

Friday, March 12, 1869

**ABSTRACT OF PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

**VOL 8**

1869

**P L**

*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 12th March 1869.

P R E S E N T :

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

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

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

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 Rájá Shioráj Singh, C. S. I.

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

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to give validity to certain Rules for the administration of Government Forests in British Burma be taken into consideration. He said that this Bill had been reported by the Select Committee with a merely verbal alteration. But as it might have the effect of stopping certain suits which had been either threatened or brought in the Recorder's Court at Maulmain, he would again explain its object. Act XXX of 1854 was an Act to provide for the levy of customs in the Arakan, Pegu, Martaban and Tenasscrim provinces. Sections 6, 7 and 8 enabled the Governor General in Council to impose import duties on teak-timber entering the province from foreign territory by the rivers, and to make Rules for the floating of such timber, the penalty on contravention of the Rules being confiscation. These sections had therefore an especial bearing on the timber brought to Maulmain for exportation, and Rules appear to have been at once made under them, and duties imposed. More recently, Act VII of 1865 became law, which enabled the Government to make Rules relative to timber floated or

otherwise, but the timber must be the produce of Government forests. It received the assent of the Governor General on February 24th 1865, and in August of that year the Rules which MR. MAINE held in his hand were framed. They purported to have been made under Act VII of 1865, and the largest portion of them were undoubtedly valid under that Act. Certain of them, however, and particularly those relating to the station at Kuddo, were of doubtful validity, inasmuch as they applied to foreign-grown timber and imposed duties. The whole of the Rules were within the competence of the Government to make; but the mistake had been made of amalgamating them instead of issuing them separately under the two Acts. On the question whether timber in British Burma was unduly burdened with duty, MR. MAINE offered no opinion; but that question ought to be considered on its merits; the discussion on it should be initiated in the Financial Department and continued in this Council upon full information. It ought not to be settled through the discovery, if discovery it were, that certain Rules had been wrongly headed. The Rules purported to have been confirmed by the Government of India. MR. MAINE was absent on leave in England at the time of their issue, but he could not say that if he had been in India they would necessarily have come under his notice; he desired to state that, under orders issued by the late Viceroy not long before his departure, all Rules made under Acts,—which Rules were in fact a subordinate legislation,—would be sent to the Legislative Department for review, and if necessary for revision, so that it might be hoped that even this venial class of error would not again occur.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

#### CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART also moved that the Report of the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter be taken into consideration. He said that it would be in the recollection of the Council that when he first obtained leave to introduce this Bill, he had said that since the Code had been passed numerous suggestions for its amendment had been received by the Executive Government. Those papers were referred to the late Mr. Gordon who under-

took the task of comparing and examining them. At his death, the papers were referred to an informal Committee consisting of the Hon'ble Messrs. Brandreth, Hobhouse, and himself. In the course of the session of last year, MR. SHAW STEWART received an intimation from the Home Office that the time had arrived for bringing forward a revision of the Code, and he obtained leave to introduce a Bill. When he introduced the Bill, he did not refer it to a Select Committee at once, but the Bill was merely introduced and published for a year. In the course of that period but few reports on the subject had been received. The suggestions received were not very numerous or important, the principal being from the Government of Madras and the High Court and District Officers of that Presidency, and they had received the careful consideration of the Committee. Since the Bill was published, as he stated at the time, a despatch had been received from the Secretary of State, expressing the wish of the Home Government that the subject of the general amendment of the Code should be left to the Indian Law Commissioners, and that at present this Council should confine itself to amending the provisions of the Code without touching on any question involving matters of principle. These instructions had been carefully attended to by the Select Committee, which had been fortunately composed of officers who represented many different parts of India. Besides having the assistance of the members of the Executive Government in charge of the Legislative and Home Departments, the Committee had consisted of members who were acquainted with the procedure in Bengal, Madras and Bombay, and the Non-Regulation Provinces of India, and the subjects brought before them had, therefore, received due attention. The report of the Committee was so full and detailed, that MR. SHAW STEWART thought there were very few points on which it would be necessary for him to make any remarks. He should, however, go through the Bill and explain the few points on which further explanation seemed necessary, reserving for the present any remarks regarding the sections which he proposed to amend.

He would first refer to the section marked 23A. This was one of the sections the object of which was to enable the Local Government to delegate to officers under it the power of appointing Magistrates and Subordinate Magistrates. This would materially assist the administration of justice in the country. At present every appointment of a Magistrate, however small his jurisdiction, was required to be made by the Government and published in the Government Gazette. The power of delegating that authority to officers such as Commissioners and other high officers, would be very convenient, both as admitting of such appointments being made expeditiously and relieving the Gazettes of notifications which now crowded them.

