COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL 11

Book No. 1

2 Jan. - 6 April

1872

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 2nd January 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.M.S.I., *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.
Major-General the Hon'ble H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
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 BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to amend Act No. V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahometans) be taken into consideration. He said this was a short Bill, but it was one which required some explanation, because the existing law on the subject had got into an intricate state, and because, although the Bill improved and simplified the existing law, yet it did not deal with the whole subject from the beginning to the end as he would have wished to deal with it. The existing state of the law upon this subject was this. First of all, there were various old Regulations; then the Acts relating to procedure authorized the taking of oaths in all judicial proceedings. There were, besides, a good many isolated Acts, scattered over the Statute-book, requiring people under certain circumstances to take promissory oaths. In 1837, an Act was passed, XXI of 1837, which enabled the Governor General and certain other authorities to dispense with promissory oaths in all cases. In the year 1840, another Act was passed, No. V of that year, singularly narrow in its scope,

which applied to the oaths and declarations of Hindús and Muhammadans; that Act commenced with these words:—

"Whereas obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindú or Muhammadan persuasion being compelled to swear by the water of the Ganges or upon the Koran, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted that, except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid within the territories of the East Indian Company shall make affirmation to the following effect:—

'I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth.'"

There was no provision, that he (MR. STEPHEN) knew of, regulating the form of oaths which were to be taken by persons other than Hindús or Muhammadans. That appeared to rest upon the practice of the Courts, although there were certain forms of oath provided in the old Regulations. These forms were now all done away with, and instead of them a solemn affirmation was substituted. The consequence of that was this curious state of things. The general rule was that every one must be sworn, but the form of the oath was not prescribed. On the other hand, Hindús and Muhammadans were not to be sworn, but they were to make a declaration which a Christain would regard as an oath. So far as he knew, there was no law in India by which a Quaker or a Moravian, or any other person with the exception of Hindús and Muhammadans, could be excused from taking an oath in any Mofussil Court. That was clearly an extremely awkward and inconvenient, state of things. It appeared that matters somehow went on until last summer when an instance occurred, not very important in itself, which drew the attention of the Government of India to the subject. The instance to which he referred was this. There was an Act passed in this Council about a year ago about Coroners, which provided that jurors should be sworn; whereupon the Madras Government stated that they wanted to have a swearing Bráhman to administer the oath to Hindús empanelled upon Coroner's juries, because Act V of 1840 only applied to the statements of witnesses in judicial proceedings and did not apply to jurors' oaths, and they wished to have the old practice renewed. On examining the Acts upon the subject, the several defects in the law which he (MR. STEPHEN) had mentioned were detected.

One important provision had been omitted from the Bill which had been originally put into it. In the first instance, the Committee proposed to adopt the plan of authorising, though not compelling, the Court to tender an oath to

any person in any shape binding upon his conscience. The Bill drawn in that manner was circulated for opinion in the usual way. The objections that were taken to that proposal appeared to him, when fully considered, to be conclusive. There was weight in the argument that, if you are to have oaths, you ought to have them in that form to which people attach the most importance, and, viewing oaths merely as an instrument for extracting truth, that looked very attractive; but there were very strong objections to it. In the first instance, there was the objection that it was hardly becoming to the dignity of Courts of Justice to countenance a miserable superstition merely because a witness here and there might be foolish enough to be influenced by it. Another objection was that many of the most effective of these oaths were such that, if permitted to be taken, they would impose cruel sufferings upon innocent persons. For instance, you made a man swear by the head of his son; the superstition connected with such an oath was that, if the man perjured himself, his son would die. Now, by imposing such an oath you certainly did put the son into a most unpleasant position, because the son might not believe in his father, and might believe in the superstition in question. He thought that, although there might be particular cases in which you might, by such means, attain some degree of truth, it was a mere speculation whether you would or would not, and directly the Courts began to rely upon it at all, they would cease to have any very particular effect. The fact was that these things were apt to be so very personal and peculiar to individuals, that no one could tell how they would act. It reminded him of the famous oath of Louis XI. There was a great discussion between him and the Constable of St. Pol as to the terms upon which the latter was to submit himself to Louis. Louis was asked to swear that he would give the Constable a safe-conduct; he said he would swear it with great pleasure: he was then asked to swear upon the cross of St. Lo, but he said he would not take that oath on any account. The Constable refused very naturally to accept a safe-conduct guaranteed by any other. As regards any particular person in a particular instance, one could of course understand that such a practical test of sincerity might be useful. If, however, you gave a definite legal value to an oath on the cross of St. Lo, or on a tiger's skin, or a cow's tail, their value would soon be lost, and after all that was not the sort of foundation upon which you could with any propriety or dignity rest the adminstration of justice. So much for the reasons why the Committee gave up that notion.

