ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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

The Council met at Government House on Friday, the 9th December 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

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

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

The Hon'ble MR. ROBINSON took the oath of allegiance and the oath that he would faithfully discharge the duties of his office.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN introduced the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter, and moved that it be referred to a Select Committee with instructions to report in three months. He feared it would be necessary for him to engage the attention of the Council for some time, as the subject of which this Bill treated was of the first importance. He might begin by stating the occasion of its introduction. In June last the Indian Law Commissioners issued their Seventh Report, which Report related to the revision of the Criminal Procedure Code. They made various recommendations in connection with the revision of that Code and the passing of Act VIII of 1869, by which the Code was extensively amended a year ago; and they concluded their report with these observations:—

"We have endeavoured by this report to complete the revision of the Code of Criminal Procedure in the manner which appears to have been contemplated by the local Government of India.

"We should not have adopted this method of executing the duty entrusted to us, if Act VIII of 1869 had not been passed; but the existing state of the law, as altered by the provisions of that Act, has, in our opinion, rendered this the most expedient course.

"A short Act may be passed, embodying the required provisions on the points regarding which we have reported—

Those were the points which, with certain others, were referred, after the passing of Act VIII of 1869, to the Indian Law Commissioners by the Secretary of State.—

"In that case the original Code XXV of 1861, with the Act VIII of 1869, and such new Act would contain the whole law.

"Should it however, be thought more convenient to consolidate the whole law of procedure in a single Act, this could be effected without difficulty by a process little more than mechanical."

That was the recommendation of the Indian Law Commissioners. MR. STEPHEN'S own attention having previously been drawn to various matters in connection with the Code of Criminal Procedure, he had before the report was issued asked leave to introduce a Bill for the consolidation of the two existing Acts on the subject, namely, Act XXV of 1861 and Act VIII of 1869 as a part of the general consolidation scheme now in progress and not very far from completion. However, when this Report arrived from the Indian Law Commissioners, the importance of taking that course was much increased. He therefore proceeded carefully to examine the Code. On examination he was by no means able to concur in the opinion that a proper consolidation could in this instance be accomplished by a mere mechanical process. The more he examined the Code, the more clearly he became convinced that it was ill-arranged, obscure, and confused, and that it would therefore be of the highest importance to re-arrange it. The Code had been in force since 1861, and he had no doubt that it was a vast improvement on the condition of things existing before that time. Since 1861, it had been amended at various times, and the amending Acts were themselves consolidated into one Act in 1869; and it was now proposed by the Indian Law Commissioners that we should have a further amending Act, for it really made little difference whether a separate Act was passed, or whether the three existing Acts were thrown into one by a merely mechanical process. This would in MR. STEPHEN'S opinion make worse that which was already bad, for the present law was to the last degree confused and ill-drawn. On a careful examination of the Code he arrived at the opinion, that he had very seldom seen a more confused and worse drawn law in his life. That was a strong assertion to make, and he would therefore ask the Council to excuse him if he proceeded to justify it.

The principle on which a Code of Criminal Procedure ought to be arranged was perfectly simple. You would naturally begin at the first steps taken when a crime had been committed or was suspected; you would go on through the various steps from the time when the enquiry was first made till you got to the execution of the sentence of the Court. Exceptional incidents and supplementary arrangements should be separately dealt with. That was the principle on which a Code of Criminal Procedure ought to be framed, and those who compiled the existing Code had arranged the chapters of the Code to a certain extent with reference to this principle; but they had departed from it to a degree which threw the whole matter into confusion.

He would now proceed to show the manner in which the Code had been arranged. In the first place it was thought desirable that the Code should contain provisions relating, not merely to the detection and punishment of crime, but also to its prevention by such processes as the taking of recognizances and security to keep the peace; the taking of security for good behaviour; the taking of measures for the removal of nuisances; the making of orders for the maintenance of wives and children, and the mode of proceeding in cases of disputes relating to the possession of land, or the right of use of any land or water likely to cause a breach of the peace.

He was not prepared to say that these subjects should not form part of a Code of Criminal Procedure, but that was no reason for putting them in the middle of the Code, between the chapters relating to enquiries and trials before Magistrates and the chapter on trials before the Court of Session; so that a student, after following the course of affairs to the committal of the accused for trial, found himself in the midst of provisions regarding local nuisances, the maintenance of wives and children, and other such matters. He had some right to speak with authority on the feelings of students on this matter, for he was one himself. When he accepted his appointment, he naturally wished to instruct himself in the laws in force in this country. When he read the Penal Code, he arrived at a clear notion of what was intended; when he read the Civil Procedure Code, he also obtained a pretty clear notion of its intention; but when he got to the Code of Criminal Procedure, he found himself at a loss to follow the progress of the steps that had to be taken with an offender, and he felt obliged to put off the attempt to understand the Code, until he could obtain oral information about it.

