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 Vict., cap. 67.

The Council met at Government House on Tuesday, the 2nd April 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
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.

His Honour THE LIEUTENANT-GOVERNOR, on the resumption of the adjourned debate on the Bill to amend Act No. V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahomedans), moved the following amendment:—

That the following new section be inserted after section 3:—

"If any party to, or witness in, any judicial proceeding offers to give evidence on oath in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, tender such oath to him.

"If any party to any proceeding offers to be bound by any such oath as is mentioned in the first paragraph of this section, if such oath is taken by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness whether he will take the oath or not.

"If such party or witness accepts such oath, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently taken out of Court, the Court may issue a commission to any person to administer it, and authorise such person to take the evidence of the person to be sworn and return it to the Court.

"The evidence so given shall, as against the person who offered to be bound by it, be conclusive proof of the matter stated.

"If the party or witness refuses to take the oath, he shall not be compelled to take it, but the Court shall record, as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would take it, and that he refused it, together with any reason which he may assign for his refusal."

HIS HONOUR had on several occasions in this Council expressed his views, as far as he had any definite views, on a subject of so delicate, and, he might say, difficult and complicated, a nature as that of oaths. On former occasions he had expressed how much he clung to oaths as a means of eliciting truth in a country like this, where the means of arriving at the truth were so very defective. If that were not so—if our Courts were so perfect that they needed no improvement; if our means for eliciting the truth were so complete that we could trust to the ordinary instruments and the ordinary means to detect falsehood; and if it were certain that a man who spoke falsely would be sent to jail—HIS HONOUR should not have asked the Council to deal with so very difficult and complicated a subject. He must confess that, after having been long connected with the administration of justice in this country, he had the greatest possible doubt that such was the state of things at present. Dealing, as they were, with a peculiar people, with whom the speaking of truth was not in any way the custom, he felt that the means which were available for getting at the truth were defective. He felt that a Judge in this country, when pronouncing judgment, very often did so with considerable hesitation and doubt. The Judge thought that he might be right; he hoped that he might be right; the chances were that he was right; but he felt that there was a considerable residuum of chance that he might be wrong, and the fact must be accepted that he not unfrequently was wrong. That being so, HIS HONOUR was most unwilling to throw away any remnant of an old institution which might afford the means of eliciting the truth, and which was in accordance with Native habits, Native views, and Native institutions. These were the reason whichs induced him to ask the Council to defer the passing of the Bill until the present occasion, and why he proposed the addition of a section which might, as it were, save the use of oaths in this country. The Council were aware that the Bill had gone through several phases; at one time it was proposed to license the use of oaths; at one time it was proposed to prohibit all oaths; and the proposal now before the Council was a sort of compromise between two extremes. On the last occasion, when he had the honour of addressing the Council on this subject, his proposal was, first, that it should be permitted to any person, who volun-

tarily presented himself, to take an oath in any form which the Court might consider advisable; and, secondly, that a party to a suit should be permitted to call on the other party, or on any witness, to take an oath, and if the oath was a proper and reasonable one, and the challenge was accepted, that the person should be permitted to take the oath. HIS HONOUR stated to the Council on that occasion that he had had a very short time for the consideration of the matter since that view of the case had occurred to him, and since he had seen the Bill in the shape in which it now stood. On turning over the matter farther, and knowing, as he did, that several hon'ble members of the Committee and the Council had very great doubts as to the expediency of committing themselves to a variety of oaths, he had thought it well to restrict the permission as much as possible, and in the proposal he was now about to submit to the Council, his view had been to follow as much as possible the Native practice. He was not now about to ask the Council to permit any man who was a party to a suit conditional. HIS HONOUR'S proposal was, first, that voluntary oaths should be permitted; and, secondly, that any party to a proceeding should be permitted to ask any other man who might be a party to the suit, or a material witness, to take an oath in a form which would be binding, and that the Court might permit it on the condition that the party who demanded the taking of the oath should bind himself to abide by the result of that oath. That was a form of oath which was in consonance with Native practice and ideas. HIS HONOUR spoke under the correction of hon'ble members who were conversant with the administration of justice in various parts of the country; but he had himself had a wide experience of the habits and feelings of the Natives, and it appeared to him that nothing was more common than for one man to say to another—"If you take an oath in a certain form which I consider binding upon you, I will bind myself to abide by the result." That was the form of oath for the administration of which he wished to make provision in the Bill. The section which he proposed to add was of some length, and he hoped that it explained itself. The taking of oaths in this way was of limited use, and would stand as a kind of mark that the Council was not altogether prepared to abandon the use of oaths, and that the Council did accept the form of oath which was most consonant to Native feeling and practice; and he ventured to hope that the addition to the Bill which he proposed might be accepted by the Council.

