."

The Hon'ble MR. WOODROFFE said:—"May I ask Your Excellency's permission to add one matter by way of explanation of my reference to the Railways Act, which I accidentally omitted from my previous remarks."

His Excellency THE PRESIDENT said:—"I see that under the rules an Hon'ble Member may, with my permission, speak once again after a previous speech by way of explanation. If the Hon'ble Member desires to speak again in this sense, I can permit him to do so."

The Hon'ble MR. WOODROFFE said:—"I referred, my Lord, to the Railways Act, as one of the other laws under which punishment of whipping can be inflicted, and I desire to explain that under that law the punishment of whipping can only be given to a juvenile under the age of 12. If the amendment be not carried, there will, in fact, be an alteration of the Railways Act by this Act by extending the age of juveniles from 12 to 16."

The Hon'ble SIR HARNAM SINGH said:—"My Lord, although I am glad to gather from the Select Committee's report that the most objectionable provision regarding riots is removed from the Bill, still the Bill as it stands is open to objection.

"My opinion is adverse to this form of punishment of juveniles for attempting or abetting to commit an offence under the Penal Code. The punishment of whipping is regarded in this country as being of a very degrading character. A boy under 16 years of age is a juvenile and is hardly conscious of the gravity of the offence he abets or attempts to commit. Considering his immaturity of judgment, the degrading character of the punishment, and the ruinous effect it will have on his future career, I believe that the proposed punishment in such a case is undesirable.

"I have to make the same remarks about making offences by juveniles against laws other than the Penal Code punishable by whipping. Having regard to the fact that such offences do not generally involve the same degree of moral turpitude as those under the Penal Code, it is undesirable to punish them with whipping, which is regarded by the people as a more degrading form of punishment than even imprisonment. Prison contamination is bad enough, but the degrading and hardening effect of the punishment of whipping would be worse, as pointed out by the Indian Judges of the Calcutta High Court. The Chief Commissioner of Assam has known a case in which a Magistrate, who saw

children playing with fireworks on the highway, caused them to be locked up for the night, convicted them himself on his own evidence the next day, and then inflicted corporal punishment on them with his own hands. This is the kind of thing which may be expected to occur if the punishment of whipping is extended to such cases, and I agree with the Chief Commissioner in deprecating any extension of whipping powers to petty offences, such as may be committed under laws other than the Penal Code.

"My Lord, I think flogging is not calculated to reform the character of a boy, and I do not see the necessity of going beyond what is already provided for in the Indian Penal Code. In these circumstances and as my hon'ble colleague Mr. Mehta's amendment tends to limit the number of cases in which this punishment can be inflicted, I feel it my duty to accord it my support."

The Hon'ble RAI BAHADUR ANANDA CHARLU said:—"The real issue before us is, Should any case be permitted to occur in which the skin might be ripped open, when it should not be? There can be but one answer to it, and that the negative."

The Hon'ble MR. REES said:—"I agree with the Hon'ble Member who moves the amendment that it is better that the Government should notify, from time to time, to what offences under laws other than the Penal Code, the new section 5 of the Whipping Act should apply, than that the section should embrace all such offences punishable with imprisonment, unless the Governor General in Council otherwise directs, but I oppose the amendment, because I think it is the function of the Legislature to decide, when passing a law, what specific offences are punishable with different kinds of punishment.

"More than one learned Judge, who has been consulted by Local Governments, has arrived at the same conclusion.

"I should prefer that the offences to which the new section 5 (*b*) is to apply should be specified in the Bill. Either it is, or it is not, desirable that a certain offence should be punishable with whipping. That is a matter which could be decided now, once and for all, and circumstances will not change so as to make whipping a proper punishment in the future for an offence in respect of which it is at present an unsuitable correction.

"Much advantage would result from the law being definitely laid down in this behalf. I was much struck with the same two cases as those selected by the Hon'ble Advocate General. A boy under 16 years of age, in charge of cattle

which strayed into a forest reserve, would be liable to be whipped, or a youth of the same age who succeeded to the possession of his father's gun, and did not renew the license. These boys may be heads of families corresponding with yeomen in England and in their little world, they would be degraded, having committed no serious offence. Never since the time of Robin Hood has the breach of forest laws, however necessary such laws may be, been looked on as an offence involving disgrace and loss of character, and as the Magistrate of a district, I should have much regretted the infliction of whipping in such cases as these. An estimable youth, cultivating on the margin of a jungle, and keeping a gun for the purpose of co-operating with the agriculturists' firmest friend, the tiger, in keeping down the head of deer, might, without any bad intention, omit to renew his license.