The next question was, what course should be taken? The course proposed was very simple, though it was not quite satisfactory to the feelings of a draftsman. It was to extend the principle of Act V of 1840 to the oaths

of all classes and persuasions. If the Bill could have been drawn in the manner in which he liked to see Bills drawn, it would have begun by stating on what occasions oaths should be imposed; on what people they should be imposed, and what classes should be exempted from taking oaths. But there would be a great deal of difficulty in doing that, and it was therefore determined to draw the Bill in the way in which it had been drawn now. First, it enacted that whenever, by any law, any person was required to take an oath or make a solemn affirmation—(the word "oath" applied to those now administered to Christians, Pársis, or other persons not being Hindus or Muhammadans: "solemn affirmation" applied to Hindus and Muhammadans who were excluded by Act V of 1840 from taking oaths)—the Courts might, in all cases, substitute a simple declaration for an oath, and that they should do so whenever it appeared that the person to whom the oath or solemn affirmation was to be administered had a conscientious objection to taking such oath, or did not understand its meaning, or regarded it as unmeaning or useless. In point of fact the solemn affirmation had, for all practical purposes, superseded all other oaths, except in the case of Christians, who were sworn in the ordinary manner. This Bill, therefore, as now drawn, simply carried out the intention of Act V of 1840, and made it of general application.

The next point was as to the form of declaration. The declaration in Act V of 1840—"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing, but the truth." The declaration in the Bill omitted the words "in the presence of Almighty God." The reason for doing so was, that it had been represented by various persons that the use of that expression, especially in the case of Hindus, was meaningless, objectionable, and unnecessary, and that they did not attach to it that degree of reverence which Christians only would attach to it. It had therefore been represented by nearly every officer that it had better be omitted. MR. STEPHEN added that if all persons were required to use that affirmation, all Christians who objected to oaths would be excluded from giving testimony. If a Quaker or Moravian, having conscientious scruples, were told to make this solemn affirmation, it would, from the use of the words "in the presence of Almighty God," be as repulsive to him as the taking of an oath which ended with the words "so help me God." The latter part of the section was to the same effect in regard to promissory oaths, and was little more than the re-enactment in a few words of Regulation XXI of 1837.

The last section of the Bill (4) empowered the Courts, either in addition to or in substitution for any oath, solemn affirmation, or declaration

directed by law to be taken or made by a witness, to admonish the witness as follows:—

"Take notice that if, in the evidence you are about to give, you state anything that is false, and which you either know or believe to be false or do not believe to be true, you will be liable to be imprisoned for seven years, and also to be fined [or to such other punishment as the witness may be subject to under the Indian Penal Code."]

That was an admonition which might not be without its use in particular cases, and which was expressly authorized to be used by one of the Bombay Regulations. The introduction of such a provision into the Bill was suggested by one of the Judges of the Bombay High Court.

He might mention in a few words the object of the amendent which he proposed to ask permission to be allowed to move, and which, if agreed to by the Council, would form section 5 of the Bill; it provided that nothing in this Act should enable any Court to administer any oath which might not have been administered under the old law.