The Hon'ble MR. STEWART said:—"My Lord, I speak on this Bill with considerable diffidence and hesitation, for it is a Bill, I think, on which lawyers and others practically acquainted with the working of our Courts are in some respects in a much better position to form a general opinion than laymen like

myself. Speaking as a layman, however, I desire to say that I think it advisable that all persons who object to oaths or solemn affirmations should be relieved from the necessity of being sworn or solemnly affirmed, while, at the same time, I am glad to have the assurance of many persons well qualified to judge, that the adoption of the course recommended by the Bill is not likely to prove dangerous in practice, for it is at no time a light thing to alter an existing law on such a subject as the present, and least of all is it a light thing to do so when, as in the present case, the alteration involves the removal of what many persons regard as one of the securities for the due administration of justice. With respect to the amendments proposed by His Honour the Lieutenant-Governor, I have carefully considered them, and I do not see that any reasonable objection can be taken to them. My main reason for being willing to agree in the principle of the Bill is the knowledge that it will be in view of the Court, when objection has been taken to an oath or solemn affirmation, that such objection has been taken, and further that the fact will be in view of the Court, inasmuch as that it will be duly considered in estimating the value of the objector's testimony. In many cases it will doubtless be held, and very rightly, that the objection is of no weight whatever; but in others it may be held with equal justice that the objection should seriously, or at all events to some extent, impair the value of the testimony."

The Hon'ble MR. CHAPMAN said:—"My Lord, I am not sanguine that the amendment proposed by His Honour the Lieutenant-Governor will be of much practical value, but I think it behoves us not to disregard any means, however feeble and uncertain, for getting at the truth.

"The crime of perjury is, I believe, fearfully rife in this country. Indeed, I believe it is daily committed in every Court of Justice throughout India with almost complete impunity. I do not share in the opinion expressed by His Honour that the people of India are naturally more untruthful than other races; but I do say that whatever proneness Asiatics may have to falsehood, has, if it has not been directly stimulated, at all events not in any way been checked, by the immunity we have practically conceded to lying in judicial proceedings.

"In my opinion the only effectual security against false evidence is to be found in the fear of judicial punishment; and yet we have, in a great measure, destroyed this security by the cumbrous machinery we have interposed against obtaining a conviction for perjury.

"Crimes of the character of perjury ought, I think, to be promptly and swiftly dealt with. And I do say that our labour in devising and enacting

Codes of Evidence and Procedure is in a great measure thrown away, so long as we oblige our Judges and Courts to deal with rotten and unreliable material in the shape of testimony.

"My hon'ble and learned friend, Mr. Stephen, will shortly leave this country with the satisfaction of knowing that he has done much towards improving the administration of justice by his excellent Law of Evidence. I wish he would add to the obligation those engaged in judicial duties already owe him, by taking into consideration the best way of eradicating this terrible crime of false evidence. I know of no one so well qualified for the task. For some months past I have been intimately associated with my hon'ble friend in considering the revised Code of Criminal Procedure; and, whatever His Honour the Lieutenant-Governor may think of English lawyers, I can affirm that I have never known any one disposed to take broader and more common-sense views of all questions affecting the administration of criminal justice than Mr. Stephen. He has always appeared to me to display the most righteous horror of an unmeaning technicality; and I do not suppose the criminal classes possess a more uncompromising enemy. I can only express a hope that he will, before he leaves, wage war against that most pestilent class of criminals—the perjurers.

"It seems to me that what we want is a simple procedure, by which a witness might be made to feel, directly he entered a Court, that he ran a risk of meeting with condign punishment then and there if he ventured to lie. Now, owing to the roundabout procedure attendant on a prosecution for perjury, convictions are rarely obtained; and a witness steps into the box, and lies with the calmest effrontery, well knowing the Court is practically powerless to touch him.