This long parenthesis of five chapters had in itself a certain degree of coherency, though its principle was by no means apparent, but it was followed

by other chapters of which the same could not be said. The chapter after disputes about land was followed by a chapter about juries and assessors. Up to that point, nothing had been said about juries and assessors; they naturally belonged to the subject of trials before Courts of Session. This chapter was followed by one about Subordinate Judges and Principal Sadr Amíns in Madras. Why a chapter on that subject should form the 24th chapter of a Code of Criminal Procedure for all India he could not conceive, and no one had ever been able to tell him. After the chapter relating to trials before the Court of Session came the subject of the finding, judgment and sentence; after that, the natural course would have been to go to the subject of appeals; especially considering how important appeals were in India; but instead, there was printed a chapter on lunatics.

There were other subjects in the Code equally ill-placed. For instance, the third chapter was entitled "Preliminary Rules," and the 31st chapter was entitled "General Rules." There was no sort of distinction between those chapters, and no attempt whatever to arrange either of them. The sections might have been arranged by lot for anything that appeared to the contrary. Thus, the first of the preliminary rules (section 43) provided that complainants and witnesses should be examined upon oath or affirmation according to the law for the time being in force; and the following section (44) authorized the Court to award a portion of a fine in compensation for loss or damage caused. What connection had these two sections? To turn to the "General Rules." Section 431 provided for the employment of interpreters, section 432 gave the accused a right to be defended by Counsel, and section 433 provided for the confinement of youthful offenders in reformatories.

He would, however, give one or two instances to show that not only were the chapters themselves ill-arranged, but that the arrangement of the sections was still more confusing. He would ask any one who knew nothing about the matter by experience or conversation to attempt to derive from the Code a clear notion of the law which prevailed with regard to trial by juries and the functions of assessors. The subject was treated of in chapter 23, and the sections were arranged in the following remarkable manner. First, there were sections which provided for trial by jury generally; then sections settling the composition of juries when Europeans or Americans were tried; then sections as to the number of which a jury is to consist, and other sections as to the number of voices required for a verdict; after that followed provisions about jury-lists and the attendance of jurors. Then you went back to the trial, then you went back to a still earlier stage, namely, the summoning of jurors; and then after

an interval of about 23 sections, you came back to the subject of the majority of votes. He had to read that chapter three or four times, and to make an index to it, before he got any notion of the law on the subject.

When an attempt had been made to follow the natural order of the subject, it had been thought necessary to put the most complicated proceedings first, and the simpler proceedings afterwards. Thus, the chapters relating to inquiries before Magistrates were put together; the most complicated of these was inquiry with a view to commitment to the Court of Session, and the simplest was the procedure in cases tried upon summons. The chapter relating to commitments came first, the chapter relating to summons cases came last; one result was a good deal of needless repetition and continual cross references. For instance, in the chapter about commitments were provisions as to the mode in which the attendance of witnesses was to be secured. They were embodied in the chapter on summons cases in the following awkward words—"Section 264. The provisions of sections 187, 188, 189, 190, 191 and 192 of this Act shall be applicable to witnesses summoned according to the provisions of sections 262 and 263." Nothing could be more vexatious or irritating to a Magistrate or to a student than the necessity thus created for constant reference from one part of the Code to another.

These were mere illustrations, but they were quite enough to show how ill the Code was arranged. Their number might be considerably increased if necessary.

MR. STEPHEN was quite aware of the gravity of his proposal to re-arrange the Code. When a person had studied and understood one arrangement, it would be by no means pleasant to him to have to learn another. At the same time he felt that these Codes were not to be considered merely with reference to the convenience of those who were now administering their provisions, nor to the transaction of current business. They must also be considered from an educational point of view. They were the great standard enactments by which a knowledge of the law was to be acquired by those who had to administer it, and who ought to be able to learn their duties with as little trouble as possible. If clearly arranged and capable of being grasped as a whole, they might be made to serve as a great means of economising time. The necessity of a good plan on this subject was indeed so obvious that he did not think some degree of inconvenience to which the present administrators of the law might be put ought to be regarded as an objection to the proposed measure.

He would now say a few words of the system on which the Bill was re-arranged, and which at once shortened the Code by about eleven sections. The Bill was divided into two principal parts, that which related to the detection and punishment of crime, and that which related to the prevention of crime. First, as to the detection of crime. The Bill dealt with the subject in the following order: jurisdiction; process to compel appearance; inquiries by the police; enquiries before the Magistrate and trials before the Court of Session; appeal, reference, and revision; the execution of the judgments of the Court. This disposed of the ordinary process in criminal trials, from the first enquiry into the matter down to the final order of the Court and the carrying out of that order. Next came matters to be separately treated. The most important of these was evidence, which was dealt with in Part VI of the Bill, instead of being as at present scattered all about the Code; then came general provisions regarding the taking of bail, the appointment of juries and assessors, and the provisions regarding lunatics and contempts of Court, which were exceptional cases. Next came what in England is called criminal pleading, the charge and so forth. This would complete the proceedings for the detection and punishment of crime. The Bill then proceeded to define the preventive jurisdiction of Magistrates, as to recognizances and securities, the removal of nuisances, making orders for the maintenance of wives and children, and for the prevention of breaches of the peace arising out of disputes regarding the possession and use of land and water. The Code would conclude with no more than three miscellaneous sections.

