COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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 Tuesday, the 26th March 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
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 J. F. D. Inglis.
The Hon'ble W. Robinson, C.S.I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.

OATHS AND DECLARATIONS ACT AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved that the final Report of the Select Committee on the Bill to amend Act No. V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahomedans) be taken into consideration. He said that it would be in the recollection of His Lordship and the Council that this Bill had undergone considerable discussion, and that, on the occasion when it was last before the Council, it was referred back to a Select Committee, on the motion of His Honour the Lieutenant-Governor, in order that it might be reconsidered. A great deal of discussion had taken place upon it in Committee, and although the final result arrived at had been substantially to maintain the view originally taken, the form of the Bill had been somewhat changed. The Committee had given up the idea originally entertained of codifying the law on this subject by reducing it to a single enactment, and thought it better, on a full consideration of the whole subject, that the Bill should merely amend the existing law in two particulars, and should leave it in other respects as it was at present. If the Bill had been rendered a code complete in itself, it could hardly have failed to attract

unnecessary attention to the distinction which at present existed between the oaths of Christians and the oaths of Muhammadans and Hindús, which might have been invidious, and would in all probability have excited needless discussion. It was certainly unfortunate that the law on this subject should have to be gathered from a variety of authorities; but that, upon the whole, seemed a less evil than the one which formed the other branch of the alternative. Under these circumstances, the Committee proposed that they should simply add two sections to the existing law. The first of these sections prescribed that, when anybody objected to take an oath or make a solemn affirmation, he might make a simple affirmation instead: that option would probably scarcely ever be exercised. The necessity for this provision was obvious. It was in accordance with the course which had been taken for many years past in England, ever since the Quakers and Moravians and others first objected to take oaths. In this country, however, and at the present moment, there was a special necessity for such an enactment for this reason. The Evidence Act which was passed the other day repealed, amongst other enactments, Act II of 1855, and section 15 of that Act was the only provision by which a person could be excused upon religious grounds from taking an oath. That section, he might add, was couched in language which appeared to him not very happily chosen, and was one which, he thought, it would not be proper to re enact in the words in which it now stood. The section was this:—

"Any person who, by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not * * * * to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation."

He did not think that it was right to pass a law which in effect said, to a Quaker for instance, that, by reason of his defect of religious belief, or want of religious belief, he ought not to be permitted to take an oath, but should only be heard on affirmation. What prevented a Quaker from taking an oath was, not the want or defect of religious belief, but an excess of religious belief. The section was indeed so worded as to imply a sort of condemnation of those whom it professed to relieve.

The next section was one which Mr. Stephen considered very important. It was this:—

"No omission to take any oath or to make any solemn or simple affirmation; no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place."

He should best illustrate the importance of this by describing the state of the law as now existing, and then pointing out its practical results. The law at present on the subject was strangely complicated. In the first place, certain old Regulations provided that Muhammadans and Hindús were to be sworn respectively on the Korán or on the Ganges water. In the next place, Act V of 1840 declared that no Muhammadan or Hindú was to be sworn on the Korán or the Ganges water, but that, instead of being so sworn, he might make a solemn affirmation. Then, the Codes of Civil and Criminal Procedure provided that witnesses were to be sworn or to make affirmation according to the law for the time being in force relating to oaths and affirmations. There was not a word in the law of the country, so far as he knew, about oaths being taken by any other persons except Hindús and Muhammadans. In point of fact, oaths were taken by Christians only; and if the existing law was put into the shape of an express provision, it would stand thus:—"All Christians shall be sworn unless they object to the taking of an oath; no Hindú or Muhammadan shall be sworn at all." The Committee did not like to put that into express words. That was the reason why the Bill had been drawn as it now stood. That state of things led to this curious result. If a man, being a Christian, made a solemn affirmation, his evidence was given irregularly, and might be upset altogether. If, on the other hand, a Muhammadan took an oath, his evidence was in the same position. Now, as there was no sign by which you could know a Hindú or Muhammadan from a Christian, the consequences might be that, in the first instance, you might administer the wrong form and thereby invalidate the witness's testimony. On the other, after using the right form, the witness might invalidate his own evidence by coming forward and saying "I am a Christian, or a Muhammadan; I ought to have taken an oath, or made a declaration," as the case might be. From the intricacies of the law in this respect, the greatest possible confusion might arise. MR. STEPHEN might mention that, at the time this Bill was under consideration, there was a likelihood of the occurrence of one of the greatest scandals and miscarriages of justice which it was possible to conceive. When Lord Mayo was assassinated in the Andaman Islands, an enquiry into the case was held by the Magistrate. The assassin was committed for trial; he was duly tried by the Sessions Court and having been convicted was sentenced to the punishment which he deserved. The proceedings were sent up for confirmation to the High Court, and when they arrived at Calcutta it appeared that the Sessions Judge had recorded that the witnesses were examined upon solemn affirmation. In point of fact the witnesses, who were English gentlemen of high position and rank, had been sworn. But as it was recorded that they had made affirmation,

serious difficulty was felt in confirming the sentence of the Sessions Judge; and if it had not been possible to produce proof that, although it was stated in the record that the evidence had been given upon solemn affirmation, the witnesses had in fact been duly sworn, one of the greatest crimes which ever disgraced this country might have passed unpunished, for this reason and no other, that five English gentlemen had asserted 'in the persence of Almighty God' that they saw this and that, instead of kissing the Bible and saying "So help me God." The possibility of such a scandal taking place shewed how necessary it was that the law should be amended as proposed.

The result of the proposed amendment would be this: it would not in any degree touch the existing religious sanction, or interfere with the administration of oaths or solemn affirmations. They would still be imposed just as at present, and any advantage which might at present be derived from them would continue to be derived from them; but if, by any accident, a mistake was made, such as was almost certain to happen in a country like this, the effect of the amendment would be to prevent the evidence from being invalidated. That was the way in which the Committee proposed to deal with the case; and although, as he had said, it would certainly be more satisfactory if the whole law on the subject could have been reduced to a single enactment, the course which, after much discussion and consideration, had been taken, would be found to have secured every practical advantage and to have prevented a discussion which had much better not be raised.

His Honour THE LIEUTENANT-GOVERNOR approved of this Bill so far as it went. He might say, in general terms, that he was bound to accept it, having been consulted in the matter. He had no doubt that the Bill as now proposed would be a very considerable improvement, and especially that the fourth clause was a very great and necessary improvement. He was glad that persons who had objections to use the name of Almighty God, whether in an oath or a solemn affirmation, would be relieved from their difficulty by the provision of section 3. At the same time he might say that he should have been better pleased if the Bill had gone somewhat further; individually, he was extremely unwilling to abondon altogether the reliance on the value of an oath as calculated to elicit the truth in judicial proceedings in this country. The law, as it would remain under this enactment, although very much improved, would stand thus, that, in future, oaths would be administered to Christians only, unless they had any objection to take an oath. As he had said, he was bound to approve of the Bill as now amended, and he felt he had no right to press an addition of which he had given no notice. At the

same time he might say that he had been very much occupied during the last few days, and that his impression was that he had not seen the Bill in its present shape till this morning. He had drawn a section which he should like, if possible, to add to the Bill. He was in the hands of His Lordship; if he was allowed to read that section, he would do so. If His Lordship would permit, and the Council were disposed to discuss that section, he should be very glad. If not, he had no wish to oppose the passing of the Bill.