"I am not entitled to speak with much authority in these matters; but I have always thought that when a Court is satisfied, by the decision which it has solemnly and deliberately arrived at, that a witness has lied on a material point, it ought, without further ado, to be able to punish him. Take, for example, the Tichborne case. Why should not Castro or Orton, or whatever his real name may be, be at once punished for his infamous perjuries. The issue of the original trial has established his guilt beyond the possibility of a doubt, and I cannot see what good will be gained by re-trying this '*cause célébré*' in order to prove him guilty of perjury. Take, again, the common case of an *alibi* set up in a trial for murder. A Court convicts the accused and sends him to the gallows; and it is an absolute impossibility that the evidence as to the *alibi* could be consistent with the conclusion arrived at as to the guilt of the

murderer. Why, I ask, if you are satisfied that he has wilfully and knowingly stated what was false, hesitate to punish the witness by a term of imprisonment, when you do not shrink from taking the other man's life on evidence which is as conclusive for the one purpose as the other.

"My Lord, I am well aware that there is great difficulty in dealing with this subject, which really strikes at the very root of our judicial administration. I know how averse respectable people are to coming forward and giving evidence at all in our Courts, especially in our Criminal Courts; and I know that this terror and this aversion would be increased tenfold if they were liable to receive summary punishment at the hands of a quick-tempered and hasty judge. But still I do think some remedy might be found for the great delays and difficulties that now attend a prosecution for perjury. The power I have alluded to might be exercised only by the higher classes of Courts, say, by those of a Sessions and Subordinate Judge or Magistrate of the first class; and the amount of punishment to be inflicted in this summary manner might be carefully limited. In all cases the accused should be given the opportunity of showing cause why he should not be convicted.

"I venture to think a sharp, quick, and decisive punishment is the only effectual remedy to apply to the offence of perjury."

The Hon'ble MR. ROBINSON said:—"My Lord, I must record my vote against the amendment proposed by His Honour the Lieutenant-Governor.

"The Bill, as it stands, is intelligible and complete. It deals specifically, and in a simple manner, with the matter of giving evidence in Court; and it accords any relief that may be necessary for parties who object to an oath, and requires no addition.

"I may not quite understand the exact scope of the amendment. But it seems to me that if the object of the amendment is strictly limited to the subject of the Bill—namely, the sanction under which evidence is given—its effect will be to revive, by a side wind, the obsolete, useless, and inconvenient formula which have disappeared from our Courts since 1840, and will land us in worse difficulties than ever, namely, amongst arbitrary and inconvenient challenges, and altercations between parties and witnesses, fanciful 'think-fits' of perhaps wayward judicial officers, and unjust inferences drawn from a hesitation about taking an oath which the law means to comfort, if not to encourage. I think that nothing can be more mischievous than this. I object to the amendment also because I do not think that educated Hindús desire this

retrogressive step, or would like to see these obsolete practices again paraded in Courts of justice.

"If, on the other hand, the Lieutenant-Governor's amendment has really reference, as it appears to me, to the decision of the issue between parties to a contention, by allowing a challenge to swear to the truth or otherwise of the whole contention on either side, I think his proposal will import something quite foreign to the measure on hand, and will introduce into the statute-law a kind of procedure which should not be allowed in any way to take the place of, or do prejudice to, a regular judicial investigation. The object which His Honour has in view in this respect is sufficiently secured by the law as it stands, as was explained on a former occasion by the hon'ble and learned member, and need not be imported into an Oaths Bill I think that both the effects noticed by me are inseparable from what His Honour proposes, and I would reject the amendment."