The Bill would be published in the Gazette, and His Lordship and the Council would then have an opportunity of seeing how the work had been carried out.

There was only one other matter connected with this subject which he wished to mention; it related to the question of jurisdiction. He was not quite sure that it would not be better to have a separate Bill devoted to the subject of jurisdiction in Criminal Courts throughout the Mofussil, leaving the subject of procedure to stand by itself. As it was at present, there were a good many provisions relating to the power of Courts to try offences, such as those relating to the subordinate judges in Bombay and Madras and some others. It might perhaps be possible to put all these together into a separate Act. He wished to point out, moreover, that in the Code as now drawn, and as it would be published, there really were hardly any substantial alterations from the existing Code. The Bill was simply the Code of Criminal Procedure as it now stood, arranged in the order of subjects, and with such drafting alterations as were incidental to that arrangement.

He might, however, mention three alterations. There was, first, that which related to the jurisdiction which Justices of the Peace in the Mofussil at present exercised over European British subjects. That jurisdiction depended at present on the statute 53 Geo. III, chap. 155, and was wide, though ill-defined, and more or less connected with certain technicalities of the English criminal law. He proposed that the jurisdiction should extend to cases usually disposed of before Magistrates upon summons. This alteration was rather in name than in substance.

The second alteration related to the manner of finally disposing of cases in which European British subjects were concerned. In these days especially, when European British subjects who were not very favourable specimens of their race were wandering about the country, he thought it would be desirable that if a European British subject were brought before a sessions judge, the sessions judge should be able to dispose of the case if the accused did not claim his right to be tried before one of the High Courts. MR. STEPHEN therefore proposed to empower sessions judges to dispose of such cases, unless the European British subject insisted on his right to be tried by the High Court.

The third and last alteration was with regard to trial by juries, the provisions regarding which appeared to be complicated. There were certain specified majorities which might convict a man of an offence; if a smaller majority wished to convict, the prisoner might be tried again. The Indian Law Commissioners observed, that this was an extremely intricate way of proceeding, and that the concurrence of the judge was a far better guarantee of the justness of the conviction than any specified majority of jurors; and the Bill was altered accordingly thus:—that if not less than two-thirds of the jury convicted a man, and if the judge agreed with them, the accused was to be convicted; if there was not such a majority, or if the judge did not agree with them, the accused would be acquitted.

Act I of 1849 had been consolidated with the Code under the head of jurisdiction, and part of the Whipping Act under the head of execution, and some other minor alterations had been made which had been thought desirable.

That was the state of the draft as it stood. But he proposed to make some observations on possible alterations or improvements of the general system of criminal procedure; alterations which he did not venture to recommend on his own authority, but which he threw out as suggestions, in order that Government might receive the views of those who were accustomed to the administration of the general system of criminal procedure.

In the first place, it occurred to him that there were many parts of the Code which might with advantage be condensed or simplified. He had observed in a great number of Indian Acts, and in the Code of Criminal Procedure more than in any other, that much difficulty had been found in drawing the line between legislative and executive functions. The consequence was that a large number of provisions found their way into the law, which, he thought, could be better dealt with by the executive Government from time to time as occasion required. He would give a single instance of this unnecessary legislation. There was a chapter in the Code about preliminary investigations by the police. That chapter, as it stood in the revised Draft Code, contained twenty-seven sections, and after reading it through and carefully criticizing it, it appeared to him (MR. STEPHEN) that those twenty-seven sections might be reduced to eight or nine, if nothing was kept except the provisions for which some positive law was required. The rest fell under one or other of these three heads: some authorized the police to do things for which no legislative authority was necessary; for instance, to question people about a crime and to make memoranda of their answers for their own use: others prohibited things prohibited and punishable under the Penal Code; for instance, using unnecessary restraint, although the Penal Code made that a crime and subjected it to a severe punishment: others required the police to do things (without any penalty for non-compliance) which the executive Government might very well do at their own discretion, by an executive order; for instance, the police were required to keep certain diaries and reports and forward them to the proper officers at certain times. These diaries and reports might very probably be necessary. But no law was wanted to ensure their being kept. The police authorities had simply to tell their men that they were to do these things, and that if they did not, they would be turned away or their pay would be stopped. To turn such provisions into positive law was to ensure endless litigation about their non-fulfilment. That particular section with regard to diaries had given rise, he was afraid to say, to how many decisions of the High Courts, and to elaborate discussions among the executive authorities as to the legality of a course taken upon the subject by one of the Local Governments. If the matter had been left to be regulated as a question of administration, all difficulty would have been avoided.