This was necessary on account of the peculiar manner in which Act V of 1840 was drawn and the peculiar manner in which section 3 of this Bill fitted into it. Without the amendment which he intended to propose, it might be said that, taking together section 3 and Act V of 1840, Hindus and Muhammadans might be compelled to swear by the water of the Ganges and the Koran. He might state that it was not the intention to do that. He himself thought that the Bill as it stood would not have that consequence; but, however that might be, it appeared to him to be better to insert the amendment to avoid any doubt at all. The principle of the Bill was to extend the principle of Act V of 1840 to all oaths and to all classes in all cases, and to keep alive so much of that Act as forbade the use of particular forms of oath which were found to be objectionable. If this section, which he would ask permission to add to the Bill, were agreed to, he thought the Bill would be complete in itself, and the result of it would be this, that, in the case of Christians and in the case of all other persons other than Hindus and Muhammadans, oaths might continue to be administered as they were now administered, subject to the condition that, if the person required to take an oath objected to do so, a declaration might be substituted for an oath. As to Hindus and Muhammadans, the effect of the Bill would be, that no form of oath could be administered to them, and the substantial result of the whole would be that a declaration would practically take the place of oaths, except in the case of Christians.

His Honour THE LIEUTENANT-GOVERNOR would only wish to ask His Lordship an the Council, and especially the hon'ble member in charge of the Bill, that the final consideration of this Report and of the Bill should not be precipitated. He thought that no one could have listened to the explanation of the provisions of this Bill, which had been given by the hon'ble member in charge, without feeling that it involved questions of extreme doubt and difficulty: those questions had been before this Council but a very short time, and the Report of the Select Committee which he held in his hands was dated only on the 21st December last. For his own part, he must admit that, amongst other engagements to which he had to attend, it was only very recently that he had been able to turn his attention to this matter. This was a matter of extreme importance and extreme difficulty and doubt, in regard to which, if he might so describe it, the legislature had see-sawed a good deal. It had been enacted that there should be oaths; it had been enacted that there should be declarations; and various propositions had been brought forward at various times. If he were to seek for an illustration of the see-saw character of the opinions on this question, he thought he need not go further than the present Bill before the Council. When the Bill was originally brought in, it was if he might say so, of a totally and diametrically opposite character to that now before the Council. When he looked at the Statement of Objects and Reasons which was submitted to the Council by the hon'ble member in charge, it was stated by the hon'ble member that "the object of the Bill was to throw into a single measure the various enactments at present regulating the subject of oaths and solemn declarations, and to extend the operation of those enactments to jurors and other persons besides witnesses in Court, for whom it was desirable that provision should be made." The hon'ble member had told us that, although it was his intention to consolidate into one enactment the whole law referring to oaths and declarations, he had seen reason to depart from that intention. It was patent that no such intention had been carried out; that, in fact, the Bill was not of the nature of a consolidating Bill in respect of the oaths to be administered; it only allowed certain exceptions in respect of the administration of oaths and affirmations, so that the law was left in the complicated state in which it was before. Then, he thought he might say that the essence of the Bill, as it was originally submitted to the Council, was to go to the extreme point in respect to the use of oaths as a means of eliciting the truth: in fact, the Bill as originally drafted contained a clause which was the very essence of the Bill, namely, that the several Courts and officers should be empowered to swear any witness in any form whatever which seemed