His Excellency THE PRESIDENT having intimated his consent to the reading of the proposed section,

His Honour THE LIEUTENANT-GOVERNOR continued—The section he proposed, and which might be inserted after section 3 of the Bill, was as follows :—

"In any judical proceeding, if any party thereto shall offer to swear, or shall demand that "any other party thereto may be sworn, in any form which is common among, or which is held "binding by, persons of the race or persuasion to which the person to be sworn belongs, and "such form of oath is not repugnant to justice and decency, and does not affect any third "person, the Court may, if it think fit, tender such oath to the person whose oath is offered "or demanded: Provided that no person who has not voluntarily offered so to swear shall be "compelled to swear. But if any person shall decline to take any oath so tendered, the fact "of his so declining shall be recorded and such record shall form part of the proceedings."

The section he had just read was intended to declare that oaths should in future be, not compulsory, but voluntary; that it should be in the power of any person to say "I am ready to swear according to the form of my race and creed to the truth of what I state," or "I demand that the witness shall be asked, are you or are you not prepared to swear according to the forms of your race?" His HONOUR proposed that the oath should not be compulsory, but that an entry should be made in the record of the fact that a person had accepted an oath, or had declined to take it. In case the witness had declined to take an oath, it would be perfectly open to the Court to put upon that refusal such a construction as it might see fit. The refusal to take an oath might be made by a man who had a conscientious objection to take an oath, or it might be put forward by a man who had no such objection, and yet was unwilling to take an oath. Such a provision would tend to the interests of justice and get rid of the anomaly that the only persons permitted to take an oath were Christians. The Council would observe that the proposal was that oaths should be administered only in such cases as the Court might think fit, and he proposed that the decision of the Court should be absolute.

He also proposed that it should be a condition that the form of the oath should not be repugnant to justice and decency, and that it should not affect third persons. The effect of such a provision would be, that oaths of an indecent kind or in an improper form would not be allowed, and an oath on the head of a child or third party would not be permitted. But it would be permissive in a Court to accept oaths which were in a decent and proper form. If a Hindú was willing to swear by a cow's tail, and a decent and respectable cow was available at hand, he should be permitted to take such an oath, and the value of his testimony would be increased by the weight that form of oath would give to it.

His Excellency THE PRESIDENT thought the amendment proposed was one of considerable importance, and that notice had better be given of it. He was not aware whether it would involve any serious inconvenience if the consideration of the Bill were postponed.

The Hon'ble MR. STEPHEN said that this Bill had been up very often, and the topic had been discussed again and again in Council and in Committee, and he did not see that any advantage would be gained by an adjournment. He thought that the Council was as capable of going into the subject now as at any other time, and he should much prefer that the matter should be disposed of now.

His Excellency THE PRESIDENT thought that the amendment before the Council was of a serious character, and if His Honour the Lieutenant-Governor desired to press the amendment, HIS EXCELLENCY thought that notice should be given, so that the members might avail themselves of the opportunity to consider the proposed amendment. For his own part, HIS EXCELLENCY had never considered this subject before.

The Hon'ble MR. STEPHEN suggested that the proper course would be for His Honour the Lieutenant-Governor to move the adjournment of the debate.

His Honour THE LIEUTENANT-GOVERNOR said that he was quite ready to make that motion, and he would do so in a formal way. As he had said before, he had no desire to press the subject if the Council were not disposed to take it into consideration. He would move that the debate be adjourned for one week.

The Motion was put and agreed to.

PANJÁB LAWS BILL.

The Hon'ble MR. STEPHEN also moved that the final Report of the Select Committee on the Bill for declaring what laws are in force in the Panjáb be taken into consideration. He said this Bill related to a matter of very great intricacy, and which it was necessary to explain fully. The Bill was intended to have been passed at Simla, in the Panjáb, in the month of October last. It had been very fully discussed at the time, but it was adjourned, in order that full consideration might be given to the opinions of persons acquainted with the subject. Those opinions had been received and discussed, and he was sorry that his hon'ble friend Mr. Cockerell, who had devoted considerable attention to the subject, was not present to take a part in the proceedings on the present occasion. MR. STEPHEN must warn the Council that it would be practically almost impossible to discuss the details of this measure on the present occasion, unless hon'ble members had already given great attention to the subject, inasmuch as it was of a very technical character. In order to lay the whole matter before the Council, he must go back to the time of the annexation of the Panjáb. At that time, it was considered by the then Government of India that, on the conquest or annexation of any new Province, it was competent to the Governor General in Council to make laws for such new dominions, not in this Council according to the forms prescribed by the Charter Acts which gave the Governor General in Council power to legislate, but in an executive way, and on the ground that the Governor General in Council represented the Queen, who individually had the right of making laws for what were called, in English law, Crown Colonies. That was different from the earlier view on the subject, for, when Benares and what were afterwards called the North-Western Provinces were conquered, the laws for the administration of those territories were made by express enactment; the Regulations and Laws previously in force in Bengal, Bihár and Orissa having been extended to them with some variations. That course was not considered expedient when the Panjáb was annexed, no doubt because the Regulations at that time had become exceedingly intricate and complicated. The course taken was to carry on the administration by means of executive orders, which took the Regulations of the other Presidencies as a general guide. The result showed that the course taken was wise. It was however found at once by those eminent men who administered the Panjáb at that period, that it was impossible to carry on the administration without some definite rules; andthe consequence was that a great variety of rules, to which MR. STEPHEN need not refer particularly, were made by the Board of Administration, and by Lord Lawrence when he was Lieutenant-Governor of the Panjáb, and were used by him and those who were associated with him in the government of the Province. Amongst those rules, there was one set collected together in a

book called the *Principles of Law*. That book was prepared by his hon'ble colleague, Sir Richard Temple, when he was serving in the Panjáb, and now passed by the name of the *Panjáb Civil Code*. The degree of legal force which attached to those rules was very doubtful ; and questions had been raised as to their legality, in consequence of which, when the Indian Councils Act was passed, section 25 was introduced, confirming all these rules inidscriminately. That section had been since taken as a legal declaration that, if the Government now wished to legislate, they must do so by means of a legal enactment and not by executive orders. Its effect was to give the character of law to a large body of rules which were never intended to be law, which were never collected together as a body of laws, which were never published in any complete form, and which were never even ascertained until last summer, when, in compliance with a circular of the Government of India, requesting that a collection of all such rules should be made, the Panjáb Government sent up a book compiled by Mr. Barkley as a collection of the rules on the subject. If any one would read those rules as MR. STEPHEN had done, he would discover the state of complication and confusion which existed. It was indeed impossible to carry confusion much farther. However, when they were carefully compared and collated, they turned out to be very much less difficult than they looked. It would be found that the Bill before the Council, and the Bill passed at Simla relating to the land-revenue, were really the nett result of the book to which he had alluded and of the *Panjáb Civil Code*. Therefore, if the Council accepted this Bill, the law of the Panjáb would be quite as definite as the law of any Province in India, not to say more so. That was the general nature of this Bill. He was extermely sorry that so many hon'ble members should have had no opportunity of testing the accuracy of what he said. Every point in the Bill was gone through carefully in the Panjáb, the whole of the Regulations had been carefully considered, and the two Bills in question were framed.