Another matter was this. There were certain parts of the Code which appeared to him to repeat without necessity the various technicalities of the English law, as to the district in which an offender should be tried. It was altogether too long a story to tell how the English law on this subject came to

be as intricate as it was. The whole of those provisions might be replaced by a simple provision to the effect that the offence was to be tried in the district in which the crime was committed, unless there was some reason to the contrary, such as the convenience of witnesses. Some section of that kind would save about ten sections of the Code. Then there were provisions relating to criminal pleading, pointing out the way in which charges were to be framed, and dealing as the English law dealt with the case of a man tried for one offence and proved to have committed another. The English law upon such subjects was in a strange state. It might be said to consist of rigid technicalities modified by sweeping exceptions.

MR. STEPHEN thought that it had been too closely followed in the Code of Criminal Procedure, and that nothing was really required beyond provisions which would secure to a man such notice of the nature of the charge against him as would enable him to make a full defence to it, and would form a memorandum of the trial when it was over. It appeared to MR. STEPHEN that there need be no great difficulty in providing for this in a short and simple manner.

The Bill contained a number of provisions relating to evidence. He thought they might certainly go out of it as they would find a place in the general law of evidence which was under consideration. In short, it was his impression that, if the Code were carefully examined from end to end with a view to the suppression of all extraneous matter, it might certainly be shortened by some sixty or seventy sections, and possibly by many more. So much with regard to improvements in the Bill as it stood. He now came to consider the substance of the present system.

There was a great danger in attempting to undertake too much in regard to a matter of this kind, and he would be the last to suggest it. We had a system of criminal procedure such as it was. He did not know that it worked badly. It was understood, and no doubt we had to struggle with very great difficulties indeed in a country where it is necessary to administer justice by foreigners in a foreign language, and amongst a people who certainly did not give very great facilities for collecting trustworthy evidence, and also where the safe-guards of the public Press and public discussion hardly existed at all. Under these circumstances it was impossible not to feel that any system which could be devised by the wit of man must yield results which could not be considered absolutely satisfactory. Therefore, any system which had been found to work reasonably well, ought to be criticised with great respect, especially by a person situated as he (MR. STEPHEN) was. He mentioned this by way of preface to some

remarks which he thought it desirable to make on the general features of the system, which he put forward in the hope that those who were acquainted with its working might see how the system struck a man educated under the English law, and might explain and justify matters which to such a man appeared questionable. He wished to throw out these suggestions in the hope that, while the Bill was under consideration, information might be furnished for the consideration of the Committee on the Bill.

The first matter to which he had to refer was this. The cardinal point of the whole system was the law of appeal. The whole system was based on the principle that the great safe-guard for the proper administration of the law was that the superior Courts should keep in order the Courts below by revising their judgments. Several remarks suggested themselves on that practice. One was that the system devised was very intricate. There were no less than three kinds of appeals. The first was the appeal proper, which lay in the cases specified in the Code; then, the process of reference in cases of capital sentence; and thirdly, the more general process of revision, which included the general supervision exercised by Court over Court, each in its degree, and by the High Courts over all the rest. The intricacy of such an arrangement was objectionable if it could be avoided. Where there were three ways of doing a thing they were sure to interfere with each other. For instance, a regular appeal was both on the facts and on the law of a case. But revision was a process which applied to law only; and he must confess that the inclination of his mind, judging from English experience, would be that this distinction between fact and law would be sure to produce great intricacy and not a little injustice. He could imagine many cases in which the Court of revision might see that the law was right, though the facts had been wrongly found, and in which they would thus be obliged to pass by an injustice without supplying any remedy for it.

There was another point connected with appeals. If an appeal was admitted absolutely at the option of the defeated party, the Court of first instance became a mere instrument for collecting evidence for the opinion of the Court above. The judgment of the Court of first instance in such cases was binding only if both parties acquiesced in it. Otherwise not. Surely this was a mistake. If a man was not fit to decide a case, he should not be allowed to try it. But if we allowed him to try the case, his judgment ought to be allowed weight, and people should not be allowed to appeal from it without showing in the first instance some ground for supposing that he was wrong. There was another difficulty in this matter. He had heard it said by a person well acquainted with this procedure, that the effect of the system

