

**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 Government House on Friday, the 18th December 1868.

P R E S E N T :

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 H. Sumner Maine.

The Hon'ble John Strachey.

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

The Hon'ble F. R. Cockerell.

The Hon'ble Sir George Couper, Bart., C. B.

The Hon'ble Mahārājā Sir Dirg-Bijay Singh, Bahádur, K. C. S. I., of
Balrámpúr.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART moved that the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter be referred to a Select Committee with instructions to report in two months. He said that the Bill was introduced on the 3rd of April during the last Session of the Council ; but in consideration of the importance of the measure and the late period at which he had introduced the Bill, he had suggested (and the Council adopted the suggestion) that the Bill should merely be introduced, and its reference to a Select Committee deferred. He had hoped to have been able this Session to refer the Bill to a Select Committee in the ordinary course, and to have brought it forward again in due course ; but he regretted that it was impossible that this Bill should be dealt with in the ordinary way, for a despatch of the 21st of October last had been received from the Secretary of State, directing that the Bill should not be proceeded with in its present form. The Secretary of State had referred the Bill to the Indian Law Commissioners, with a request that they would submit their opinion on its provisions. The Commissioners did not give any opinion on the provisions of the Bill, but stated that at the present stage of their labours they thought it impossible for them to take the Bill into consideration, and that they could not consider the Code of

Criminal Procedure till they had completed the revision of the Indian Penal Code. The Secretary of State, while expressing his general concurrence with the opinion of the Law Commissioners, stated that there were many points in the Bill which did not affect any question of important principle, and which merely dealt with points of administrative detail: these there was no objection to take into consideration at once. MR. SHAW STEWART therefore proposed that if the Bill be now referred to a Select Committee they should take for their guidance the Despatch of the Secretary of State and turn their attention to the alteration of the Bill from being an amended Code of Criminal Procedure to make it an amending Act, excluding all points which came under the head of points of legal principle. He thought that every one must admit that great advantage would be gained from the Law Commissioners considering the Bill in the manner proposed, but there were two points which he hoped would be taken into consideration. If the Secretary of State had allowed the Bill to be proceeded with in the ordinary way, we should have been able to repeal the old Code of Criminal Procedure and its five amending Acts, and to substitute for them one new Code. Instead of which we should now have to add another amending Act to the statute book, and the law of Criminal Procedure would have to be sought for in seven Acts instead of in one Act. The Indian Law Commissioners held out no hopes of being able at any definite time to undertake the task of revising the Code; they said that they could not do so till they had considered and completed the revision of the Penal Code. MR. SHAW STEWART understood that the papers connected with the revision of the Penal Code had not even yet been put into the hands of the Indian Law Commissioners; there was therefore a prospect of considerable delay in their undertaking this important work. He thought the revision of the Code of Criminal Procedure was a matter of such great importance that he trusted the Commissioners would be induced to turn their attention to it as early as possible.

The Hon'ble MR. MAINE said, that His Excellency's Government was much indebted to the Hon'ble Mr. Shaw Stewart and to the gentlemen who had acted with him, for the pains they had bestowed and the intelligence they had shown in revising the Code of Criminal Procedure. He hoped that such pains and intelligence would not be ultimately thrown away. He trusted that the Indian Law Commissioners would undertake the revision of the Code at an early date, and, certainly, the Executive Government would do what it could to prevail on them to do so. •

MR. MAINE ventured to say that the Commissioners would derive a not inconsiderable measure of assistance from the labours of his Hon'ble friend.

The Motion was put and agreed to.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE asked leave to postpone the Motion, which stood in the List of Business, that the Bill for the appointment of Justices of the Peace be referred to a Select Committee with instructions to report in six weeks. He said, there were some important papers on the subject which were expected from the High Court but which had not yet been received.

Leave was granted.

PRISONERS' EVIDENCE BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, said that in the present state of the law there existed no facilities for obtaining the evidence of prisoners in the Civil or Criminal Courts of this country. In the Presidency Towns, within the limits of their original jurisdiction, the High Courts of Judicature might issue a writ of *habeas corpus ad testificandum*, but beyond such limits the law made no provision for compelling or authorizing the person responsible for the safe custody of a prisoner detained in any jail to produce such prisoner for the purpose of giving evidence in a Civil or Criminal Court. Some years ago the Bengal Government, upon a reference being made on this subject, issued a general order prohibiting compliance with the requisition of any Civil Court for the attendance in such Court as a witness or a party to a suit of a prisoner confined in jails, unless when the Government had granted its special sanction, to be applied for only on good and sufficient grounds in each case. Acting on this prohibition, officers in charge of jails had declined to send prisoners before Civil Courts as witnesses, and their refusal had in some cases led to the issue of a commission by the Courts for the examination of the prisoner, whose personal attendance to give evidence could not be obtained.

As, however, the conditions under which Civil Courts might obtain the examination of persons by commission were not ordinarily applicable to the case of prisoners confined in jails, such commissions were informal and their execution could not be legally enforced. It resulted that parties to suits had no certain means under the existing law and practice of procuring the attendance of prisoners in the Courts as witnesses, however material their evidence might be to the issue of such suits, and that the due administration of justice was thereby prejudiced.

In consequence of a reference from the Inspector of Jails showing the present unsatisfactory state of the law in this respect, the Government of Ben-

gal consulted the High Court as to the propriety of relaxing the rule by which the evidence of prisoners in confinement was practically excluded from civil and criminal cases. The High Court, concurring in the opinion of the Lieutenant Governor of Bengal, at his instance framed certain rules for procuring the attendance of prisoners as witnesses in the Civil and Criminal Courts, but considered that legislation was required to secure the necessary powers for their enforcement.

A Bill for the attainment of this object was now before the Legislative Council of the Lieutenant Governor of Bengal. The question involved in the proposed legislation was, however, obviously one of imperial interest.

The inconvenience and injury to suitors resulting from the absence of any legal provision for obtaining the evidence of prisoners in jails, when such evidence was material to the issue of their suits, must be experienced in other parts of the country no less than in Bengal; and in asking leave to introduce this Bill he was only anticipating the necessity for providing a remedy for the present state of things which the exigency of the case must sooner or later force upon the attention of the legislature. He had only to add that the proposal to transfer legislative action in the matter to this Council was made after communication with the Lieutenant Governor of Bengal, and with His Honour's assent; and that before any attempt was made to pass the Bill, ample opportunity would be given for communication with the various Local Governments, both as to the practice now obtaining in the territories subject to their control, in regard to the evidence of prisoners in Civil or Criminal Courts, and as to the applicability of the contemplated provisions of the Bill to the circumstances of those territories.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter—The Hon'ble Messrs. Maine, Strachey and Cockerell, the Hon'ble Sir George Couper and the Hon'ble Mr. Gordon Forbes and the Mover.

The Council adjourned till Monday the 21st December 1868.

CALCUTTA, The 18th December 1868.	}	WHITLEY STOKES, <i>Asst. Secy. to the Govt. of India,</i> <i>Home Department (Legislative).</i>
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