He next came to section 61, in which an amendment was made with the intention of allowing a fine imposed on the offender to be levied on any property of his wherever it might be found. By the section as it now stood in the Code, the levying of the fine by distress and sale of property was limited to property within the jurisdiction of the Court passing sentence. It often happened that an offender had made away with his property and removed it to a different district: the power of levying the fine by distress of such property would now be given to the Court by which the offender was sentenced.

By section 114 as it stood on the interpretation of more than one High Court, search-warrants could not be issued unless the officer issuing the warrant specified exactly the property for which search was to be made. It was believed by the Committee that that was an inconvenient restriction; that it was often necessary, in the event of a crime being committed, to search the neighbouring houses for the purpose of tracing anything that might lead to the discovery of the offender. The amended section would therefore admit of the exercise of that power when the Court considered that the enquiry would be furthered by the inspection of any house or place.

The next sections to which he would refer were sections 130 to 132 C, which related to the proceedings to be taken when property seized by the Police was brought before the Court. The law had been interpreted in different ways in different parts of India, and there was considerable doubt as to what should be done with property brought before a Court, and regarding which an offence appeared to have been committed. Amendments had been adopted which admitted of the Criminal Courts passing any order which they thought right for the disposal of such property.

Section 185, as it stood before, provided for the property of an offender absconding and forfeited under section 184 being restored, if within two years after the attachment the offender surrendered himself and proved that he did not abscond for the purpose of avoiding justice. There was no provision for the restoration of the property in the cases of the offender being apprehended or not being brought to trial. It was quite possible that after property was forfeited it might be found that the offence was not committed, and for many other reasons it might be undesirable to bring the person to trial. The Committee had therefore worded the section so that property might be restored to the offender if he appeared or was found within two years after the attachment of the property, and proved to the satisfaction of the Court trying him for the offence of which he was accused, or, if not tried or committed for trial for that offence, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice.

In sections 209, 210 and 211 amendments had been made with the object of correcting and amending the law relating to the tender of pardon to an accomplice, with the view to his becoming Queen's evidence. Pardon might now be tendered by any Magistrate authorized to take up a case triable by the Court of Session, and the Court of Session was empowered during the progress of a trial to tender a pardon, instead of being obliged, as at present, to refer the accused person to the Magistrate for such purpose. The procedure before the Court of Session would be simplified by this change.

In section 270, as stated in the report of the Select Committee, an alteration which appeared in the Bill as recently drawn, had not been adopted. It was proposed originally to extend the power of giving compensation for frivolous or vexatious complaints, to cases of somewhat greater importance than those to which it now extended. This was considered a question of principle which should be left to be dealt with by the Indian Law Commissioners, but the Committee had made some slight amendments in the section.

The next section he would notice was section 276. By the law as it stood, great inconvenience was experienced from the direction that, when a Subordinate Magistrate found during a trial that he had not jurisdiction, he must refer the matter to the Magistrate of the District. The Magistrate of the District might at the time be at a great distance from the Magistrate trying the case, and there might be some other competent Magistrate close at hand. Power had therefore been given to a Magistrate trying a case in which he found he had no jurisdiction, to refer the case to the Magistrate of the District, or to such other Magistrate as the Magistrate of the District might direct.

In section 322 a discretionary power had been given to the Local Government, at the time that it directed trial in any district to be by jury, to direct that the jurors in such trials shall be sworn. There was some difference of opinion as to the propriety of administering an oath to jurors; it was therefore felt that it would be better to leave a discretion to the Local Governments. In some parts of the country such a procedure might be very desirable; in others it might not: the Local Government would therefore have the power of directing the oath to be administered or not as it thought fit.

In section 395 an amendment had been made with the object of securing the more frequent examination of criminal lunatics. At present such persons were only required to be examined once in every twelve months. It was proposed to require the examination to be made every three months. It was very undesirable that a man who was restored to sanity should remain for

twelve months in a lunatic asylum before an examination into his case was made.

In sections 413 and 415 the Committee had made alterations which would admit of appeals being preferred beyond the period of thirty days now prescribed.

Section 422 contained perhaps one of the most important points that the Committee had taken cognizance of. By the section as it stood, it was held by one of the High Courts that it was competent to the Appellate Court to enhance, in certain cases, the sentence appealed against. The Committee had no hesitation in considering that that power was not intended to be given by the framers of the Code. They had therefore added words which would prevent such enhancement in future.