was that, though a man was put on his trial three times, he was never tried at all. That was rather a caricature upon the system, but still there was something in it which required attention. When the accused was before the Magistrate, the Magistrate enquired into all the circumstances of the case; he saw the witnesses and heard what they had to say, and recorded the evidence. He finally committed the man for trial before the Court of Session. He had thus a good opportunity to form an opinion on the guilt or innocence of the prisoner; but his province in the matter was simply to say whether he thought the man should be put upon his trial. This might be called the first trial. Then the Sessions Judge tried the case, with the knowledge that the Magistrate thought the man guilty, and with no better—perhaps with a worse—opportunity than the Magistrate of forming a sound opinion. The Sessions Judge passed sentence, and this might be regarded as the second trial. But his sentence was not final. The accused appealed to the High Court. The High Court pronounced a final judgment, but that judgment proceeded entirely on hearsay evidence—on some one else's report of what the witnesses had said. This was the third trial. The result was that the man who had the best opportunity of forming an opinion on the matter pronounced no sentence at all; that the Court which first pronounced sentence tried the case, not when it was fresh, but after a very rigorous examination by a Magistrate had coloured all the proceedings, and that the Court which pronounced the final sentence, had the worst opportunity of the three for forming an opinion. Moreover, each Court was dependent to a certain extent upon the Court below, not only for evidence, but for an estimate of the way in which the evidence was given, for both the Magistrate and the Sessions Judge had to record any remarks which they thought material as to the manner, &c., of the witness; so that the High Court decided the case finally upon reports of evidence which they did not hear, and accounts of demeanour which they did not see, and that, although they were constantly protesting against hearsay evidence. A case lately came to his notice officially in which the Magistrate recorded his opinion, that a particular witness knew a great deal more than he chose to tell. From the peculiar circumstances of the case MR. STEPHEN entirely agreed with the Magistrate. But, when that deposition, with that remark, went before the Sessions Judge, was he likely to hear that man's evidence in an entirely unbiased spirit? Was the High Court likely to do full justice to that evidence? The result of the whole system was that no one ever had before him the real merits of the case, being at the same time under the responsibility of deciding what the judgment ought to be. Unless we got those two things together, we could not get a sound and unbiased judgment. Of those three tribunals, impressing one another with their opinions, it seemed to MR. STEPHEN that it might be said

that the man was really tried by no one of them, but by all three together in confusion. That might be right; it might be the best way to struggle with the difficulties that were to be overcome. But he should have thought that a far simpler and more solid form of trial might have been devised if the attempt had been made. It seemed to him that the great object was to get a really good trial as soon as ever you could, because if you had a rotten foundation to stand upon, he (MR. STEPHEN) did not see how you could ever arrive at a satisfactory final result. If it were the duty of the Magistrate to take down the evidence, to see the spot on which the crime was committed, to look in short into the whole matter when it was fresh; and the opinion he formed was wrong, he did not see how it was possible for any Court of appeal ever to set it right. He would wish to strengthen in every possible way the first Court which dealt with the transaction; to have as good an enquiry as the nature of the case would permit; to let that be the basis of the whole transaction, and let it be distinctly understood that in most cases that investigation would be final.

He was quite aware of the difficulties connected with this, and that there were many things which would have to be considered, but that object ought to be kept in view. The trial by the man who saw and heard the witnesses and went to the spot ought to be the really important matter. He (MR. STEPHEN) was quite aware at the same time that in this country you must have control; you must have the power to set to rights errors of judgment, or of over-zeal or of too little zeal. He recognized that as fully as anybody, but he thought that that control ought to be made as direct, as simple, and as stringent as it possibly could be. It ought not to be fettered by distinctions between fact and law, and it ought, he thought, to apply to acquittals as well as convictions. He would not give a man a positive right to appeal in any case, but he would let him show that there was a probability that the judgment against him was wrong. He would make the lower Courts as good as possible, so that the presumption would be that the conviction was right; but he would not let there be an appeal of right. If the question was to be re-opened, first let the man interested show that the question ought to be re-opened. When you had decided that, MR. STEPHEN would give the superior Court power to do full and complete justice between the parties.

As the matter stood at present, there were all sorts of restrictions. He would adduce one. Although the prisoner might appeal, the Crown could not appeal. Frequent attempts had been made to establish a system of criminal appeal in England. One argument against it had always been that, if there was an appeal at all, there ought to be an appeal on both sides, and so strongly had that been felt that it had been one of the principal reasons why no appeal at all was allowed, except in a most

anomalous shape in England. In point of fact the Secretary of State for the Home Department was a Court of Appeal; a very bad one in some respects, and a good one in others. He was a bad Court of appeal for reasons which MR. STEPHEN did not think it necessary to explain, but if he exercised his function of recommending a pardon in a different way, as proposed by Lord Penzance in a Bill introduced into the House of Lords' last Session, he would be as good a Court of Criminal Appeal as we could have. The arrangement proposed by Lord Penzance was, that the Secretary of State and a judge who tried the case should have power, if cause were shewn, to go into the whole of any case tried, and either to direct that it be tried again, or to vary or quash the sentence, or to do whatever might be necessary in order to remedy any mistake which they had cause to suspect. We had an opportunity of introducing a system of that kind into this country by throwing the processes of appeal and revision into one. If you empowered a superior Court, should cause be shown why the matter should be re-opened, to re-open the matter on both sides, you would have all that was now done in a very irregular way by the Secretary of State and something more; and he (MR. STEPHEN) should be very glad to receive suggestions from those more acquainted with the existing system than he was, whether such a plan could be adopted in this country. That might possibly raise the question as to the executive control which the High Courts at present exercised over the subordinate Courts. About that executive control much might be said if necessary; he would throw out as a suggestion that it should be separated from the judicial functions of the Court, but the subject was one which he could not at that time discuss fully.