"Whipping would not be a suitable punishment in such cases, and, indeed, the feeling of the inhabitants of India upon, and their attitude towards, this subject are not, I think, altogether similar to those of Europeans.

"I remember that the commotion consequent upon the infliction of very moderate corporal punishment by a schoolmaster, gave a sharp shock to a well known educational institution.

"Again, at any time it may happen that the whipped boy is a married man—at such an early age do striplings in this country take upon themselves the pains and pleasures of manhood. The higher the caste, the earlier the marriage—and the less suitable corporal chastisement for a culprit whose offence very possibly may not argue great moral turpitude.

"The amendment would prevent the infliction of this punishment in any case to which it had not been made specially applicable, but I think that the offences should be specified in the Bill, as those offences are specified in the Whipping Act, that both the section and the amendment are open to equal objection, and that the latter should be rejected and the Whipping Act revised."

The Hon'ble MR. TOYNBEE said:—"My Lord, I think that there is great force in the arguments which the Hon'ble Mr. Mehta has given for the amendment which he has moved. If the question is raised before a Court as to whether or not the punishment of whipping is applicable to a juvenile offender who has committed an offence under some law other than the Penal Code, it would undoubtedly be safer to solve the question by the production of a *Gazette of India* notification specifying the laws under which whipping

may be inflicted, than to produce a similar notification specifying laws under which it may *not*. The former, which I may call the *positive* method, seems to me to be safer and simpler than the latter, or *negative*, method, because in the first case the whipping could not be legally inflicted unless the law concerned was found to be specified, whereas in the second case the Court would have, as it were, to prove a negative, and might illegally inflict a sentence of whipping by reason of its not being able to find a prohibitive notification which actually existed. As a prohibitive notification seems to me to run a greater risk of being overlooked than a permissive one does, I support Mr. Mehta's amendment. There seems to be considerable misapprehension, my Lord, as to the alleged degrading nature of a whipping inflicted on a juvenile offender. But it need in no case be of such a nature; for section 392 of the Code of Criminal Procedure says:—'In the case of a person under 16 years of age it shall be inflicted in such mode, and on such part of the person, and with such instrument, as the Local Government directs'. And section 390 of the same Code says:—'the sentence shall be executed at such place and time as the Court may direct'. The whipping need not, therefore, be inflicted in public; and at least one Local Government, that of Bengal, has directed that it should be inflicted 'in the manner of school discipline'."

The Hon'ble MR. RALEIGH said:—"The case in support of this amendment turns a good deal upon the general statement that the people of this country regard whipping as a hardening and degrading punishment. I wish to deal very considerately with a feeling of that kind, but it seems to me that in the case of a boy, the question whether whipping is more or less degrading than imprisonment, turns entirely on the circumstances of the case, and that, if advantage is taken of the provisions that the law gives, if the whipping be administered without undue publicity and severity, it is far less hardening to a boy, especially to a boy not belonging to the criminal classes, than a sentence of imprisonment would be. The case made by the Advocate General turns a good deal upon this, that if we make merely a general provision that whipping may be substituted for imprisonment for boys, that general provision may be abused. May I point out to my hon'ble friend that, if the word *may* is to be used in this argument, it is possible to make a case against any existing law whatever. Every criminal law operates for good or for mischief, according to the judgment with which it is applied, and if it be assumed that a Magistrate inflicts whipping when the case is clearly one that ought not to be brought under the criminal law at all, or where the offence is one unsuitable for that penalty, that would be an act on the part of the