to them to be the form most likely to force the truth from any witness. Well, that was one view of the case: it was an extreme view of using oaths to the very utmost. Now, he found when he looked to the present Bill, that not only had that part of the Bill as originally framed been dropped, but that this Bill went exactly to the opposite extreme: in fact, it seemed to him now to be a Bill to abolish, to all intents and purposes, all oaths and solemn affirmations, inasmuch as it said that all oaths and solemn affirmations might be dispensed with in every case in which the Court or officer administering the oath might think proper to dispense with it: furthermore, it must be dispensed with in every case in which a person had conscientious objections to take such oaths or solemn affirmations; and he need not say that there was no test as to what were concientious objections. If the person administering the oath, or the person to whom the oath was tendered, had an objection to administer the oath or to take the oath, then no oath or solemn affirmation was to be taken. So that it really came to this, that oaths and solemn affirmations were in future to be purely optional. He thought that it would be desirable that this Council, in taking up this matter, after the various proposals which had been brought forward, should come to a decisive conclusion one way or another; either to use oaths for the purpose of eliciting the truth, or to abandon them altogether. He had been struck by the opinions given in this matter by the Judges of the High Court of Bombay, and he could not but feel that Indian human nature was very much the same all over India. The opinions and practical experience which were set forth by the Judges of the High Court of Bombay, were exactly the kind of practical experience which he had himself had, and which led to the same phase of opinion in his mind. He thought that all men who had been actively engaged in the administration of justice were prepared to say that a solemn affirmation as now administered was a farce, and nothing but a farce; either it was gabbled over, or it became extremely troublesome when required to be administered to an old woman. He thought they would be all agreed that, for all practical purposes, it was of no use whatever. On the other hand, admitting to the fullest extent that there were very great doubts and difficulties in regard to some of the forms of solemn affirmation which were most binding on the consciences of the people of this country, it appeared to him that there was no country in the world in which, having regard to the manners and feelings of the people, oaths administered in Native form were more binding and more effective in eliciting the truth than in India. He might quote his own experience when a district officer, in his early days, in an unsettled district, where cattle-lifting was very common; in five-sixths of the cases they were settled by oath. The custom was very common for the claimant to come before the Magistrate and say that he would be

satisfied if the defendant would make an oath—not a mere affirmation in our Courts, but a solemn oath as administered by themselves. The result of that appeal was that the claimant and the defendants went out together. His Honour did not enquire how they administered the oath: but either the cattle were restored, or the oath was taken, and the parties went away satisfied. In those early days, before the country was given over to law and lawyers, an oath was thought the most effective engine of justice. He was prepared to admit that there *were* difficulties in the way of swearing a man upon his son's head, and that it was repugnant to our feelings. He did not wish that he should be understood as pledging himself to the view towards which the remarks which he had just made might seem to tend; but he would ask the hon'ble member that he should give us time to consider this matter. He thought that the Council should not adopt at once what the hon'ble member had himself described as an incomplete measure and one not altogether satisfactory; but that we should take a little time about it, and having taken time, that we should face the difficulty boldly; that we should make up our minds either to use oaths or to give them up. If we used them, we should use them in such a manner as to make them effective as an engine for the administration of justice. If we were to give up oaths, we should cease to use this farce of solemn affirmation in which the name of Almighty God was used to an unjustifiable degree, and thus free the Courts of Justice from what he must consider to be a very vague and useless repetition of the name of Almighty God.

The Hon'ble Mr. Stephen wished to say, with reference to the remarks of His Honour the Lieutenant-Governor, that, as far as he was concerned, he should be most happy to agree to the proposal to postpone the consideration of this Bill, if he saw the least reason to believe that, by postponing it, any more light on the subject would be obtained than was to be had at present, or that the Council would be better able to give an opinion upon the subject than they were at this moment. Now, he thought that His Honour had not quite understood him when he spoke of the Bill as an incomplete Bill. When he said that the Bill was incomplete, he meant that, if the Bill was drawn with that degree of completeness which one would wish to see, it would have begun by repealing certain parts of the Codes of Civil and Criminal Procedure; by laying down the cases in which oaths were to be imposed; by specifying the form in which those oaths were to be taken, and then detailing the cases in which persons were to be excused from taking oaths. That certainly would make the Bill more complete, if he might be allowed to use the expression, as a work of art; but it would have had no other practical effect whatever: it would have brought the law exactly to the shape in which it would now be brough by this