There was also another alteration in the same section. It appeared that the language of this section of the Code was vague as to the attendance of the appellant at the further enquiry required by the Appellate Court. It might be very inconvenient to take the appellant from the jail in which he was confined, to a distant part of the district where the further enquiry was to take place; and it might also, in the opinion of the Appellate Court, be unnecessary that this should be done. The Committee had therefore given to the Appellate Court the power of directing that the appellant should be present, and had left to the Magistrate the option of having the appellant present or not, even if the Appellate Court did not direct it.

There was one section the necessity for amending which was brought before the Committee, but after much consideration it was determined to omit it. That was section 138, which required that every person who was aware of the commission of certain offences should give information thereof to the nearest Police officer. The offences mentioned in the section were all of a formidable nature, such as robbery, dacoity, lurking house-trespass by force, and other offences of a serious nature; but from this list one of the most serious offences had been omitted. It had been argued that murder ought to be included in that list. MR. SHAW STEWART believed he was right in saying that the reason why the framers of the Code did not insert murder in that list was, if the concealment of murder was made punishable, it would be difficult to get information of those domestic murders which were unfortunately somewhat common in this country. A murder took place in a house, and its inmates concealed it, the police went to make enquiries, and these inmates were the only persons from whom they could gain information of the offence; but of course they would give no information if it was punishable to have concealed their knowledge.

On the whole the Committee were of opinion that it was a question of principle that had been settled by the framers of the Code, and had better be left for the consideration of the Indian Law Commissioners.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that, in section 23G, the word "otherwise" be inserted after the word "as" in line 1. The object of the amendment was to assert the subordination of all Magistrates in the district to the Magistrate of the District. It appeared that there was considerable doubt as to the extent of that subordination. Some officers in the position of Assistant Magistrate, but with full powers, thought that in consequence of appeals from their decisions lying directly to the Sessions Court, they were exempted from subordination to the Magistrate of the District. That opinion had been put down as much as possible by the Executive Government, but still the law was not clear on the subject. The Committee had therefore recommended that that subordination should be clearly stated. The word now proposed to be inserted appeared to have been inadvertently omitted.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the following section be included under section IV of the Bill:—

"409. Any person convicted on a trial held by the Magistrate of the District or other officer exercising the powers of a Magistrate, or required by such Magistrate or other officer under section 295 or 296 to give security for good behaviour, may appeal to the Court of Session of the District."

He said, as stated in the report of the Committee, the provisions of the law relating to appeals were carefully preserved; but section 409, as it stood in the Code, contained the following words at the close of it:—"may appeal to the Court of Session to which the Magistrate or other officer is subordinate. To prevent mistakes, it was as well to avoid any reference to the subordination of Magistrates to any one except the Magistrate of the District. It was therefore proposed to insert the words "of the District" after the words "Court of Session," in lieu of the words above referred to.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the following section be substituted for section 435:—

"435. In the case of offences specified in the seventh column of the schedule to this Act annexed as triable by the Court of Session only, or by the Court of Session or Magistrate of the District, the Court of Session may order the commitment of any accused person who may

have been discharged by any Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which any Magistrate may have dismissed without enquiry.

"In the case of such offences, the Magistrate of the District shall have like powers where the Magistrate who has discharged the accused person or dismissed the complaint without enquiry is a Subordinate Magistrate.

"If the Court of Session consider that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the conviction and sentence, and direct the commitment of the accused person for trial before itself."

He said that section 435 as it stood gave the Court of Session the power of ordering the committal of an accused person discharged by the Magistrate, or of ordering an enquiry into any complaint dismissed by the Magistrate without enquiry. The only alteration proposed by the amendment went to give a like power to the Magistrate of the District as regarded Subordinate Magistrates.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in the last clause of section 44, the words 'to the person injured' and 'to him' be omitted, and that, in section 133, for "138," the figures "108" be substituted.

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in section 322, the words "at the same time" be omitted in the second clause of the section.

These words, he said, had been inadvertently added, and their omission would enable the Local Governments to direct that jurors should take oaths in cases where they had already ordered that trials should be by jury.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART further moved that, in the seventh column of the schedule, opposite section 347, the word "*ditto*" be read in lieu of the words "*Court of Session or Magistrate of the District:*" and that opposite section 381, the words "*Court of Session or Magistrate of the District,*" be read in lieu of the word "*ditto.*"

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the Bill as amended by the Select Committee together with the further amendments now adopted be passed.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence of prisoners, and for service of process upon them.

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

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend the procedure of the High Court of Judicature for the North-Western Provinces.

The Council adjourned till the 18th March 1869.

WHITLEY STOKES,

*Secy. to the Council of the Governor General  
for making Laws and Regulations.*

CALCUTTA, }  
*The 12th March 1869.* }