Another subject to which he wished to refer was the subject of trial by jury. He should be very glad to be informed as to the degree of success which so remarkable an experiment had obtained. There were certainly some considerations which had led him to suspect that the institution of trial by jury was not adapted to this country, and it would be very desirable to know what experience had to say about the success of the experiment. Many points in the present system were singular. It was unhappily notorious that oral testimony in this country was of little value. You could place little confidence in the veracity of witnesses. Why then did you place so much confidence in the impartiality of jurors of the very same class, from whom you did not even take the security of an oath, whatever that might be worth? Why in particular put more confidence in the verdict of such a jury than in the opinion of a Magistrate or Sessions Judge? An appeal lay from their decisions, but from the verdict of a jury, however monstrous the conviction or acquittal might be,

there was no appeal. The experiment might have succeeded, and it might be quite right; but all that he (MR. STEPHEN) could say was that it was extraordinary.

Another circumstance seemed very remarkable. Whenever you had trial by jury, the goodness or badness of the verdict must depend on the summing up of the judge. Now, he greatly doubted whether many of the Sessions Judges were qualified to sum up in a Native language. Hardly any of them had had any practice at all in public speaking, and however well a man might know a foreign language for common purposes, it was quite another thing to sum up in it; upon, it might be, numerous and intricate facts. He (MR. STEPHEN) had heard thousands of summings up by Judges of all sorts, professional and unprofessional. Nothing could be more difficult than to sum up at all well in one's own language, and he did not believe that any one could do it who was not very much accustomed to public speaking. To sum up well or even intelligibly in a foreign language appeared to him difficult in the extreme, not to say impossible. Even this, however, was not all. The Sessions Judge had to record his summing up and to transmit it to the High Court. Of course he could not both speak and write at once. He must therefore write it out from memory. Could there be any moral doubt that he would record neither what he actually did say, nor what the jury supposed him to have said, but what he meant to say, which might and probably would be quite a different thing? As the whole success of trial by jury depended upon the summing up of the Judge, if that security were wanting, all that he could say was, that the system of trial by jury in this country must be in a very singular state. MR. STEPHEN did not presume to pass an opinion on such a subject; but it was very well worth consideration, and it would be desirable to have some information of the degree of success which had attended the system.

He had now gone through the main points which he wished to be considered. He wished to state, in conclusion, that he made these observations, not as indicating any policy of the Government, but as the personal criticism of one who had paid considerable attention to the subject of the administration of criminal justice; and he made them in order that the Committee might receive information from persons competent to give it, and that the questions raised might be considered with the attention that their great importance deserved.

The Motion was put and agreed to.

PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to consolidate the law relating to the Government Paper Currency, and moved that it be referred to a Select Committee with instructions to report in a month.

The Hon'ble MR. BULLEN SMITH said that there were one or two remarks with reference to this Bill which he had intended to bring forward in the Committee, on which he had no doubt he would have the honour to serve. But it had been suggested to him, since coming into the room, that, as the points in question were important, it would be more in accordance with the custom of the Council that they should be brought forward at this stage of the proceedings: he would, therefore, beg leave to make a few remarks on the subject, although he was not prepared as he should wish to be in submitting anything for the consideration of the Council.

The first point to which he would advert was that this Bill would cause a good deal of disappointment out-of-doors, if amendments were not made in sections six and seven. He meant that the time had now come when some very considerable modifications might be made in the number and extent of the circles of issue, which had been fixed at their present limits ten years ago, if indeed they might not be altogether abolished. At that time the paper currency was new and tentative: the only paper currency previously known was the currency of the Presidency Banks, which was small and confined to restricted limits. When Mr. Laing introduced the paper currency, he said that we should proceed very cautiously, and the chief reason for the constitution of so many circles of issue was the position of the country as regards the facilities for transmitting bullion. It was felt that the inability to send bullion speedily to any particular place in which there might be a run on the treasury might be attended with very great inconvenience. Without wishing in any degree to undervalue the opinions of those who spoke on this subject with authority, it seemed to him that the same causes which produced a run on any one treasury, would imply mistrust of the Government which would extend to every other treasury in the country, and therefore a run would not be confined to any one place. Admitting, however, the danger of a run on one treasury as possible, he thought that sufficient reason could now be found for greatly modifying the existing provision regarding circles of issue. He thought that, with a line of railway extending from Calcutta to Lahore, it was only reasonable to think that the Government was in a position to meet speedily any unforeseen demand at any one of the places of issue, and that the great inconvenience felt by the currency not being convertible at any place other than the place of issue, might be removed. It did seem now unreasonable that a traveller carrying notes of the Government of India from Calcutta should find himself twenty-four hours after in a district where he could not insist on those notes being cashed, and that he could only obtain change as a favour or by paying a discount. He trusted, therefore, that in Committee the sections affecting circles

of issue would be so modified as to give to the Government currency note a much wider area in which it should be payable.