He wished to call the attention of the Council to the fact that the vague state of the law which it was proposed to remedy had involved very great practical inconveniences, and might do so again at any future time. In illustration of this, he would refer to three distinct instances of the inconveniences that had arisen.

In the first place, His Lordship and the Council would recollect the occurrence in this Council of one of the warmest discussions that had ever taken place, namely,

the discussion on the Panjáb Tenancy Act. That discussion arose entirely from the uncertainty which existed on the question what Regulations had been introduced into the Panjáb and what Regulations had not been introduced. The leading Regulation in the settlement law was the Bengal Regulation VII of 1822. Whether that Regulation was or was not introduced into the Panjáb by certain letters written to the Board of Administration, was one of those indeterminate questions upon which any two persons might form different opinions. The view taken by his hon'ble friend, Sir Richard Temple, and Lord Lawrence, on the one side, was entirely different from the view taken by a distinguished settlement officer, Mr. Prinsep, on the other; and the Chief Court of the Panjáb took the same view as Mr. Prinsep. The Chief Court held that the Regulation was law in the Panjáb and upheld Mr. Prinsep's proceedings. The effect was to produce very great discussion. The view of Lord Lawrence and Sir Richard Temple was that Regulation VII of 1822 was never introduced into the Panjáb at all; but that it was held up to the settlement officers as a guide in their proceedings for the settlement of the Province. MR. STEPHEN need not follow out in detail the practical consequences of those two conflicting views. But acting upon his view of the case, Mr. Prinsep practically reversed an immense number of decisions which had been given by the early Settlement Courts. MR. STEPHEN thought that the very fact of a controversy of that kind arising between two leading authorities in the Panjáb, was sufficient to show clearly the extreme importance of putting into a definite shape the laws which were in force in the Province.

The second illustration which he would give was also one of very great importance. Certain rules had been passed, by which the obligation of attending roll-calls was imposed upon those who were known as the habitual criminal tribes of the Panjáb. The policy of those rules might have been good, or it might have been bad; but as a fact they had been acted upon for a considerable time. After a certain time, the Chief Court of the Panjáb declared that those rules had not the force of law, and that they did not form part of the rules which were confirmed by the Indian Councils' Act. The effect of that ruling was to set a number of wandering criminal tribes free from all control, and to put a number of officers in the Panjáb into the position of having done a series of illegal acts when their supposed that they were discharging their duties. There, again, was another instance of the extreme practical inconvenience of the uncertainty as to what was and what was not law in the Panjáb.

MR. STEPHEN would give a third instance which would perhaps set the matter in a still more glaring light. The book called the *Panjáb Civil Code* contained

certain insolvency rules, the effect of which was somewhat to vary the procedure followed upon that subject in other parts of India. Under the Code of Civil Procedure, a sort of race took place between the creditors of a debtor : the man who first got judgment had it satisfied in full, and the balance of the debtor's property was divided amongst the other creditors. That was not at any time, and was not now, the law in the Panjáb. But under the Panjáb law, when a debtor was insolvent, his property was divided rateably amongst the creditors. MR. STEPHEN would not discuss the question whether the Panjáb law was right or wrong. He offered no opinion upon that subject; but he pointed out this strange state of things that, after the sale of a very extensive property had taken place, one of the Judges of the Chief Court held that these rules had not the force of law, and that the whole proceedings were null and void ; and another Judge, in another case, had held, with equal earnestness, that they had the force of law.

If MR. STEPHEN were at liberty to read to the Council the different opinions which had been delivered as to the character of the *Panjáb Civil Code* he could show, not only that there had been the most conflicting and contrary views as to whether that Code was or was not law, but that those who held that it was law had gone so far as to say that the Code was a Code of different degrees of inspiration. As many as six or seven degrees of inspiration had been ascribed to the different parts of the Code and as to the relation in which they stood to the rest. By one authority it was laid down that, if the *Panjáb Civil Code* was inconsistent with Muhammadan law, it overruled Muhammadan law ; according to another authority, if it differed from Muhammadan or Hindú law, it might be regarded as evidence of a custom which overruled those laws ; and according to another Judge, if the Code differed from Muhammadan law, Muhammadan law overruled it. In point of fact, this Code, which was drawn up by Sir Richard Temple with the best of motives and with geat ability as a text-book for persons who had no guide to administer the law, was said to be a sort of semi-inspired volume with different degrees of infallibility attaching to its different parts.

That was the state of thing, which existed in the Panjáb at this moment, and which it was the object of this Bill to remove. The Bill had been considerably modified from the shape in which it first appeared. The Committee on the Bill considered that the most rational theory as to the *Panjáb Civil Code* was that it was law ; that in so far as it professed to declare the Hindú or Muhammadan law, it must be taken to be subject to those laws; and that in so far as it differed from them it must be taken to alter them. The Committee accordingly extracted from the

Panjáb Civil Code those passages in which it differed from the ordinary Hindú and Muhammadan law, enacted them specifically as law, and declared that, subject to those alterations, Hindú and Muhammadan law were in force in the Panjáb. The Bill so drawn was referred for the opinions of the Judges of the Chief Court of the Panjáb. There was a good deal of correspondence on the subject, but the final result of that reference was as follows: The Judges said that they had not been in the habit of recognizing as law the deviations from Hindú and Muhammadan law which occurred in the *Panjáb Civil Code*, and in fact that they regarded the *Panjáb Civil Code* rather as declaratory of that form of Native law which prevailed in the Panjáb than as being itself law, except in regard to the two subjects of pre-emption and insolvency. That, he thought, was the result of their statements. The Committee accordingly struck out of the Bill the variations upon Native law taken from the *Panjáb Civil Code*, retaining only its provisions as to pre-emption and insolvency. Those now formed part of the Bill, and those he should ask the Council to pass as they stood. Then, the question arose, what version of Hindú and Muhammadan law should be administered? The Bill provided that the Hindú and Muhammadan law as modified by the custom of each place should be administered: if the custom and the law were the same, as at Delhi, the Hindú and Muhammadan law would be administered; if in other parts of the country the law was modified by custom, the particular customs prevailing there would be administered.