Bill ; and the difference between having a Bill a little more or a little less neatly expressed was not after all one of very great importace. He cared more for avoiding useless and irritating controversies, the only effect of which would be to provoke discussions, which would render it very difficult to obtain any practical object. Suppose we opened up the whole question of oaths, and discussed the question whether we should swear people in the High Courts as at present or not. He had his own opinion upon that point and others might have theirs. The subject was one upon which people felt very warmly. That was the sole reason why he preferred letting the matter remain as it was, to treating it with theoretical completeness.

His Honour said that this Bill had see-sawed from one extreme view to another extreme view. MR. STEPHEN quite admitted that he had changed his opinion as to the utility of these strange oaths which it was proposed should be administered. But, at the same time, he could not agree with His Honour in saying that the Bill had swung round from one extreme to another. The Bill was just where it was, except that one provision not at all essential to it had been left out. In the Bill as originally proposed, it was never intended that anybody should be compelled to take an oath ; all that was intended was to empower people to tender such oaths as they thought would tend to the better administration of justice. The effect of the Bill as it had been now drawn by the Committee was to extend the principal of Act V of 1840 to all cases, instead of its being confined as now to Hindús and Muhammadans only. Therefore, when His Honour said that the Bill had swung round from one extreme view to another, he did not state the case correctly. If that had been the case, the first part of the Bill ought to provide that all witnesses should be sworn in all cases. The Bill did the very opposite of this.

MR. STEPHEN would proceed to the further remarks which had fallen from His Honour the Lieutenant-Governor. First, he wished to postpone the consideration of the Bill on the ground that the Council had not had time to make up their minds. Now, it appeared to him, from what had fallen from His Honour, that he at least had made up his mind in regard to the most important parts of the Bill, because he said that the solemn affirmation was no better than a farce and an absurdity. MR. STEPHEN did not think that, if we waited another week, His Honour would change that opinion. It appeared to him that, as to the whole of the Bill, with the single exception of what he had termed strange oaths, the Council was unanimous, and there was no occasion for further delay. He would ask the Council to say whether, by waiting a fortnight or three weeks, they

would be in a better position, after all their great experience in this country, to form an opinion upon the question whether or not it was desirable to have the curious oaths to which he had before referred. The Council had received papers from all the Local Governments; and of the High Courts who were consulted, most had expressed their opinions. The High Court of Bengal would not express any opinion. What more had we to wait for? The matter lay in a very small compass, and he was quite sure that His Honour the Lieutenant-Governor had his own opinion upon it: every one had his own opinion, and it was not likely that that opinion would be changed by delay.

There was one other remark of His Honour on which MR. STEPHEN had to make an observation. His Honour said that, in his younger days, it frequently used to happen that the people settled their disputes in cases of cattle-lifting by going out of Court and settling the matter by an oath, and His Honour asked no questions as to how the dispute was settled or what oaths were taken. That reminded him of an observation of a great authority whom we should all respect, to the effect that district officers ought not to be slaves to rules, and that they ought to be allowed to work the laws in a reasonable manner. MR. STEPHEN would ask what there was in the Code of Civil Procedure to prevent an officer from saying, "well, if you choose to do so, settle it by oath amongst yourselves." There was nothing in this Bill that would interfere with this. The Bill did not authorize the Courts to administer these curious oaths. It was one thing to say that the parties might abide by the result of such oaths, and a different thing to say that the Courts should administer them. On the question whether the Bill should now be taken into consideration, he was inclined to say that, by all means, it ought to be taken into consideration now. He would make one more remark to conclude with. His Honour had read out the Statement of Objects and Reasons attached to the Bill, and he said that the Bill did not carry out the purpose there stated of consolidating the law. MR. STEPHEN would affirm that it did carry out that object though not quite in the best conceivable form. If this Bill was passed, the effect would be that there would be only one Act, namely, Act I of 1872, on the Statute-book relating to the subject of oaths and affirmations.

The Hon'ble MR. STRACHEY said that, although he had signed the Report of the Committee which recommended that the Bill should be passed, and although he was personally content that the measure should pass in its present form, still he was disposed to support the view of His Honour the

Lieutenant-Governor, that more time should be given for its consideration. MR. STRACHEY must confess that he did think with His Honour that the character of the measure had been very much altered since it was first introduced. We all knew that views of the most opposite kind were held on the subject by authorities who deserved equal respect, and although, as he said, he personally would be content to see the Bill passed, still the question having been raised by His Honour the Lieutenant-Governor, and he having stated his personal wish that more time should be given to him and to others for the consideration of the measure, MR. STRACHEY thought that it would be better that the consideration of the measure should be postponed.

His Honour THE LIEUTENANT-GOVERNOR desired to say a word in explanation. The hon'ble member in charge of the Bill seemed to suppose, in regard to the first part of the Bill, that HIS HONOUR was in perfect accord with him. He would like to explain, in regard to section 3, that he did not concur with the Bill in its present form. It appeared to him that under that clause, the result would be that, in all cases of ordinary Native witnesses, very nearly the same form of declaration would be tendered to all witnesses; that was to say,—"I declare that what I am about to state is the truth, the whole truth, and nothing but the truth," with this exception that, when the Judge or Magistrate chose to retain the word "in the presence of Almighty God," and when the witness did not object, those words would be added to the declaration.

The Hon'ble MR. STEPHEN said that that was not so: it could never be so administered. Act V of 1840 was to be repealed by this Bill. If a Magistrate did not think fit to exempt a witness from taking an oath, he might administer to him the caution prescribed in the Bill. He could not imagine the case of a Magistrate refusing to exempt a witness who had conscientious objections to the taking of an oath.

His Honour THE LIEUTENANT-GOVERNOR said his view was that the declaration set fourth in the Bill should be applicable in all cases, and that no option should be given to the Judge or witness except in regard to particular cases.

The consideration of the Bill was then postponed for a fortnight.

BURMA COURTS BILL.

The Hon'ble MR. STEPHEN introduced the Bill to regulate the Courts in British Burma, and moved that it be referred to a Select Commitee with instructions to report in a month. He said that this Bill had been drawn and settled with very great care, in communication with the local authorities of Burma, and he might briefly state what were the reasons which

rendered it necessary, and what was the course proposed to be taken. The first matter which rendered the re-adjustment of the Burma Courts necessary was this. The Chief Commissioner of British Burma, who had many exceedingly arduous executive duties, found himself, under the present state of things, hampered also with judicial work; and inasmuch as it was extremely desirable that he should be able to superintend matters, and to travel about freely and acquaint himself with the condition of the Province, it was thought hardly consistent that he should also be obliged to act as the principal Court of appeal. The main object of the Bill was to relieve the Chief Commissioner from the burden that was thrown upon him. The question which next arose was, how this was to be managed? Of course, it was an object to conduct the matter in as economical a manner as possible, though some small increase of expenditure would be absolutely unavoidable. The constitution of the Courts in Burma was somewhat peculiar. With regard to the inferior Courts, he might say that they were in much the same position as in other parts of the country. But there had been peculiar difficulties in respect to Burma. Rangoon and Maulmain were both towns of considerable commercial importance and contained a certain amount of European population; and he might say the same of Akyab. It was thought proper to take power to establish what were called Recorders' Courts in those towns which were to occupy a position not altogether unlike, in some respects, the position occupied by the High Courts in the Presidency towns. This arrangement continued under various forms for a considerable time; no Recorder was ever appointed for Akyab, but there were Recorders for Rangoon and Maulmain. It was found by experience that the amount of work was not sufficient to warrant the keeping up of two officers of that character, and it was accordingly considered that the better arrangement would be to have one person only in that position, and to appoint a Judicial Commissioner, who should be the head of the judicial system of the Province, and who, for certain purposes, might be associated with the Recorder and form a Chief Court. He would also superintend the minor Courts and relieve the Chief Commissioner from judicial work, and thus enable him to discharge the other functions of his office. The Bill proposed that there should be a Judicial Commissioner; that there should be a Judge of Rangoon, and that there should be, in the place of the Recorder of Maulmain, a Judge who should perform the duties and occupy the position of a Small Cause Court Judge with the powers of a Sessions Judge for the trial of criminal offences. The present Recorder of Maulmain had equal jurisdiction with the Recorder of Rangoon, and his final jurisdiction was greater than that of any Judge in India. His jurisdiction was without appeal up to Rs. 3,000, and in