The Hon'ble SIR RICHARD TEMPLE said that, although he was very unwilling to trouble the Council with any discussion at this moment upon judicial matters, yet as his hon'ble friend, Mr. Robinson, had thought fit to challenge the expediency of the amendment proposed by His Honour the Lieutenant-Governor, he deemed it his duty to give his testimony very strongly in favour of His Honour's amendment. His Honour had appealed to other Hon'ble Members who had had experience of the Native character in various Provinces of India. It was SIR RICHARD TEMPLE'S fortune in former days, before he became engaged in Finance, to have been in contact with the people of nearly two-thirds of British India, and he must say that his experience, so far as it went, was entirely in accord with that of His Honour the Lieutenant-Governor. Notwithstanding all the faults that might be found—sometimes hastily and uncharitably found—in regard to the morality of our Native fellow-subjects, he for one was strongly impressed with the belief that there was a good deal of morality remaining in the Native character, and that there was much more of the moral and religious sanction remaining in their minds than was ordinarily supposed; and, if that were so, the propriety of administering such oaths as might be peculiarly consonant to their sentiments, and the importance of eliciting their moral sympathies on the side of justice and truth, were too obvious to require him to dilate upon them. He believed that, by a considerate system and by a judicious practice, for educing and encouraging that feeling amongst the Natives, something might yet be done towards the furtherance of justice and the repression of perjury; and he was confident that, if the moral and religious sanction provided in the amendment was discriminately and carefully applied, it would do good.

The Hon'ble MR. STEPHEN had given his best attention to the amendment proposed by His Honour the Lieutenant Governor. Notwithstanding what had fallen from His Honour and his hon'ble friend, Sir Richard Temple, MR. STEPHEN had a very strong opinion that it would be a great pity to adopt the amendment. In the first place, he must recall His Lordship's observation to the position in which the matter stood. The amendment before the Council did not propose to retain existing law, but to revive, to a certain small extent, the practice which, after being tried for nearly fifty years, was deliberately given up in 1840, because of the objections which had been found to exist to it. It was an exceedingly difficult matter to say how the so-called religious sanction to testimony would operate even with the people of one's own country, a people whose feelings one understood. As soon as we began to interfere with a practice of which it was really impossible that even Magistrates should know anything, we exposed ourselves to the chance of doing a great deal of harm for the sake of the possibility of doing very little good. How could any European enter into the state of mind of a man who attached some peculiar sanctity to a tiger's skin and a cow's tail? No European could tell what effect such an oath produced on a man, or what inference ought to be drawn from his refusing to take it. When he drew from such conduct any inference at all, he was entering upon unknown ground, and was very likely to make a mistake. He begged the Council to hesitate before they revived what really was an obsolete procedure. He would just point out one or two illustrations of the curious kinds of injury which they might be doing by committing themselves to the amendment. He was favoured by the Secretary, Mr. Bayley, with one illustration of this kind in his own experience. Mr. Bayley said—"I knew a case of a man who objected to take any oath at all. His debtors came to know this, and with one accord denied their debts, offering to admit them if he would swear they were due, which of course he would not."

There was every sort of curious twist in connection with the taking of these strange oaths. A man was sworn on a cow's tail. The theory about it was that he must speak the complete truth upon every matter; if he made any slip, intentionally or otherwise, it was all over with his future prospects. The result was that people objected greatly to being sworn on a cow's tail, but if they were, they felt that it was hopeless to attempt to speak the truth so fully as to escape from future punishment. They were therefore apt to act upon the principle—as well 'be hung for a sheep as a lamb,' and to lie freely, as they must be damned at all events. When we were dealing with these curious unknown quantities and strange superstitions, with which we did not sympathize or agree, we did not know what we were about, and we were

always liable to produce results of this kind. It did not seem to be consistent with the dignity of the Court, and with its sense of truth and reason and justice, to administer oaths of this kind, in which those who administered them did not profess to have the smallest degree of confidence, and in which they did not believe at all. It seemed to him an unworthy thing for an English Judge to be trying to get a little bit of advantage in a particular case by a resort to forms of oath of which he knew nothing. There were other objects in the administration of justice besides the immediate object of getting at the truth. In many instances, the object of getting at the truth was sacrificed in order to obtain other ends of importance. He had not the least doubt that if torture were employed, a great deal of truth would be obtained in all cases; but the evil of employing it was greater than the evil of missing the information it would supply. So, with regard to these strange oaths, he thought that the countenance that was given to them, the appeal that was made to them, and the importance that was attached to them, were altogether wrong. MR. STEPHEN thought that the principle that would be sacrificed by the acceptance of the proposal contained in the amendment was of far greater value than any mere chance truth that might be got. How could one possibly tell what the result might be? Look at the proposal. Two men came into Court, and one said to the other—"Will you swear on a tiger's skin?" The other said "I will not." How could the Judge know why he would not swear on the tiger's skin? MR. STEPHEN knew people who talked a great deal about their acquaintance with Native habits and feelings; he could only say that their acquaintance with the Native character must be far greater than the acquaintance of any Englishman with the feelings and ideas of his own countrymen, if they could tell what reasons might operate to prevent a man from taking such an oath; he might, and probably would, be influenced by some curious ideas on the subject, about which the Judge might know nothing whatever. Again, the proposal was, that if the person asked to swear agreed to take the oath, it should be binding on the person who demanded the taking of the oath. Why should a Court of justice be made a party to such a proceeding? MR. STEPHEN had said again and again that if the parties agreed to settle their dispute in that manner, there was nothing to prevent their doing so out of Court.