That brought MR. STEPHEN to make an observation on the amendment which was proposed by His Honour the Lieutenant-Governor.

MR. STEPHEN thought that the intention of the Bill to give the utmost prominence to custom was plain, but His Honour was not of that opinion; accordingly His Honour had drawn up an amendment in consultation with MR. STEPHEN, which he would propose and which MR. STEPHEN considered satisfactory. The amendment was as follows:—

"That, in section 5, line 6, all the words after the words 'religious usage or institution' be omitted, and the following be substituted:—

"the rule of decision shall be—

"(1) any custom of any body or class of persons which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority,

"(2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been

altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

The *Panjáb Civil Code* gave custom the effect of law, and it was one of the principal objects of Lord Lawrence that it should do so. MR. STEPHEN thought that the effect of the amendment would be to put that beyond all doubt or question whatever, and, if so, the position of things would be this: The *Panjáb Civil Code* would maintain the position which his hon'ble friend, Sir Richard Temple, intended it should have, as being an authorized hand-book. It would be available as evidence as to the custom in any particular case; but there would never again be a question as to whether that Code was law or only an exposition or commentary on it. He hoped the Council would consider this explanation satisfactory.

The rest of the Bill he should pass over very shortly. There were provisions relating to the Court of Wards, and there were sections taken from the Bengal Regulations and the practice of the Panjáb Courts. It was intended at first to put these into the Act relating to land-revenue; but it was considered more appropriate that they should find a place in this Bill. With regard to criminal judicature, the Committee proposed to extend the Penal Code to offences committed before its passing, with the exception of political offences. Before that time, there existed a sort of small Penal Code called *Rules for the Administration of Criminal Justice*, which was drawn up by Mr. Aitchison. Cases which would fall under it would now seldom arise, and if they did, there was little difference between the rules and the Penal Code. With regard to the rules referred to at the end of the Bill, he might observe that they were the rules which had already received the force of law under section 25 of the Indian Councils' Act. The Committee proposed to lay down, in a general form, the objects for which the Local Governments might make rules, and until such rules were put in force, the existing rules would be law.

That exhausted the subject of the Bill. Then came the schedules. The first schedule specified the enactments which were to be in force in the Panjab, and, the second, the enactments which were not to be in force. The letters to the Board of Administration and other documents contained in the book to which he alluded had been considered to introduce the Regulations, or what was called the spirit of the Regulations, into the Panjáb. As the Council was aware, the greater part of the Bengal Regulations had been abolished. Upon a careful consideration of the subject, it appeared, that the only Regulations which need be specified as being in force in the Panjáb were nine, which were put down in the

schedule. The Committee proposed to repeal all the rest of the Regulations and local rules contained in the Statute-book, the substance of which had been put into this Bill.

That was the nature of this most intricate transaction. He felt that he was very much in the hands of the Council as to its acceptance. He would repeat that it had been carefully considered in Committee. It would have been desirable, if possible, to have passed this Bill at Simla, where the Council would have had the assistance of His Honour the Lieutenant-Governor of the Panjáb and of Mr. Egerton, the Financial Commissioner. Those gentlemen had given great attention to the subject; their approval had been given to the whole Bill, except as to one point on which Mr. Egerton differed in opinion: as regarded His Honour the Lieutenant-Governor, it was his earnest wish that the Bill should be passed into law. MR. STEPHEN was sorry if hon'ble members had not had the opportunity of going fully into the matter; but he hoped that they would be satisfied with the explanations which he had been able to give.

The Hon'ble MR. CHAPMAN had no intention of opposing the passing of this Bill, but he thought it right the Council should know that the opinion of the authorities in the Panjáb was not unanimous in favour of the Bill. He gathered from the papers that Mr. Boulnois, one of the Judges of the Chief Court of the Panjáb, was not altogether in favour of the measure; and also that Mr. Forsyth, who was a gentleman of very great experience, did not approve of the Bill Mr. Forsyth said, in respect to the proposed abolition of the Panjáb Code—

"I regret this exceedingly, for it will entail on the people endless litigation, and on our Judges fearful labour. It is well known how intricate any point of Muhammadan or Hindú law is, owing to the different schools of their lawyers, requiring the Judge who has to administer the law to consult many authorities and often to call for interpretations from pandits and maulavis. Now, the merit of the *Panjáb Civil Code* was that, to a very considerable extent, this work of minute enquiry was rendered unnecessary."

Mr. Egerton, the Financial Commissioner of the Panjáb, in a letter dated so recently as January 1872, objected to all the provisions about betrothal and marriage having been left out. MR. CHAPMAN saw also that several authorities in the Panjáb objected to the provisions of the Bill by which all females were to be brought under the guardianship of the Court of Wards.

With regard to the provisions relating to pre-emption, MR. CHAPMAN thought that the rules laid down were admirable, and he should like to see more general

effect given to them; he was of the same opinion as to the provisions relating to bankruptcy.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR moved the following amendment:—

"That, in section 5, line 6, all the words after the words 'religious usage or institution' be omitted, and the following be substituted:—

"the rule of decision shall be—

"(1) any custom of any body or class of persons which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority,

"(2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

He agreed with his hon'ble friend, Mr. Stephen, that the effect of the Indian Councils' Act, as it was usually interpreted, had certainly been to render it necessary that some declaration of the law in force in the non-Regluation Provinces should be made. His Honour's own view—a view upon which he had acted for many years, and which he ventured to maintain was the correct view—was that, in acquiring new territory, we succeeded to the law of our predecessors, that was to say, to despotic power, and that we were entitled to exercise it until we were tied up by positive law, and in so far as we were not so tied up. He did not see anything in the Indian Councils' Act inconsistent with that view. He thought it unfortunate that the Indian Councils' Act had been otherwise construed, and that construction had taken so firm a hold that it was difficult to shake it. First, that Act had been construed to give the force of law to a vast number of letters and orders and documents which were never intended to be laws or regulations, and, the rules previously made by the executive power having been rendered valid by the Indian Councils' Act, it was inferred that the power to pass such rules ceased in the future; it came to be supposed that an officer could not hold up his little finger without having a law which would authorize him to do that. In one sense, therefore, there were too many laws, whilst at the same time there was this doubt as to being able to do anything without a law. His Honour did think that something should be done in the matter. When the Council, on a former occasion, were discussing a similar matter, he began by saying that he did not