suits above that amount, the appeal lay, not to any Court in India, but to the distant tribunal of the Privy Council. There were various inconveniences connected with that position to which he need not particularly refer. He thought that the name of "Recorder" itself was rather an unfortunate and ill-chosen one as it suggested a sort of comparison with the High Courts, and indicated to the persons who held the office that they were placed in altogether an exceptional position. Now, he did not think that it was at all desirable that that arrangement should continue, and experience had shown that it was not free from inconvenience. Of course, in a country like this, a good many executive duties were thrown upon Judges. It was necessary that they should exercise a degree of control over the inferior Courts; that they should submit returns; and that they should supervise the several departments attached to the Courts. Although, of course, no one would for a moment think of suggesting that, as regards his judicial duties, a Judge should not be absolutely independent, it by no means followed that it was a good plan to place a Judge in such a position as to make him think that he was not bound to comply with such reasonable requisitions as were made upon him for executive purposes. That was one matter which had been kept in view in framing this Bill. It proposed to do away with the title of "Recorder," which was objectionable on the ground stated, and to substitute, for the Recorders' Courts, Courts which should be organised in the following manner. The Judge of Rangoon would have the greater part of the work which was formerly done by the two Recorders of Rangoon and Maulmain: the rest of the work of the Recorder of Maulmain would be transferred to a less highly paid officer. The Judicial Commissioner would have the general superintendence of the Courts, and, in most cases, he would be the Court of appeal from the inferior Courts; but the Judicial Commissioner and the Judge of Rangoon would sit together in certain cases and form a Court for the purpose of dealing with the more important cases of appeal. MR. STEPHEN ought also to remark that they had taken the opportunity to put the relations between the High Court of Calcutta and the Court of Rangoon on a more distinct footing than that upon which they now stood. There was a case reported, which excited considerable attention at the time, on the question whether the Court of Maulmain was or was not under the supervision of the High Court of Calcutta. The High Court said that it was, and the Court of Maulmain thought that it was not: MR. STEPHEN thought that it was a matter of considerable doubt whether it was or was not. It was exceedingly difficult to say who was right and who was wrong. At all events, a difference of opinion of that kind, which was brought prominently before the public, placed the Government of India in a very unpleasant position, inasmuch as it was more or less called upon to decide upon a question

of law upon which two high judicial authorities differed. He thought that that was not a convenient state of things, and it was therefore proposed to define exactly the relations between the High Court of Calcutta and the Judicial Authorities in Burma. Those were the most important provisions of the Bill, and he hoped the Council would agree to refer it to a Select Committee. He hoped that the Bill would be disposed of speedily: it had been drawn with great care and in personal consultation with the Chief Commissioner of Burma.

The motion was put and agreed to.

The following Select Committee was named :—

On the Bill to regulate the Courts in British Burma—The Hon'ble Messrs. Strachey, Ellis, Cockerell and Chapman and the Mover.

The Council adjourned *sine die*.

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

CALCUTTA,
The 2nd January 1872.

Government of India Central Printing Office.—No. 194 s. L. D.—3-1-94.—100.—R. B.