The amendment further provided that, if the oath to be administered was of such a nature that it might be more conveniently taken out of Court, the Court might issue a commission to any person to administer it, and authorize such person to take the evidence and return it to the Court. That meant that

a Commission should issue to the priest of the nearest temple to administer the oath and return the evidence given by the person to be sworn. MR. STEPHEN did not know why every priest of a temple should be considered a competent person to take evidence. He would far rather adhere to the practice which had been followed for so many years. Of course they were anxious to get at the truth. They all knew that they were placed at a great disadvantage in getting at the truth. That was one of the things with which they had to contend in this country, and he would say that they should fight against that difficulty in a fair, natural, and straightforward way, hoping that, by degrees, the good influence of the system of justice which the British Government had established might improve the credibility of the testimony given in the Courts. He believed that the moral influence of a stable, well-ascertained, and distinct set of laws, administered without fear or favour by independent and thoroughly trained Judges, would produce a great change in the character of the people. He had no confidence whatever—he meant no slight to the supporters of the amendment—in any nostrum of this kind.

Some remarks had been made by his hon'ble friend, Mr. Chapman, about what MR. STEPHEN had done to improve the administration of justice in this country. He felt very deeply the compliment that had been paid to him, and he wished he could consider that those remarks were thoroughly well founded. But, however that might be, he entirely agreed with his hon'ble friend in his view of the expediency of having a law for the more effectual and speedy punishment of perjury. It was out of the question now for MR. STEPHEN to undertake such a work. He did not think there would be any difficulty in framing such an Act as Mr. Chapman had sketched, and he believed that it would be far more efficacious in eliciting the truth than the procedure now under consideration. He could see no difficulty at all in enacting that the Courts, down to a certain level—say not inferior to a Subordinate Judge in civil cases, and not below a Magistrate of the first class in criminal cases—should have power, if they thought that any witness in any trial before them had perjured himself, to convict him there and then, and to punish him to some moderate extent, say with imprisonment for three months, and return the conviction to the superior Court. Considering the latitude of appeal in this country, MR. STEPHEN believed that there was very little danger of injustice being done in that way. It must unquestionably happen in a great number of cases that the Judge who tried the case had exactly the same proof before him of the perjury as the Court

which, under the ordinary procedure, would try the person when committed for perjury. His hon'ble friend Mr. Chapman had referred to the Tichborne case. There was an intricacy in the English law which fortunately did not exist in this country, and which embarrassed all proceedings regarding perjury. By English law, a man accused of perjury must be tried by a jury. In the Tichborne case the Judge was only in the nature of a committing Magistrate. In this country, however, trial by jury was quite an exception; and, as it was the Judge who had to decide questions of fact, he did not see why the Judge should not find that such and such a person had committed perjury. MR. STEPHEN further thought that when a man told contradictory stories, that should be enough to justify a conviction for perjury, though it might not appear which of the two stories was false. He did not think there would be any considerable difficulty in preparing such a Bill, and it would have a very great effect in the suppression of false evidence. It was not severity of punishment alone that deterred people from committing crimes. The near prospect of punishment had much more to do with it. His belief was, that if every man who went into Court knew—and people would very soon learn to know it—that if he told a lie, he would be taken out of Court straight to jail, it would do more to reduce the crime of perjury than anything else; and he did not see any great difficulty in introducing a measure to that effect.