accept the view which his hon'ble and learned friend, Mr. Stephen, had more than once propounded with regard to the duties of Members of this Council. His Honour thought that Members were bound to do something more than to echo their hon'ble colleague's views; that they were bound to exercise an intelligent opinion with regard to the Bills placed before the Council. He would not, therefore, excuse himself for venturing to exercise his judgment with regard to this Bill. He had served in the Panjáb during many years of his official career. He had succeeded to the Sikhs in charge of the territories in the province of the Sutlej before the annexation of the Panjáb. He had served in that country for many years, and he had continued to keep in view the course of administration in the Panjáb ever since. For the people of the Panjáb he had a great regard; they were a people in many respects of a very superior character, and he had had a second home amongst them. He had therefore a special interest in this Bill. After a quarter of a century of British administration the state of things was, he thought, such as to disappoint persons who were concerned in the administration of the province in the early days when he had served there; the plan of administration then pursued had not only been modified, but, he might say, entirely reversed. The Panjáb had come to be as law-ridden, as much ridden over by lawyers, he feared, as any part of British India. He had often expressed in this Council, perhaps it might have been thought in a somewhat jocular way, his abhorrence for the reign of lawyers; but in doing so, he did not in any respect mean to give that opinion in the way of a joke, but in the most serious and sad manner. He did consider that the predominance of lawyers all over the country was a very serious and growing evil, and he wished to declare his opinion that if ever the country became too hot to hold us it would be the lawyers that had done it. The Senior Judge of the Panjáb, an English lawyer who had in comparatively recent years gone to that province, was, he was told, strongly of opinion that the Courts were becoming a burden and a disaster to the people of the Panjáb. That being so, His Honour had looked to this Bill in order to see whether its effect would be to give new force to this law-ridden, lawyer-ridden form of administration. He thought the Council should consider this Bill very carefully, and he had himself been struck by the circumstance which had been noticed by his hon'ble friend, Mr. Chapman, namely, that there were a good many differences of opinion in respect of this Bill. He had also had the feeling that what was called the *Panjáb Civil Code*, which his hon'ble friend, Sir Richard Temple, had so large a hand in preparing, was a successful and creditable attempt at simple codification in our early days; and although His Honour had not himself had much practical experience in administering that Code, he believed it was a simple exposition of the first principles of law, and he had been somewhat unwilling to see it set aside and put an end to. But having done

his duty in going into this matter as narrowly as the press of business upon him would permit, he would say this, that when he sent for the *Panjáb Civil Code*, there was brought to him, not the small book which he knew as the *Panjáb Civil Code* as it existed in early days, but a volume of immense thickness, and he found that the Code had been overlaid by an enormous amount of commentaries, and it was almost impossible to extract from it the portions of which the *Panjáb Civil Code* originally consisted. That went very far to reconcile him to the speedy passing of this Bill, and he was much influenced in so reconciling himself by the opinion of His Honour the Lieutenant-Governor of the Panjáb, for whom he had the greatest respect, and who was stated to be very anxious that the Bill should be passed.

His Honour, having great respect for the Hon'ble Member in charge of the Bill, and the members of the Select Committee, including his hon'ble friend, Sir Richard Temple, who was also the sponsor for the *Panjáb Civil Code*, would not oppose, but would rather assist in, the passing of a Bill of this kind, provided it was passed in such a shape as would not make it dangerous to the peace of the country and facilitate the influx of a perfect horde of lawyers.

In examining the provisions of the Bill, he found that it was more an abolishing, than an enacting, Bill: it abolished a great deal, and re-enacted comparatively little. He also hoped and anticipated that almost all the existing law-books in the Panjáb might be swept away. That being so, he would try to make the best of the Bill. He could not say that he had no doubts as to the result; but it was his duty under the circumstances to make the Bill as good as possible; if the Council would accept the amendment of which he had given notice, it was his impression that a great part of the objections to the Bill would be removed. The provisions of the Bill which attracted his attention and with regard to which he had the gravest doubts, were those to which the Hon'ble Member in charge of the Bill had alluded at some length, namely, the provisions of section 5 as to the laws by which certain questions should be decided: it enacted, in regard to a large number of subjects, that the Muhammadan law in cases where the parties were Muhammadans, and the Hindú law in cases where the parties were Hindús, should form the rule of decision, except where the law had been altered or abolished by legislative enactment, or was opposed to the provisions of the Act. He was quite willing to admit that certain simple rules, excerpted from the Hindú and Muhammadan law, had to a certain extent had force in the Panjáb; but it appeared to him that a section of this kind would import into the Panjáb, not the simple law of the

Province, but the whole of the complications of the written Hindú and Muhammadan laws, and the whole of the voluminous case-law comprehended in the decisions of the Courts all over the country, and more especially in the decisions of the High Court at Calcutta. That he regarded with the gravest apprehension. He should so regard it, not only because it would open a wide door for lawyers, but because it was not the law of the Panjáb; not one out of ten, perhaps not one out of a hundred, persons in the Panjáb was governed by the strict provisions of the Hindú and Muhammadan law. The only object of HIS HONOUR'S amendment was to provide, in simple words, in such a way that the officers of the Panjáb in administering the law might not mistake, that custom came first, and that Hindú and Muhammadan law only came when custom failed. That was the principle he had ventured to express in the words of the amendment, which provided that—

"the rule of decision shall be—

"*First*—Any custom of any body or class of persons which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority"

As drawn, the Bill did provide, in a later section, that under certain circumstances regard might be had to custom; but as the arrangement now stood, it was proposed that the Hindú and Muhammadan law should come first. Moreover, by custom the Bill as originally drawn seemed to refer to *local* custom, but the customs were customs peculiar to persons rather than to places. Having then put custom first, in such a shape that those who administered the law would see that custom was marked first, and that it should be considered first, then came the second clause of the amended section.

"*Second*—The Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to be provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

So far as the Muhammadans were concerned, HIS HONOUR believed that such a provision would meet the case. He believed that comparatively few of the Panjáb Muhammadans were governed by pure Muhammadan law. It had always seemed to him that the Muhammadan law was a law, not for a settled place, but for a wandering people, possessed of flocks of sheep and herds of cattle which were divided amongst their descendants by rule of arithmetic. Therefore,

in dividing property and in other matters, where the parties were Muhammadans, it would be provided that the customs of the parties should first be ascertained, and, in the absence of any custom, the Muhammadan law should prevail; and as there could not be much doubt whether the person whose case was concerned was or was not a Muhammadan, HIS HONOUR thought that sufficient provision for such cases would be made by the amendment. But when they went farther, he had doubts whether the words of his amendment would meet the case of those who were not Muhammadans. The doubts which he entertained were centred in the one word "Hindú." What or who was a "Hindú"? That was a question upon which there was great doubt, and especially so in the Panjáb, for there really were very few true Hindús there. He thought that the Sikh pure was not a Hindú. He had adopted another religion, and was under a rule altogether different. But the great mass of the people in the Panjáb were Játs, and he questioned whether these Játs were Hindús; and that was a question which it was impossible for any man to answer. HIS HONOUR would explain what the difficulty was. It had been asserted, and the assertion had by some been mistaken for an axiom, that the Hindú religion was not proselytizing; that a Hindú would remain a Hindú to the end of the chapter, and that no one else could become a Hindú. That, he ventured to say, was altogether a mistake. Any one who had studied the history of India in some of the aboriginal tribes, might see the process of Hindúizing going on from day to day. It might be seen in the territories under HIS HONOUR'S own administration, and in some other territories, in the Central Provinces for instance, where he was before, and where there were many tribes in a state of Hindúization. He himself believed that the Rájpúts were adopted Hindús, and the Kols and other aborigines were turning themselves into Rájpúts with a view to an adoption into the Hindú hierarchy, and at this moment the process of Hindúization was going on amongst the Manipúris. That process went on through the system of caste, which was assumed to divide Hindúism from all other religions. Any tribe who paid tribute to a Bráhman, who in fact made their adoption into Hindúism profitable to a Bráhman, were accepted as a new caste into the Hindú hierarchy.