The second point to which he wished to refer was still more important. It was whether the time had not come when the Government of India might give the public the great advantage which would result to them, and themselves take the legitimate profit which would accrue, by reducing the minimum size of the note below the point of rupees ten at which it now stood. He had read over very carefully all that was said in this Council on this subject in 1861, and he found that there was a very considerable difference of opinion on the subject; but that, on the whole, the balance of opinion was in favour of a smaller note than that now in force. His Excellency the present Commander-in-Chief, and Sir Bartle Frere, late Governor of Bombay, held that a note of five rupees ought to be the minimum; and both of those officers knew the country so well that he thought their opinion ought to be of great weight. There were others also who were in favour of the five-rupee note, but who did not press their opposition, because Mr. Laing held out hopes that the Government would at no distant date be in a position to give a gold currency which would, in some measure, obviate the inconvenience which was undoubtedly felt by the absence of any note of smaller value than rupees ten.

MR. BULLEN SMITH did not at all mean to say that the paper currency as it now stood had not been successful. On the contrary, the Chief Commissioner of Currency lately issued a table, which he had no doubt most Hon'ble Members had seen, showing to what extent the paper currency was used in daily transactions at the presidencies, by the local banks, by members of the Chamber of Commerce, and by the Trades' Association. If his memory served him rightly, this was something like thirty-six per cent of the whole monetary transactions of the parties in question. That could not be considered otherwise than satisfactory, as we were only in the tenth year of the Act. But he (MR. BULLEN SMITH) believed that even in such a return, the existence of five-rupee notes would very materially raise that average, especially as regards the daily transactions of the members of the different Trades' Associations. But if we came to consider whether we had got the currency in circulation among the people, whether it had really taken hold of the country generally, it seemed clear that we must admit that in this respect it was almost a total failure. Speaking from his own experience, and information derived, he found that the currency notes sent out of the presidency went up chiefly for the purpose of paying rent and such like purposes: they were paid away at once by planters and others either directly to the Collector, or to the zamíndár, who paid them

to the Collector on account of revenue, and there the so-called circulation ended. There was no circulation in the sense of percolating through the country, and entering into the daily transactions of the mass of the people. On the contrary, one might go through the length and breadth of Bengal, without scarcely seeing such a thing as a currency note, even in important háts and places of trade. Other Hon'ble Members could say whether this was true also of other districts; but he had been told that, within ten miles of Lahore, a respectable inhabitant of a village did not know what a currency note was, on its being shown to him, and said he thought it was a parwána. With such facts as these he did not think that we ought to rest satisfied. If we had a smaller note, which would be more within the available means of the people, more proportionate to the sums of money they were accustomed to deal with, it would be an advantage to the people and a profit to the State. His idea of what real circulation was, or ought to be, was to be found in Scotland, where the great bulk of the people positively preferred the one-pound note to the sovereign simply because they were more accustomed to it. The one-pound note of Scotland much more nearly represented the weekly earnings of the lower classes of the people in that country, than did a ten-rupee note the monthly incomings of the bulk of the population here, and he believed that, had there been in Scotland such a disproportion between the lowest currency note and the means of the people as we found in this country, a circulation so successful would not have been attained. He did not in the least entertain the opinion, or wish to represent, that there was no difficulty in lowering the value of the note; he was fully alive to the responsibility of making any change; but from all he could learn he thought that, on the whole, the proposed change was desirable, and that the five-rupee note would prove to be an advantage to the people and a benefit to the State.

The Hon'ble Mr. Cowie said that he wished to endorse the opinion of the Hon'ble Mr. Bullen Smith with regard to the advisability of issuing notes of a lower denomination than those now in circulation. He believed that they would gradually prove of very great advantage to the public as well as to the Government.

The Hon'ble Sir Richard Temple said that as this was merely a consolidation Bill, he did not come into the Council prepared to enter into the consideration of the points that had been adverted to. But as the Hon'ble Mr. Bullen Smith had made these valuable observations, Sir Richard Temple hoped he might be permitted very briefly to advert to them.