His Honour the LIEUTENANT-GOVERNOR was glad to have the support of two Hon'ble Members on his right (Messrs. Stewart and Chapman); and although, perhaps, his hon'ble friend Mr. Chapman's speech was not altogether in support of the amendment, and HIS HONOUR might say, with regard to it, "save me from my friends," still he was gratified at having his hon'ble friend's vote. He was specially gratified at having the support of his hon'ble friend Sir Richard Temple—particularly and specially gratified—because Sir Richard Temple's experience of India was very large; HIS HONOUR would venture to say that, between Sir Richard Temple and himself, they had experience of five-sixths of the people of India; and it was gratifying to HIS HONOUR to know that Sir Richard Temple agreed in the opinion he held, that the amendment was consonant with the customs, habits, and feelings of the people.

Now he came to the gentlemen who held different views. He had a very great respect for the opinion of his hon'ble frend Mr. Robinson. He might say that Mr. Robinson's speech was somewhat difficult to answer, because HIS HONOUR did not see that his hon'ble friend had advanced any arguments

against the amendment further than those which were advanced by the young lady for her dislike to Dr. Fell:

> "I do not like thee, Dr. Fell,
> The reason why I cannot tell."

Mr. Robinson had not informed the Council why he disapproved of the amendment. His Honour had not been able to understand the objections that his friend had taken. In one respect he was decidedly in error, namely, in saying that the Bill, without the amendment, provided for the object which His Honour had in view. The Bill certainly did not provide for anything of the kind; its effect without the amendment would be, that no one would be asked to take an oath except a Christian; other people going into Court might or might not make a solemn affirmation, which he supposed they all agreed in thinking was a farce. His amendment was a very real one, and introduced a considerable change in the existing procedure; because it provided that, under certain circumstances, and guarded by strong safeguards, the Court should have power to permit the taking of really effectual oaths, without having the power of compelling people to take them.

Well, then, he came to the objections of his hon'ble friend, Mr. Stephen. He must say that he had been disappointed to find Mr. Stephen taking so strong a view adverse to that which His Honour held. It seemed to him that Mr. Stephen exaggerated the evils and under-estimated the good that were likely to result from the course proposed. His Honour was free to admit that nothing in this world was altogether free from evil, and that there must be evils attending the course proposed. But he must declare that, after great consideration, he was not at all convinced, but was still strongly of opinion that the advantages of the course proposed would very much preponderate over the disadvantages. The Hon'ble Member said that it would be a reverting to the procedure which was deliberately abandoned in 1840. His Honour altogether denied that proposition. The procedure which existed before the passing of Act V of 1840 was a totally different one. Before that, certain fixed forms of oath were compulsory upon all witnesses. It was not permitted to the Court to select particular forms: certain forms were prescribed and were compulsory. He had now made a totally different proposition. He proposed that oaths should be voluntary, and that the parties, under the direction and discretion of the Court, should select the form of oath which was most binding on the conscience of the witness, and not repugnant to justice and decency: that was totally different from the procedure which

was before in use, and he hoped the Council would consent to give this experiment a trial; he was confident that, at the worst, it could not do any great amount of harm. It seemed to him altogether impossible that any considerable amount of harm could arise if the Courts exercised a proper discretion in the matter. The Hon'ble Member said that it was playing with edged tools on the part of people who did not understand the Natives and their feelings. He did not like to speak of himself, although he had experience in the administration of justice in this country for the greater part of the last thirty years. He did make mistakes, but he did not consider himself and other Indian officers so ignorant of the Natives as the Hon'ble Member would have the Council believe. HIS HONOUR believed that by far the greater number of Judges in this country were men of experience, who were intimately acquainted with the ways and habits and feelings of the Natives, and might with perfect safety be permitted to administer such oaths as were taken on a tiger's skin or a cow's tail. He did not think that there was anything offensive or repugnant in such oaths: he believed that they were in many cases very effectual. The Hon'ble Member had also expressed himself strongly on the subject of religious decorum. He said that it was both unbecoming and improper that any Judge should administer a form of oath in which he did not believe; but it appeared to HIS HONOUR that that argument struck at the root of the Government and judiciary of this country. Acting judicially, we professed no religion. The oath to be administered was not that in which the Judge believed, but that which would be effectual in influencing the witness's conscience. Under the Bill, when Christians were to be sworn, the oath would be administered by Native Judges as well as by Christians. That being so, HIS HONOUR did not see anything in the amendment which would be in any degree repugnant to the consciences of Christian Judges. He believed that most of the Judges in this country carried consciences, but there was nothing repugnant to a good conscience in asking a man to swear upon a tiger's skin if it was believed that such an oath would be effectual in eliciting the truth. He believed that the Judges would be perfectly willing to administer such oaths.