That was the case to a limited extent in regard to the Játs. They were a people who had, to a moderate extent, come within the influence of Hindúism. Therefore, in regard to the manners and customs of those people, it could not properly be said that their customs modified the Hindú law, but rather, on the contrary, that the Hindú law modified their customs. The Bráhmanical law of the Hindú was new to them. In parts of the country they had partially adopted

the Hindú law by engrafting it upon their customs; on the other hand, in some instances they had not accepted that law, but held by older and more widespread Aryan laws. That being so, HIS HONOUR'S doubt was whether his section would fully and entirely solve the difficulty; it would still remain to be ascertained whether the party to the suit was or was not a Hindú. HIS HONOUR might have liked to add a few words, but he felt himself entirely in the hands of the Hon'ble Member in charge of the Bill, as to the sufficiency of the amendment which he had proposed.

The Hon'ble MR. STEPHEN thought that the amendment would entirely meet the case. It might perhaps be doubtful whether a person was subject to the latter part of the amendment, or to the custom only; but he must be subject to one or the other. If a case were before the Court, it must be dealt with either according to some custom to which the parties were subject, or according to the Hindú or Muhammadan law, or according to the Hindú or Muhammadan law modified by custom; one or other of these ways must meet the case.

His Honour THE LIEUTENANT-GOVERNOR only wished to add five words to the second clause of his amendment. They were the words "hitherto governed by Hindú law" after the word "Hindús."

The Hon'ble MR. STEPHEN very much preferred the amendment as it stood: he thought that it covered every possible case that could arise. He must remind His Honour the Lieutenant-Governor that the introduction of the words he proposed would give the amendment a very different meaning from what it had as it stood.

His Honour THE LIEUTENANT-GOVERNOR would accept the assurance of the Hon'ble Member that his amendment as it stood would meet the object he had in view. Having the interests of the people of the Panjáb sincerely at heart, he was anxious to guard them from a law which did not belong to them, and from the lawyers who might devour them. If the Council accepted the amendment, he hoped it would go far towards the object. He had endeavoured to make the section as good as he could.

The Hon'ble SIR RICHARD TEMPLE said that on this question he desired to say a few words, and those words should be chiefly in corroboration of what had fallen from his hon'ble and learned friend Mr. Stephen. He could assure hon'ble members, especially those on the left, that the account that had been given of the state of ambiguity regarding the law was quite correct. The fact was that, within

a few years after the the annexation of the Panjáb, he (SIR RICHARD TEMPLE) was employed in the drawing up of what was now called the *Panjáb Civil Code*; as something had been said regarding the degrees of inspiration of that Code, he desired to explain that whatever he did in the matter was done under the general guidance and direction of Lord Lawrence and Sir Robert Montgomery, late Lieutenant-Governors of the Panjáb; if the term 'inspiration' had beenused in its ordinary and secular sense, those were the sources whence the inspiration was derived. No doubt the Panjáb authorities did intend that that Code should be made law: they might have been wrong or they might have been right; but such was the intention. They believed it was better that that Code, with all its imperfections, should be made law, than that the Panjáb should be subject to the known ambiguities of the Hindú and Muhammadan law and of the Regulaton law; and they had an idea that the Regulation law was liable to be perverted by interested persons, to the detriment of the simple folk of newly acquired Provinces. The Panjáb authorities were not allowed to carry out that intention. The Government of India of that period, no doubt by legal advice, seemed to hesitate to give their sanction. SIR RICHARD TEMPLE could confirm the statement that the intention of the Panjáb authorities was not carried out; but they were allowed to prescribe the Code as a Manual. It was so prescribed by the Judicial Commissioner of the Panjáb, who was, in his own person, Chief Court and Minister of Justice, backed by the entrie force of the Executive Government, and SIR RICHARD TEMPLE thought that the Council would quite understand that what was so prescribed had in a manner come to be regarded as law. Now, as an excellent mode of enforcing the observance of the Code, in the examinations which young Civil Officers had to pass, it was usual to put questions taken from this Code; young officers were thus taught to study the Code, and of course, having studied it, when they came upon the Bench, they administered it as law. This excellent state of things was disturbed from the time when the Chief Court was established. There was no longer a Juidcial Commissioner alone; there was substituted a Court of three Judges, one of whom would be taken from the Bar, and other Judges selected from Provinces outside the Panjáb, with Advocates, both Euproean and Native, to practise before the Court; and although the Chief Court did all it could to support the Executive in establishing the legal force of the Code, the Council would see that, in this state of things, it was open to any Judge, or Counsel, or any person interested, to dispute the validity of this body of law, and when the question was raised, it was impossible to show that the Code was law. So, notwithstanding the very laudable exertions made by the Court to maintain

the authority of the Code, questions were raised which caused great inconvenience. Thus, SIR RICHARD TEMPLE could fully corroborate all that his hon'ble friend had said as to the necessity of putting an end to this state of things.

Well, then, about the Hindú and Muhammadan laws, concerning which His Honour the Lieutenant-Governor had spoken very warmly, SIR RICHARD TEMPLE would explain that the Panjáb authorities in those days were fully aware of the ambiguity of those laws, of which the original character had become obscured by what was called Judge-made law. Therefore, they ascrtained and embodied in the Code what were understood to be the leading principles of those laws. For that purpose, they consulted all the leading law-books, and set forth the principles in consultation with the best Pandits and Maulavis in the Panjáb; and experience had shewn that the principles collated in that way were suited to the circumstances of the province, and had been generally adopted. The present Bill deliberately omitted these principles; that is to say, did not include them. No doubt that was the weak part of the Bill, and he was afraid that that weakness could not be remedied. Instead of these simple principles which had been so long observed, instead of that abstract of Hindú and Muhammadan law, there must now be substituted a reference to the body of those laws as discoverable by the Court from the various existing authorities. But he was afraid that that could not be helped. If the Code as it stood was not accepted by the Court as law, what was to be done? One way was for the Council to give the impress of its authortiy to the principles laid down in the Code. Though he maintained the perfect correctness of the principles laid down in the Code, yet he thought the Council could not, on its own responsibility, be asked to pass all these sections on the assurance that the Code was absolutely and certainly correct. That being so, there was nothing for it but to draft the Bill as it had been drafted, especially with the amendment proposed by His Honour the Lieutenant-Governor. The draft then omitted the sections of the Code which recounted the main points of the Hindú and Muhammadan law, and referred parties to those laws as ordinarily ascertainable, save so far as such law might have become demonstrably modified by custom. He (SIR RICHARD TEMPLE) could only hope that, when questions of Hindú or Muhammadan law arose, litigants in the Panjáb Law Courts would refer to the well-established principles of that Code, and recognize them as binding. Moreover, after the passing of this Bill, there would be nothing to prevent the Executive Government, or the Chief Court in its capacity of minister of justice, prescribing

the Code as a Manual for young officers. If that was done, he hoped that the advantages now derived from the Code would continue.