The two points noticed by the Hon'ble Mr. Bullen Smith, and the one point in corroboration by the Hon'ble Mr. Cowie, had been for the past two years occu-

pying his (SIR RICHARD TEMPLE's) attention. Personally his own opinion had always coincided with the views that had been set forward. If he could have had his own way, he believed that the suggestion which the Hon'ble Mr. Bullen Smith had so justly made would long ago have been carried out. But as His Lordship in Council was aware, in these matters, a great number of authorities had to be consulted in a great variety of provinces, and though there might be unanimity amongst the Hon'ble Members of the Legislative Council, there was not that unanimity everywhere, and that was the sole reason why full effect had not already been given to the measures indicated. These two very points were under the immediate consideration of the Financial Department, and it was his intention to bring forward, in another branch of the Government, propositions to the effect of that which the Hon'ble Mr. Bullen Smith desired. He (SIR RICHARD TEMPLE) would wish, not perhaps exactly what is commonly called the "universal note," that is a note of which payment could be demanded by law at every treasury in India, but a note of which payment could be demanded at the principal public treasuries of each Presidency; for instance, a note of the Calcutta circle, the holder of which could cash it at the principal treasuries throughout the Bengal Presidency. There was nothing in the law to prevent us from arranging that.

The other point referred to by the Hon'ble Mr. Bullen Smith was perhaps a more difficult one, namely, whether we should lower the minimum denomination of the notes. SIR RICHARD TEMPLE's own opinion had been, for the last two years and more, that we should have a note of a smaller denomination than ten rupees, that is, a note of five rupees; and it was possible that before the Bill passed through Committee he might be able to submit some proposition to this effect. That being the case, he was extremely glad to hear the opinions expressed by such competent judges as the Hon'ble Mr. Bullen Smith and the Hon'ble Mr. Cowie. Whether or not their anticipations would be fulfilled he could not say;—namely, that the issue of these notes would cause the circulation of the Paper Currency to expand. He was sorry to be obliged to corroborate what had been said as to our circulation, though highly successful in the presidency towns, not being equally successful in the interior of the country. He had now under preparation a Resolution in the Financial Department, directed to the several Local Governments, calling their attention to the fact that the circulation in what were called Mofussil circles did not evince the vitality which we desired. Possibly the issue of five-rupee notes might cause an improvement; but he was not sure, because if a ten-rupee note was beyond the means of the mass of the population, a five-rupee note was also beyond their means. Then, could we issue notes of a lower denomination than five rupees? He believed not. Still the issue of a five-rupee note was an experiment that ought to be

made, and the proof of the experiment would consist in this, as to whether the people applied for those notes or not. If they did, he presumed that it would be desirable to meet the want.

There was one more observation which he wished to make. He understood the Hon'ble Mr. Bullen Smith to make some allusion to the prospect of our issuing a gold currency, which had in a manner been promised by Mr. Laing. As the Council were aware, there was no gold coin in India which was a legal tender. Nevertheless, for the last twenty-five years, there had been going on a coinage of gold pieces of the value of fifteen rupees; but until quite recently it had not been in the power of the Government of India to issue gold coins of the value of ten or five rupees, for the simple reason that we had not got the mechanical means for coining them. It took a long time to get out machinery from England. It had taken a year and a half to get dies and other necessaries for coining these pieces. The Mint Master now reported, however, that he had got all that he required, and would be able to supply gold coins of those denominations; that was to say, whenever merchants or others sent their bullion for coinage, they might receive in return gold pieces of the value of ten and five rupees.

The Motion was put and agreed to.

EMIGRATION OF NATIVE LABOURERS' BILL.

The Hon'ble MR. CHAPMAN moved for leave to introduce a Bill to consolidate the law relating to the Emigration of Native Labourers. He said that the law relating to Emigration was now scattered over five Acts. The proposed Bill would be a further step towards the completion of the general work of consolidation now in progress. With the exception of some improvements in arrangement and wording, the existing law remained unaltered. The Bill would be referred to the Local Governments and the Protectors of Emigrants at the several presidency towns, and other authorities acquainted with the subject. Any suggestions they might have to make for improving the substance of the law would be duly considered by the Committee.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Robinson be added to the Select Committees on the following Bills:—

To define and amend the Law of Evidence:

To amend the Law of Insolvency:

For the Limitation of Suits.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Robinson be added to the Select Committees on the following Bills:—

To consolidate and amend the law relating to the local extent of the general Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities:

To consolidate and amend the law relating to the District Munsiffs in the Presidency of Fort St. George:

To consolidate the law relating to Cattle Trespass:

For the Registration of Assurances.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Hon'ble Mr. Cowie be added to the Select Committee on the Bill for the Registration of Assurances.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter—The Hon'ble Messrs. Cockerell, Inglis and Robinson and the Mover.

On the Bill to consolidate the law relating to the Government Paper Currency—The Hon'ble Messrs. Stephen, Bullen Smith, Cockerell and Cowie and the Mover.

The Council adjourned to Friday, the 16th December 1870.

CALCUTTA,
The 9th December 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

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