Mr. Stephen had admitted that there were difficulties in the way of getting at the truth, but thought that it might in the end be got at by the aid of good laws and honest administration. It might be an unpleasant thing to say, but after having been concerned in the administration of justice for nearly thirty years, after having looked into the working of the Courts in their earlier stages and in their later stages, HIS HONOUR had to declare his very serious conviction that there was much more difficulty in getting at the truth

now, than in past days. It appeared to HIS HONOUR that things were in that respect going backward, and with every respect for the Hon'ble Member, who had done so much towards the improvement of the laws, he was not convinced that his hon'ble friend had it in his power to improve human nature to that degree, that with the aid of his laws he would incline people to speak the truth. He was not prepared to trust to English made laws, but to try the effect of such measures as were effectual with Natives. Then, it was said that the effect of the amendment would be to put some people in a false position because they might have conscientious objections to swear. In answer to that HIS HONOUR would appeal to the words of the amendment itself; he believed the Council would find that such a result was guarded in every possible way. The Court had entire discretion to allow the oath or not as it thought fit. The Judge might say—"I know this man is of a sect that dislikes to be sworn, and I will not even ask him to swear." The Court was supposed to be a reasonable Court. If the Court asked—"will you take the oath?" it was provided that the answer should be recorded, together with any reason which the person who was asked to swear might assign for his refusal; the Court might be expected to take into due consideration the reason assigned by the party, and, having done so, might be expected to judge whether the reason assigned was good or bad; and the record of the proceeding would remain in Court. If, on account of any failure in the inferior Court, due weight was not given to the reason assigned, it would be open to the parties concerned to appeal against the decision. HIS HONOUR would also remind the Council that the sects and classes who really had peculiar objections to the taking of oaths were comparatively limited; that there were large classes of Hindus and the whole of the Muhammadans who had no objections to the taking of oaths, and he saw no reason for supposing that the Courts, with the full discretion given to them, would do injustice to the small classes who really had conscientious objections. The possibility of the Courts doing injustice in a small number of cases should not be a reason against reviving an engine which would, in a great mass of cases, have considerable effect in doing justice and not injustice. The Court had a discretion, and it seemed to him that the procedure now proposed was in no respect in the same category as judicial torture which was compulsory and gave no option to the person to be tortured.

He would go back and say one or two words in respect to the expressions which had fallen from his hon'ble friend, Mr. Chapman, because he wished to put himself right with the Council and with the Natives of the country in a very important matter. Mr. Chapman said that His Honour's belief was that

the Natives were above all men liars. HIS HONOUR wished most distinctly and completely to deny that that was his opinion. Although he had taken a logical view of the matter in saying that truth was not estimated by the majority of the Natives as a virtue, he was not one of those who held exaggerated ideas in regard to the untruthfulness of the Natives. He believed he was one of those who held the best opinion of the Natives. He believed that they had many virtues, and that many of them spoke the truth in an honourable way; but he did not think that truth was considered by them as an honourable virtue to the same extent that it was so considered by Englishmen. He had not heard, in the various discussions that had taken place on the subject, that any one had contradicted him on that point. His argument rather was, not that the Natives were above all men liars, but rather that lying was natural to mankind, and that truth was a peculiar virtue which was only developed in certain civilized countries. He thought that the Natives were on the same platform and parallel with most of the world in regard to the speaking of truth. He thought he was not doing any injustice to the people amongst whom he had spent his life in saying that truth, as truth, was not regarded as a virtue amongst them to the extent that it was regarded amongst some of the people of Western Europe.