There were only one or two other points on which he would ask permission to say a few words. It had been objected and pressed by his hon'ble friend, Mr. Chapman, that some well-informed officers regretted the omission from the Bill of the portions of the Code relating to contracts of marriage during the infancy of the parties. SIR RICHARD TEMPLE would observe that that point was very carefully considered in Committee in his presence, and it was felt to be impossible to insert those particular sections in a legal enactment; the doing so would have raised endless questions as to whether the Government were justified in stamping with its authority, in any way, those provisions of Hindú and Muhammadan law which were opposed to the usages of civilized life, and which were calculated to impede the progress of society. That way of regarding these provisions might be wrong, but still that was the view which English legislators would ordinarily take, and such provisions had never yet been embodied in any enactment passed by the legislature of a civilized nation. The Committee felt that they could not ask the Council to give legal authority to such customs. But still there the sections remained in the Code, which he hoped would continue to be considered as a Manual, and would still be attended to and observed by the Courts as being, at all events, a record of custom.

Another subject to which he would refer was that of pre-emption. He was glad to observe that his hon'ble friend, Mr. Chapman, had no objection to the sections regarding pre-emption; they were particularly desirable in the Panjáb on account of the numbers of village communities which existed there. Each one of these countless communities formed a complete brotherhood or cousinhood in itself. The records of their descent from one ancestor, and their genealogical trees, were carefully preserved.

One word in regard to the question of bankruptcy. Some officers whose authority was entitled to weight had objected to this portion of the Code being included in the Bill; still he was sanguine that, whatever view might be taken by individuals, those provisions would be found to be just and equitable. But two specific objections had been taken. One of these was that the rules were unsuited to very small cases, and to the very humble persons to whom they would mostly apply in the Panjáb; that it was improper to put such machinery into play in petty cases, and that persons who owed £5 or £10 might come under the operation of all those provisions. That objection, SIR RICHARD TEMPLE thought, had been

met by the limitation of Rs. 500 or £50 which had been provided. Another objection was that those rules as to insolvency made no provision as to the liability of the insolvent debtor's after-acquired property for the payment of his debts after his discharge. SIR RICHARD TEMPLE did not believe that that objection was correctly founded, and he thought it could not have been urged by any one who had attentively considered the subject; for after providing for the administration of the insolvent's estate, the Bill empowered the Court to give the insolvent his discharge, but he was still expressly liable for any debt remaining unpaid. SIR RICHARD TEMPLE believed that the provisions in question would be found to secure the interests of the creditor, on the one hand, and on the other, to protect the debtor from that sort of duress which might hamper him in his efforts to recover himself, and might fetter his industry in the future.

With these remarks he begged to give a strong vote for the Bill as it had been prepared by his hon'ble friend, Mr. Stephen, and to assure his colleagues that, from the experience he had had in the Panjáb, he thought it was the best arrangement that could have been come to under difficult circumstances.

The Hon'ble MR. STEPHEN assumed that the amendment proposed by His Honour the Lieutenant-Governor was substantially accepted by the Council. He now wished to make a very few observations. The first subject to which he would refer was the Hindú and Muhammadan law. He thought that the sections as it would stand with this amendment would meet every possible case that could arise; the person must be subject either to the Hindú or Muhammadan law, or to the Hindú or Muhammadan law modified by custom, or to some custom other than the Hindú or Muhammadan law; and MR. STEPHEN could not imagine any case that did not come under one or other of those heads. That disposed of the objection to the Bill raised by Mr. Forsyth, and also in a great part by Mr. Boulnois, and it also disposed of the objections which has been stated by His Honour the Lieutenant-Governor of Bengal. MR. STEPHEN must say, with regard to this Bill, and with regard to many other matters connected with it, that it was really hardly fair to the law and to lawyers in general to speak of them in the way in which His Honour the Lieutenant-Governor had spoken. He did not think that it was right that the highest public servant in all Bengal should express the opinions which His Honour had expressed. They all knew what the evils of a complicated and intricate state of the law were. Most of them knew or might imagine what the evils of arbitrary power were. There were two ways only of governing: a country must be governed either by law or by the

arbitrary will of the person governing; and he did not think that arbitrary despotism had been shown by the history of India to be a very satisfactory state of things. If it was so good a thing as was supposed, he would ask how it was that the English were governing in India instead of the Native Powers, who were never shackled by law. If it was right to govern by law, then the only way to do so effectually was to simplify the law as much as possible; otherwise it would be necessary to say in every particular case what was meant to be done. The effect of such a course would be to get a numerous mass of cases which His Honour had described as a blessed condition for the lawyers. When MR. STEPHEN first saw the *Panjáb Civil Code*, it was contained in one small volume, but it had now swollen into a very thick book, in reading which he found it a hopeless business to ascertain whether he was reading the Code or the commentaries upon it. The only mode of getting simple and good laws was by legislating in an express form. That was the course taken of late years by the Government of India. No doubt that was a difficult task, but it must, nevertheless, be undertaken for the good of the people. Look at the Evidence Act which had lately been passed. Was that an Act which lawyers in general liked to see? It diminished the law by volumes and volumes, and it would be found much the same with regard to this Bill and the *Panjáb Civil Code*.

As regards the effect of custom, there was one point omitted which he thought was quite conclusive. The Panjáb had been for twenty years under British rule, and land-settlements had been made everywhere. Every custom throughout the country had been most scrupulously registered. The records of the different villages gave the customs of the country a degree of stability which they never had before. The thing had been reduced to a certainty, and all that the Bill would effect would be to remove an additional piece of intricacy by making that intelligible which was now quite unintelligible.

MR. STEPHEN need not follow his hon'ble friend Sir Richard Temple in his remarks. In his opinion that the existing rules as to betrothals could not be retained, MR. STEPHEN entirely agreed. The rules in question gave, amongst other things, absolute power to a father to dispose of his daughter in marriage. That was a provision which one might put into a circular, but which one could not ask the Legislature to enact as the solemn law of the land. With regard to many of those customs, he thought it was better to leave them to be dealt with according to justice, equity and good conscience. It was impossible that the Council should pass an Act by which a man might contract for a marriage with a baby two

months old, and that the Court should be bound to enforce the performance of such a contract. MR. STEPHEN could not think of putting such a proposition before the Council. He might mention one other matter; with regard to women being put under the guardianship of the Court of Wards, the Bill simply embodied the provision of the existing law. The Court of Wards had a discretion in the matter.

His Honour THE LIEUTENANT-GOVERNOR would only exercise his right of reply in regard to the remarks that had passed regarding lawyers. He would say that nothing was further from his mind than to detract from the reputation of those eminent lawyers who administered the law in this country. His observations referred to those abhorred hordes of legal practitioners who made the promotion of litigation a trade all over the country.

He hoped that his hon'ble friend Sir Richard Temple's suggestion that the *Panjáb Civil Code* should still be retained as a Manual would be adopted. As the work was out of print, a new edition might be prepared and circulated to all officers for their guidance in the discharge of their duties. He was sure that a better guide could not be put into their hands.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended together with the amendments now agreed to be passed.

The Motion was put and agreed to.

HIGH COURT JURISDICTION (SIND) BILL.

The Hon'ble MR. CHAPMAN moved that the Report of the Select Committee on the Bill to remove doubts as to the jurisdiction of the High Court over the Province of Sind be taken into consideration. He said that the Bill had been referred to the Bombay Government, which reported that it did all that was wanted.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN moved that the Bill be passed.

His Honour THE LIEUTENANT-GOVERNOR had no intention of opposing the passing of this Bill. He wished, however, to explain that he did not vote for its passing with an intelligent mind and because he approved of it. No sufficient information had been given to him or to most Members of the Council to enable them to judge whether the effect of the Bill would be good or bad. He had already expressed his dissent from the doctrine laid down by his hon'ble and learned friend,

Mr. Stephen, and his assent to the theory that the Members of this Council were not mere dummies. It struck His Honour that his hon'ble friend, Mr. Chapman, took a different view of this matter, according as the Bill came from the Panjáb or from Bombay. He knew no Hon'ble Member who was more ready to criticize Bills that came from the Panjáb, to complain of want of information, to pull them to pieces, and to criticize them in every way. But when a Bill came from Bombay, his hon'ble friend did not think it necessary to give the Council much information on the subject: he considered that, as the Bill was approved by the Government of Bombay, the Council had better pass it without more ado, and without any enquiry into the matter. At the last Session of the Council, a Bill from Bombay had been put before this Council in much the same way: it was a Bill to relieve certain gentlemen from paying their debts, and it was supported on the ground that the Government of Bombay had promised those gentlemen that they should be relieved. The Statement of Objects and Reasons appended to the Bill now before the Council consisted of a line and a half, and did not explain anything; and at the several stages through which the Bill had passed, his hon'ble friend had not condescended to explain anything, except that doubt had arisen whether the High Court of Bombay had jurisdiction over the Province of Sind, and that the Government of Bombay had resolved to remove that doubt by declaring that the Court had nc such jurisdiction. It might reasonably be considered, and His Honour believed it had been considered, that there was doubt whether or not the High Court had such jurisdiction.

The Hon'ble MR. CHAPMAN said that the High Court never had any juisdiction in Sind.

His Honour THE LIEUTENANT-GOVERNOR continued:—If there was no doubt of that kind, then, he would ask, where was the necessity for this Bill? When it was first placed before the Council in this bald form, he had ventured to say that is had considerable doubts whether the solution provided by this Bill was the right one. His doubts as to the desirability of keeping the Province of Sind from the jurisdiction of the High Court were occasioned by the circumstance that there were in Bengal two provinces situated very much like the Province of Sind; and although it had been found, in the early days of administration, that despotic power answered very well, and the power exercised by the Commissioner under the control of the Government answered very well, when matters were further advanced, and it was necessary to have a judicial authority independent of the executive, he thought it well that such authority should be vested in the best and the highest Court. In two provinces of Bengal, Chota Nágpúr to the west, and

Assam to the east, which were situated very much like Sind, the administration was under a Judicial Commissioner, who was subject to the control of the High Court. His Honour had not the least wish to remove those provinces from the jurisdiction of the High Court. He had no reason to believe that the Judicial Commissioners were of a standing and weight to make it desirable to exempt them from the control of the High Court as to the settlement of great judicial questions, which were better determined by the High Court than by the Judicial Commissioner without the contol of the High Court. To His Honour's mind nothing was more unsatisfactory than to find a couple of murder cases sent up for consideration amongst a number of other matters in a box. He thought that the determination of such questions was better left to properly constituted judicial authorities. The High Court at Calcutta had been found to be a reasonable body, well suited for the discharge of the important duties entrusted to it; it might be that the experience of Bombay had been different; it might be that it was more difficult to deal with the Province of Sind than with the two similarly situated provinces in Bengal. If such was the case, His Honour thought that those difficulties should be stated. He himself, and most of the Hon'ble Members of the Council, were entirely in the dark as to the reasons which had induced his hon'ble friend to introduce this Bill.

The Hon'ble MR. CHAPMAN could only repeat what he had already three times stated to the Council—namely, that this Bill had for its object the removal of a verbal doubt that had arisen as to whether the Province of Sind was or was not, in respect to the jurisdiction of the High Court, included in the Presidency of Bombay. There was no analogy whatever between the case of Sind and that of the Provinces in Bengal alluded to by His Honour. In the latter Provinces the High Court of Calcutta had exercised jurisdiction; but in Sind the High Court of Bombay, or the old Sadr Court, had never exercised, or made pretension to exercise, jurisdiction since the time of the conquest by Sir Charles Napier. He really had no further information to give his Honour, and could assure the Council that, as far as he knew, the Bill was of the simple and innocent character he had represented it to be.

The Hon'ble MR. STEPHEN could hardly imagine how His Honour the Lieutenant-Governor who was himself a Barrister of great distinction, and had been a Judge of the High Court, could have brought himself to make the observations which he had made regarding what he was pleased to term the "abhorred horde" of lawyers. It appeared to MR. STEPHEN that His Honour, in his wish to exclude the Panjáb from strict judicial administration, had himself raised exactly the same

sort of point in regard to that province that had arisen in connection with the meaning of the term "Presidency" in the Charter of the High Court at Bombay.

The Motion was put and agreed to.

PATTERNS AND DESIGNS.

The Hon'ble MR. STEWART presented the Report of the Select Committee on the Bill for the protection of Patterns and Designs.

The Council adjourned to Tuesday, the 2nd April 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Gent. for making Laws and Regulations.

CALCUTTA;
The 26th March 1872.

S. G. P. L.—No. 77 L. D.,—3-7-11—50.