Magistrate proving him more or less unfit for his position and rendering him liable to censure. Then it is argued that the sentence of whipping is irreparable. I think perhaps that argument has been pushed a little too far, considering that the effects of whipping (it is a sharp and summary punishment) are not of very long duration, and to say that the effects of whipping are more irreparable than the effects of detention in imprisonment upon a boy, appears to me to be rather an exaggerated way of stating the case. And let me point out this, that if we take the course which the Hon'ble Mr. Mehta proposes and my hon'ble and learned friend supports, and we empower the Governor General to specify the offences, or if we go the whole length of what has been suggested by my hon'ble friend Mr. Rees and put the offences into an Act of this Legislature, we shall still, from my hon'ble friend Mr. Woodroffe's point of view, not be very much better off than we were before, because we shall have to specify a large number of offences where the choice between whipping and imprisonment will still call for the exercise of magisterial discretion, where mistakes of the kind described by the Advocate General may be made, and where the effects of the mistake will be just as serious as in the case of those offences which we should leave out. Whilst therefore I support any proposal that we should make a general provision that whipping may be substituted for imprisonment in the case of juvenile offenders, we should trust to the discretion of the Magistrate, under the supervision to which Magistrates are subjected in this country, to determine which are the offences to which they ought to apply the general rule."

The Hon'ble MR. MEHTA said:—"I should like to say one word in reply. All that the Hon'ble Mr. Rees says in opposition to my amendment is that I do not go far enough. He is prepared to go very much further, but, as I am not able to go all the way, he won't accompany me even part of the way. With regard to what has fallen from the Hon'ble Mr. Ibbetson and the other Hon'ble Members who have spoken in support of the original section, it seems to me they have not met the case which I have put before the Council. Their case is that Magistrates, under the section as it stands, will inflict whipping in lieu of imprisonment, but it has to be remembered that the section does not only include offences which are punishable with imprisonment only. It includes also offences which are punishable with fine or imprisonment, and all those cases would be included under clause (*b*); so that Magistrates would have the right to inflict whipping in lieu of fine also. That, I submit, would be an intolerable state of things, and when it is remembered that there is no appeal from a

sentence of whipping and that whipping once inflicted is irreparable, the necessity for proceeding with caution and discrimination is extremely urgent."

The Council divided:—

Ayes—9.

The Hon'ble Mr. Allan Arthur.
The Hon'ble Rai Bahadur B. K. Bose.
The Hon'ble Mr. J. T. Woodroffe.
The Hon'ble Kunwar Sir Harnam Singh.
The Hon'ble Rai Bahadur P. Ananda Charlu.
The Hon'ble Maharaja of Darbhanga.
The Hon'ble Mr. D. M. Smeaton.
The Hon'ble Mr. G. Toynbee.
The Hon'ble Mr. P. M. Mehta.

Noes—11.

The Hon'ble Mr. H. F. Evans.
The Hon'ble Mr. J. Buckingham.
The Hon'ble Mr. J. D. Rees.
The Hon'ble Mr. J. K. Spence.
The Hon'ble Nawab Faiyaz Ali Khan.
The Hon'ble Mr. Denzil Ibbetson
The Hon'ble Mr. T. Raleigh.
The Hon'ble Mr. C. E. Dawkins.
The Hon'ble Sir A. C. Trevor.
The Hon'ble Major-General Sir E. H. H. Collen.
His Honour the Lieutenant-Governor of Bengal.

So the motion was negatived.

The Hon'ble MR. WOODROFFE moved that the words "after making such enquiry (if any) as may be deemed necessary" and the words "the finding of the Court in all cases being final and conclusive" in the Explanation to section 5 of the Whipping Act, 1864, as proposed to be substituted by clause 2 of the Bill, as amended by the Select Committee, be omitted. He said:—"Among the papers circulated by the Government of India with this Bill will be found the remarks of the Judicial Commissioner of Sindh, to which special attention has been drawn by the Bombay Government. In those remarks it is pointed out that the proviso, in the opinion of the Court, should be final and conclusive on the point of age is properly speaking a legislative direction and cannot appropriately be included in a mere explanation. This proviso found no place in Act VI of 1864. It was first introduced by section 6 of Act III of 1895. Beyond the suggestion that it was sometimes found difficult to determine a boy's age and that it was thought desirable that the opinion of the Court of first instance should be taken as final, Sir Alexander Miller, in moving that the Report on the Bill should be taken into consideration by the Council, made no case for this strange addition to the law. For upwards of 30 years the law had stood unaltered. It had been declared by the High Court of Bombay very shortly after the Act of 1864 was passed that unless an accused person was found to be under the age of 16 he could not be punished under Act VI of 1864. It was not suggested then, nor is it

suggested now, that there had or have occurred cases in which there had been any failure of justice owing to the supposed difficulty of ascertaining a boy's age. It was not suggested then, and it is not suggested now, that it is more difficult to determine whether a boy is under 16 than a man is over 45; yet under section 393 of the Criminal Procedure Code no male person can be whipped if the Court considers him to be more than 45, and that section, be it observed, further contains, and that rightly, no such legislative direction as is appended to the explanation now under consideration, though it would in the vast majority of cases be, I think, more difficult to determine whether a man is over 45 than whether a boy is under 16. Moreover, as the law now stands, no appeal can be preferred by a convicted person in cases in which the Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of whipping only. See section 413 of the Criminal Procedure Code. There is therefore no such difficulty to be encountered as that which was suggested by the Hon'ble the then Legal Member in moving the introduction of this clause in 1895 nor, except in a certain limited class of cases, any question as to the finality of the decision of the Court of first instance. This being so, it appears to me in the highest degree desirable that there should appear upon our Statute Book nothing which can in any way throw doubt upon the necessity for the exercise of the duty of determining judicially whether the delinquent does or does not come within the provisions of the law. The determination of the sentence is, I venture to think, no less important than the determination of the commission of the offence. Moreover, a sentence of whipping is irreparable, and I am hardly prepared to go so far as the Hon'ble Legal Member (Mr. Raleigh) does when he says that the memory of it quickly passes away. That very much depends upon the hand which has laid it on, and even though the punishment of whipping a juvenile offender be conducted as it may be conducted under circumstances not involving the publicity of the whipping, yet the fact that that person has been whipped is a fact which cannot be concealed, and Members of Council will remember that in this country a juvenile offender means and includes a man who has, probably two or three children. You are extending the punishment of whipping very far, and are, as a matter of fact, making persons punishable under this section, who are not in any true or real sense of the term juvenile offenders. It is, I venture to think, also in the case of juvenile offenders even more necessary perhaps than in the case of adults to see that no such brand should be fixed upon them. They are not old, hardened, or habitual offenders, and the disgrace attendant upon a whipping in this country is not looked upon in the light of a tunding at

Winchester or similar punishment at our public schools. We have to deal with the people of this country and their feelings in estimating the propriety of the punishment which should be meted out. I venture to think, further, from another point of view, that it is most desirable that all Magistrates, especially those from whose decisions there does lie an appeal, should be bound to exercise their functions judicially. There are far too many cases, unfortunately, to be found in our reports of sentences of whipping improperly passed and carried into immediate execution, to render it in any degree proper for a Magistrate to pass a sentence of whipping without making due enquiry. The nature and extent of that enquiry must, of course, vary with the circumstances of each particular case, but should it go forth that it rests with the Magistrate to determine whether he will make any enquiry or not, there will, I very much fear, be very many more instances in which whipping will be inflicted upon persons not liable to be so punished than at present. In my opinion, the changes that have been introduced into the explanation in the Select Committee, so far from indicating, as in the Report it appears to be thought, to the Courts the necessity of making an enquiry in cases in which an enquiry is necessary, confers upon them the arbitrary power of determining, and that finally, whether any enquiry is necessary or not. For my part, I would very much have preferred that, if that explanation were to stand, it should stand as it did in the Bill as originally reported on. The words "if any" introduced in the explanation seem to me to forebode mischief, and it is wholly unexplained why there should be a different language introduced into our law in the case of the whipping of juveniles and whipping of adults. The law as regards adults provides that 'if it considers him to be above 45.' Why not in precisely the same language 'considers him or thinks him to be over 16'? I would therefore suggest that at least our law should be consistent, and that there is no reason why juveniles should be treated differently from adults. The Court considers the matter and arrives at its conclusion only upon evidence. By the adoption of the proposed amendment, whether there lies an appeal or not, Magistrates will understand that there is a duty laid upon them, the breach of which will subject them to the animadversion of the High Court."

The Hon'ble MR. IBBETSON said:—"I find myself unable to accept this amendment. I take the second part of the proposal first, namely, to strike out the provision that the finding of the Court as to the age of a juvenile offender shall be final and conclusive. I have listened most attentively to all that has fallen from the lips of the hon'ble and learned Advocate General, and I am still wholly unable to realize what practical effect he proposes to

himself as likely to flow from his amendment. I understand the suggestion underlying the proposal to be that, under the law as it stands, Magistrates are careless in coming to a conclusion in the matter of age. I confess that I cannot see how the excision of the words in question will make them more careful. If the Magistrate is a 1st class Magistrate, there is no appeal from his decision, and his finding is final and conclusive, whether the Whipping Act says so or not, and he knows it. If he is not a 1st class Magistrate, an appeal lies. But since sentences of whipping only, which are the sole sentences that can be passed under the section, are carried out at once, the appeal is practically from the conviction only, which is not affected by the question of age. Thus, I do not think that the amendment will attain the object with which it is proposed.

"On the other hand, there seem to me to be positive objections to the proposal. There are numerous 2nd class Magistrates, specially empowered to pass sentences of whipping, from whose decision an appeal lies. (I am taking, for the present, the law as it stands, without reference to the Hon'ble Sir Harnam Singh's amendment.) Now it may be fair enough that the accused should have an appeal from the conviction, so as, if possible, to clear his character by proving his innocence of the charge. But there is nothing to be gained by allowing him to appeal also on the question of age, which affects, not his guilt or his innocence, but merely the legality of a punishment which has already been inflicted. We all know how greatly the liberty of appeal is already abused in India. The proposed amendment will simply give a new opening to the petition-writer or to the unscrupulous pleader; and we shall have the money of the people and the time of the Courts wasted upon the question, whether the age of a native lad, who has already had his whipping, is 15½ years or 16½. The provision in question has been part of the law of India for the past five years, and I see no necessity whatever to alter it.

"As for the other proposal, to omit the words 'after making such inquiry (if any) as may be deemed necessary', the suggestion to insert these words emanated, I think, from my hon'ble friend Mr. Mehta. It struck me, and I think the other members of the Select Committee also, as an eminently reasonable and proper suggestion. The words 'if any' were inserted to make it clear that no inquiry need be made in the case, say, of a boy of 12 years, who was obviously and undoubtedly under 16 years of age. It seems to me that the law, as it stands in the Bill, is exactly what is wanted. It provides for a final decision upon a point which must be settled on the spot, after a summary inquiry when there is any room for doubt, by the Magistrate who has the lad before him, and who is really the only person

capable of deciding. It is notoriously impossible to ascertain exactly the age of a native of the poorer classes. And if a lad whose age cannot be ascertained exactly is so developed physically that he looks as if he were 16, it surely is only reasonable that he should be treated as if he really was 16; for the probability is that his mind and character will have developed together with his body."

The Hon'ble MR. REES said:—"My Lord, I cannot see that because it is difficult to decide whether a man is over 45, an attempt should not be made to deal with the question whether a boy is under 16, and it is not so long since I exercised the functions of a Magistrate that I cannot remember how the time of that unfortunate functionary is wasted, whenever the law gives the opportunity. The fact is, in regard to the man and the boy the decision is pure guess work. This seems to me to be an additional reason why all the offences for which whipping can be administered should be stated in the Act. I would oppose this amendment."

The motion was put and negatived.

The Hon'ble SIR HARNAM SINGH moved that the following clause be added between clauses 2 and 3 of the Bill, as amended by the Select Committee, and that the present clause 3 be renumbered clause 4:—

V of 1898. "3. (*1*) Notwithstanding anything in the Code of Criminal Procedure, 1898, an appeal shall lie in every case in which a juvenile offender has been sentenced to whipping, and no such sentence shall be executed until a period of fifteen days has elapsed from the date of sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court.

"(*2*) The Judge or Magistrate who has passed any such sentence shall have all such powers of admitting any such juvenile offender to bail as are conferred on Appellate Courts
V of 1898. by section 426 of the Code of Criminal Procedure, 1898:

"Provided that, if no application for bail is made at the time when such sentence is passed, the sentence shall, notwithstanding anything in sub-section (*1*), be carried out forthwith at such place and time as the Court may direct."

He said:—"As it has been practically decided to extend the Whipping Act to offences punishable by laws other than the Penal Code, I would suggest that whipping be lightly administered in the form of school discipline, as provided in the Criminal Procedure Code, in the presence of a District Magistrate or a Magistrate having 1st class powers, and that the punishment be inflicted in a place not exposed to public view, and as marked a difference as possible be made between the whipping of a juvenile offender and the whipping of an adult. I would also suggest that a right of appeal be given, and the

juvenile offender be released on bail till the result of the appeal is known. It does not seem equitable that a juvenile offender, who, if he were sentenced to a term of imprisonment, would have, in most cases under the Code, a righ of appeal, should, simply because a different form of punishment is arbitrarily substituted for that term of imprisonment, lose his right to have the question of his sentence and conviction reconsidered, and I therefore beg to move the amendment of the Bill which stands in my name."

The Hon'ble MR. IBBETSON said :—"I am unable to accept the proposal to allow an appeal in the case of all sentences of whipping which are passed upon juveniles. It is not desirable to add to the liberty of appeal which is already enjoyed except on grounds of the clearest necessity. And this seems to me to be pre-eminently a case in which it is not advisable to allow an appeal. If a lad is to receive 5 or 10 strokes by way of school discipline, he should receive them at once, and have done with it. I cannot conceive why he should have a right of appeal which is denied to an adult who is to receive 30 stripes that may perhaps mark him for life. And what strikes me most forcibly about the proposal is, its cruelty to the boy himself. For the sake of the one boy in a hundred, whose conviction will be upset, the other 99 are to be kept waiting for a fortnight, and for as much longer as the Appellate Court may take to decide the appeal, with the whipping hanging over their heads, in terrified apprehension, which is infinitely worse than the reality. Surely, if there ever was a case which it is desirable to dispose of promptly, it is that of the whipping of a juvenile.

"Apart from the merits of the proposal, moreover, there are other grounds on which it seems to me to be open to strong objection. If the amendment is carried a Magistrate will turn to section 413 of the Criminal Procedure Code and find the following :—

'Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the 1st class passes a sentence of * * * * *. whipping only.'

"He will then turn to the Whipping Act,—and it must be remembered that under that Act a sentence of whipping passed upon a juvenile offender as such must be a sentence of whipping only,—and he will find the following :—

'Notwithstanding anything in the Code of Criminal Procedure, 1898, an appeal shall lie in every case in which a juvenile offender has been sentenced to whipping.'

"The fact is that the proposal is really one to amend, not the Whipping Act, but the Code of Criminal Procedure. It is not yet two years since that Code was passed in its present form, after full discussion; and I think that it would require far stronger grounds than have been shown in the present instance to justify the virtual repeal of one of its provisions."

The Hon'ble RAI BAHADUR ANANDA CHARLU said:—"In 1889 or 1890 two cases occurred in this Presidency, with which every one in Calcutta must be familiar. In the first of those cases, a Magistrate inflicted the sentence of whipping and immediately carried it out. The matter went up before the High Court, and that Court set aside the conviction and passed severe remarks on the impropriety of the sentence having been carried out. Before the same Magistrate, and soon after, another case came up similar in nature. The Magistrate had the perversity again to inflict the sentence of whipping and to carry it out, setting the admonitions of the High Court deliberately at naught. The High Court handed the Magistrate up to the Government, and the result was, that he was placed in a situation in which he could not exercise the powers conferred upon him by the Whipping Act. But I am told, facetiously I hope, that the officer was promoted in consequence.

"Reference was made to the fact that the Criminal Procedure Code was only amended so recently as in 1895, and it is too soon to meddle with it. But it so happens, and that more recently still, *i. e.*, so lately as June or July, 1899, that another Magistrate was found to do exactly the same thing, and the High Court, in setting aside the conviction, could do nothing more than regret at the whipping having been administered. This shows how the necessity for staying the sentence till the appeal is disposed of is extremely urgent. Certain reasons were assigned by the Hon'ble Mr. Ibbetson in support of his position. The very same reasons I claim in support of the amendment before us. He says that there will be a delay in the disposal of the appeal and that the sentence of whipping would be hanging over the head of the culprit in the interval. I think that when an inconsiderate juvenile offender has this interval, after knowing what punishment the error he had drifted into brought upon him, he will very probably reflect and repent of it and avoid becoming callous in consequence of undergoing the penalty in that spirit. The effect of delay may thus only prove salutary and not harmful."

The Hon'ble MR. REES said:—"My Lord, my hon'ble friend Mr. Ananda Charlu and I, in the last five years, have generally presented the spectacle of

a united family from Madras. On this occasion I regret that I cannot agree with him. I would oppose the proposed interpolation of a wholly new and vital section between clauses 2 and 3 of the Bill. I would myself prefer that every offence for which whipping may be awarded should be stated in the Bill, as I said in speaking on the first motion, but I cannot think it desirable to provide on this occasion a system of bail and appeal for the whole law relating to the whipping of juvenile offenders. It is contrary to the conception of providing a different class of procedure for juveniles, and it seems to me that either the law should enact that a boy convicted of a certain offence, for which the Legislature had deliberately decided whipping should be inflicted, should be sentenced and whipped outright, or that in regard to such an offence, the ordinary procedure which obtains in respect of adults should apply. To release a boy on bail, and then after a long interval to call him up to be judicially whipped, seems to me to convert the homely birchen rod into a sword of Damocles, and to give a solemnity to personal correction, which is, in fact, somewhat foreign to the inherent character of corporal castigation.

"As it is evident from what I said in speaking to the first motion that I am opposed to the wholesale application of the rod to the backs of our younger fellow subjects, I have therefore the less scruple in opposing this amendment. If it is fated to become law, at least Local Governments should express their opinions of it and a Select Committee should sit upon it, for I hope and believe that Select Committees have not in India become, as a leading journal said yesterday morning of Select Committees elsewhere, 'instruments of insincerity, procrastination and oblivion.' My Lord, I trust this amendment will not slip through without undergoing that careful and prolonged examination which should be the prelude to all legislation. This matter should be taken up, I think, when a revising and consolidating Act is undertaken.

"I ask Your Excellency's leave to refer to what my hon'ble friend Mr. Mehta said, *viz.*, that I would go the whole way with him but not half way. Surely, if an Hon'ble Member thinks that offences punishable with whipping should be specified in the Act, Mr. Mehta's amendment, equally with the section, is open to objection and should be rejected. On the other hand, to object to one section as it stands is no sufficient ground for rejecting the whole Bill."

The Hon'ble MR. RALEIGH said:—"The main part of the hon'ble and learned Member's contention in favour of the amendment is the same argument as that used with regard to the hard cases, which I have already described as rather misleading in reference to another amendment proposed by my hon'ble

friend the Advocate General. Mr. Charlu thinks that the delay which the Bill involves will have an excellent moral effect, because it will give the offender time for repentance. It appears to me that that effect of delay in the execution of a sentence is, to say the least, a little uncertain. There is another effect of delay, which is almost certain, and this is the consideration which I wish to suggest to Council. If you allow a longer delay for appeal, it becomes objectionable to carry out the sentence at all, and there is a certain cruelty in saying to a boy 'you can go away now, and after three months you will be brought back, and then you will be whipped.' I think the ordinary feeling would be against that, and I have not the least doubt that, if we allow an appeal, the effect would be largely to hamper and pervert the operation of the law. For these reasons I vote against the amendment."

The motion was put and negatived.

The Hon'ble MR. IBBETSON moved that the Bill as now amended be passed. He said:—"My Lord, I gather from the question that was asked of Your Lordship at an early stage in the course of the debate, that some remarks may possibly be made upon the general principle on which the Bill is based, and I may therefore be allowed to say a very few words in support of it. It is no new principle. It was affirmed 34 years ago, when the Whipping Act of 1864 was passed, that whipping is often the most suitable form of punishment for a juvenile: and the present Bill simply extends that same principle to offences which have, for the most part, been created since the Act of 1864 became law—extends it, indeed, in a restricted form, since it does not authorize whipping for any offence which is punishable with fine only.

"I confess myself unable to understand the assertion that a moderate whipping, inflicted upon a young lad under proper conditions, must necessarily harden and degrade him. It would not do so if inflicted by his father, or by his schoolmaster: and I fail to see why it should do so, merely because it is inflicted by the order of a Magistrate. At any rate, association, for ever a short time, with the class of juvenile criminals which are too often to be found in our jails, may do him an irreparable injury; while the disgrace of incarceration in jail seems to me, to say the least of it, to be as great as that of whipping. I fully realize that the feelings of the natives of India on the subject of corporal punishment are very different from our own. I have often had reason to regret this fact in connection with the management of schools. We are, however, bound, in legislation such as this, to give the fullest weight to those feelings as they exist. But if the effects of whipping young lads were really so disastrous as we are told, surely, during the 35 years for

which the Act has been in operation and during which many thousands of lads must have been whipped, we should have had some more tangible evidence of the evil effects of our legislation than has so far been put before us."

The motion was put and agreed to.

INDIAN COMPANIES (BRANCH REGISTERS) BILL.

The Ho'nble MR. DAWKINS moved that the Report of the Select Committee on the Bill to authorize certain Companies registered under the Indian Companies Act, 1882, to keep branch registers of their members in the United Kingdom, be taken into consideration. He said:—"I would like to draw attention to one modification introduced by the Select Committee into the original draft Bill. In the original draft authorization to Indian Companies to establish branch registers in the United Kingdom was limited to Companies having a capital of not less than Rupees twenty lakhs and having existed for three years. These limitations do not exist in the case of the Companies Colonial Registers Act, which we have been following, and in view of the almost unanimous representations of the Chambers of Commerce that these restrictions would tend to minimise the utility of the Act, the Select Committee decided to withdraw them. I may also ask leave to call attention to the notifications which have been placed upon the table, conveying exemption from Indian stamp and probate duty of shares of Indian Companies liable to payment of such duties in the United Kingdom, owing to their inscription on the branch register in London. After the Bill had left the Select Committee, my learned friend the Hon'ble the Advocate General suggested that these exemptions, which were promised in the Statement of Objects and Reasons, should be incorporated in the Bill itself. It was, however, felt to be inexpedient to modify two existing Acts by a third Act and to take power for giving exemptions when such power was already existing and vested in the Governor General in Council under the Indian Stamp Act and Court-fees Act. It was, therefore, decided to meet the practical difficulty pointed out by my learned friend the Hon'ble the Advocate General, namely, that the Act as it stands would not acquaint an investor with the fact that this exemption existed, by an undertaking that the notifications to issue under the Stamp and Court-fees Acts should be bound up in the pamphlet form in which the new Act will be sold to the public. These are the notifications which lie on the table."

The motion was put and agreed to.

[16TH FEBRUARY, 1900.] [*Mr. Rees; Mr. Dawkins; Mr. Ibbetson.*]

The Hon'ble MR. REES moved that after the word "discontinued", in clause 3, sub-clause (*a*), of the Bill, as amended by the Select Committee, the words "and the Registrar shall record such notice" be added. He said:—"My Lord, in clause 3, sub-clause (*a*), no provision is made for recording the notice of situation of the British register. It is not to be supposed that the Registrar of Joint Stock Companies will consign such notices to his waste-paper basket, but the recording of the notice is a judicial act, and it is expressly provided by section 64 of the Indian Companies Act that the Registrar shall record the notice of situation of the registered office in India. A similar provision should apparently be made in respect of notice of situation of the British register, since the Bill is, under clause 5, to be construed as one with the Indian Companies Act. It happens, moreover, that in some provinces Registrars are under existing rules forbidden to record, upon receipt of a fee, anything the record of which is not expressly enjoined by the Companies Act."

The Hon'ble MR. DAWKINS said:—"I think that we should be well advised in accepting this amendment. As the Act stands, the Registrar would probably not deposit any notice given to him in the waste-paper basket, but, at any rate, the amendment will provide that he shall not do so under any circumstances, and it will certainly render the Bill more complete."

The motion was put and agreed to.

The Hon'ble MR. DAWKINS moved that the Bill, as now amended, be passed.

The motion was put and agreed to.

LOWER BURMA COURTS BILL.

The Hon'ble MR. IBBETSON moved that the Bill to consolidate and amend the law relating to the Courts in Lower Burma be referred to a Select Committee consisting of the Hon'ble Mr. Raleigh, the Hon'ble Mr. Smeaton, the Hon'ble Rai Bahadur Ananda Charlu, the Hon'ble Mr. Woodroffe and the mover.

The motion was put and agreed to.

The Council adjourned to Friday, the 2nd March, 1900.

CALCUTTA;
The 16th February, 1900.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

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