Before HIS HONOUR left the remarks which had been made by his hon'ble friend Mr. Chapman, he would address himself to the suggestion which Mr. Chapman made, and which was supported by Mr. Stephen, regarding a summary law for the punishment of perjury in which those Hon'ble Members seemed to repose their confidence. HIS HONOUR had had a good deal of experience in a great many parts of India; and it had also been his lot, amongst other occupations, to assist for a considerable period in the trial of cases in England, and he was then very much impressed by the opinion of some of the most eminent Judges of the day—men whose names were held in great respect to this day—on this particular point. It so happened that he sat as an officer of the Court of Queen's Bench at the time when the change in the law took place which enabled parties to appear as witnesses in their own suits. The result of that law was that many parties, especially women, gave their testimony in such a way as to induce the Judges to commit them for perjury. He believed that, in the first few weeks, parties to suits who gave their evidence were committed for perjury right and left. But a very large proportion of those who were committed were acquitted, and the Judges were obliged to confess that they had made mistakes, and that persons interested in a case were very likely to say things which were not true without having any deliberate intention to commit perjury. Well, then, if those eminent Judges found that they were liable to make

mistakes, how much more were Indian Judges, who had no very great legal experience, and who had several avocations besides the administration of justice, liable to make similar mistakes. His Honour believed that nothing would be more unjust than to give every Magistrate and Judge the power to punish for perjury persons whose evidence they did not believe. If such a law were enacted, witnesses would come into Court with halters about their necks. He thought that even if it were provided that the officer before whom the supposed perjury was committed was to try the case afterwards, the case would not be quite so bad. But, above all things, he deprecated the passing of a law which would enable every Judge summarily to punish a man whose testimony he did not believe. His Honour was sanguine that such a proposition as he had put forward would be infinitely preferable to the very harsh measure which was proposed by Mr. Chapman and supported by Mr. Stephen.

The Hon'ble Mr. Chapman said :—"My Lord, in explanation of what has fallen from His Honour, I only wish to say that I never contemplated giving a Judge power capriciously to punish a witness because he had given what he (the Judge) considered false evidence at any particular stage of the proceedings. I intended that this power should be exercised only when, after a decision had been arrived at, the Court was satisfied that the evidence given by the witness was diametrically opposed to such decision. In short, that if the decision was right, the witness must wilfully and knowingly have been wrong. It seems to me there is a great difference between the way in which I put the case, and that in which His Honour has represented it.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Stephen.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Robinson.
Hon'ble Sir R. Temple.	
Hon'ble Mr. Ellis.	
Major General the Hon'ble H. W. Norman.	
Hon'ble Mr. Inglis.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Stewart.	
Hon'ble Mr. Bullen Smith.	

So the amendment was carried.

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

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. STEPHEN also moved that the Report of the Select Committee on the Bill to regulate the Courts in British Burma be taken into consideration. He said that it was a difficult matter to give to the Council detailed information on this Bill, which had been carefully considered and settled in Committee. Its objects were to relieve the Chief Commissioner of British Burma from his judicial functions, and to make certain other changes in the judicial machinery of the province. The alterations were these: there was to be only one Recorder, to be called the Recorder of Rangoon, instead of two, as at present, and, under certain specified conditions, the Judicial Commissioner and Recorder of Rangoon were to sit together as a Special Court to dispose of cases. The Bill was eminently one of executive detail, and MR. STEPHEN hardly thought any principles were involved to which any one could object. Since their establishment the Recorders' Courts had undergone several changes. Act XXI of 1863 provided for the establishment of three Recorders' Courts, one at Rangoon, one at Maulmain and one at Akyab; but the Government at first proposed to appoint only one Recorder to act for all three places; subsequently two Recorders were appointed, one at Rangoon and one at Maulmain; but there never was a Recorder of Akyab. That arrangement was not found to work satisfactorily; questions arose of a somewhat unsatisfactory kind between the executive and the judicial authorities, to which, for obvious reasons, MR. STEPHEN would not now refer; after much deliberation this Bill was introduced, and it had now been considered with very great care by the Select Committee.

The Hon'ble MR. CHAPMAN had signed the Report of the Select Committee on this Bill because he could not suggest any thing better. He thought that the Special Court to be established under the Bill would be of a somewhat incongruous character; it was to be constituted upon the principle that a trained English lawyer was to be yoked together with the Judicial Commissioner, and it was to be hoped that, between them, they would not upset the coach. He hoped, also, that in time either a High Court or a Chief Court would be established in British Burma to exercise supervision and control over all the Courts in the Province.

The Hon'ble MR. ELLIS did not propose to detain the Council for any length of time by observations on this subject. For, as had been stated

by the Hon'ble Member in charge of the Bill, there was really no very important principle in the Bill, which was composed of a mass of details that did not require any explanation of their principle. He agreed so far with his hon'ble friend, Mr. