

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 4th November 1868.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.

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

The Hon'ble G. N. Taylor.

The Hon'ble H. S. Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble Colonel H. W. Norman, C.B.

ARTICLES OF WAR.

The Hon'ble Colonel NORMAN introduced the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

As he had explained to the Council when he obtained leave to introduce the Bill, the existing law for the government of the Native Army was contained in Act XXIX of 1861, as amended by Acts V of 1863 and XXVI of 1865, and certain changes being deemed necessary, it was considered advisable to embody them and the large portions of the existing Acts which it was proposed to be retained in an entirely new Bill, which, if passed, would constitute the entire law for the government of Her Majesty's Native Indian Forces.

All the principal alterations in the existing law were noted in the Statement of Objects and Reasons attached to the Bill, and he did not at present propose to enter into any detailed explanation as to those alterations beyond what was contained in that statement. They had been carefully considered and discussed outside this Council, but the Bill would be published and would of course be open to any improvement that might be deemed desirable by the Select Committee to which he would at a future sitting move that the Bill be referred.

Besides certain changes in substance, the present Bill contained various alterations and, as he (Colonel NORMAN) thought, improvements in point of arrangement and language, calculated, he trusted, to make the Articles more clear and intelligible to the officers who would have to administer them,

and to those soldiers and others who would be subject to them. He (Colonel NORMAN) desired to acknowledge the obligations he was under in the preparation of the Bill to the Judge Advocate General's Department, and especially to Lieutenant Colonel Maisey, who, as Officiating Judge Advocate General at the time, drew out the original draft of the Bill under the orders of His Excellency the Commander-in-Chief, and had since very ably and assiduously assisted him in its elaboration. He (Colonel NORMAN) was also most highly indebted to Mr. Whitley Stokes, who had devoted much time and care to the Bill, and whose suggestions as to arrangement and phraseology had been most valuable.

His Excellency the COMMANDER-IN-CHIEF, by permission of the President, said that, although there was no motion before the Council, he thought it right to say that the several provisions of the Bill had received great attention. The matter indeed had been under consideration now for not less than six years between the several Governments and the respective Commanders-in-Chief. At this stage there was one point only,—the limitation of the power to try by Summary Courts Martial,—to which he deemed it right to invite notice. If no remarks were made upon it, some persons might suppose that the limitation in question would restrict the military powers of the commanding officer. Nothing would be more erroneous. It had been his (the COMMANDER-IN-CHIEF's) duty when in command at Bombay to point out that the mode of applying the powers of such courts was occasionally wrong. Certain commanding officers, not well versed in law, either civil or military, had actually held Summary Courts Martial to try offences against themselves, and even against their own property. And subsequently, since His Excellency had assumed his present command, he had found it necessary to check similar practices in this Presidency. It would be remembered that this kind of Courts was constituted of the officer, by whom it was held. Article 93 of the present Bill accordingly provided expressly that offences by which the convening commanding officer was personally aggrieved and crimes of fraudulent character, should, as a rule, not be tried by Summary Courts Martial without reference made to superior military authority. This was the only limitation on the power referred to, and His Excellency wished the public to understand that the Bill would not in any way diminish proper military powers.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill further to amend the Criminal Procedure of the High Court of Judicature for the North-Western Provinces, said that, though the Bill covered some space, it was merely intended to remove two technical difficulties. The High Court for the

North-Western Provinces possessed two original criminal jurisdictions,—one ordinary, the other extraordinary: European British subjects were triable in the exercise of the former, Natives in the exercise of the latter. Now, it sometimes happened that an European and a Native were jointly charged with an offence, and then the most convenient course would obviously be to try them together. But when an European was tried, the majority of the jury had to be composed of Europeans or Americans, or both, and the procedure was regulated by Act No. XXIV of 1866; when a Native was tried, half the jury was, if he so required, composed of persons not Europeans nor Americans, and the procedure was wholly regulated by the Code of Criminal Procedure. The Bill gave power to try the European and the Native together, but saved the Native's right (if he chose to exercise it) to be tried separately by a jury, of which at least one-half consisted of persons not Europeans nor Americans.

There was another amendment of less importance which the Bill proposed to make. The High Court was subject, in exercise both of its ordinary and of its extraordinary criminal jurisdiction, to the rules of the Code of Criminal Procedure, except in so far as these rules had been modified by Act XXIV of 1866. Of these rules, those prescribing the mode in which Judges should take down evidence were unmodified. They were contained in sections 198 and 364 of the Code. They had been framed for the guidance of Judges from whom there was an appeal, and for this and other reasons they were wholly unsuited to the learned Judges of the High Court. The Bill accordingly proposed to suspend the operation in the High Court of the two sections which he had mentioned, and to enable the Judges to take down the evidence in such manner as the Court might by general rule direct.

The Motion was put and agreed to.

The Hon'ble Mr. MAINE then introduced the Bill.

The Council then adjourned to Friday, the 27th November 1868.

WHITLEY STOKES,

*Asst. Secy. to the Govt. of India,
Home Department (Legislative).*

SIMLA,
The 4th November 1868. }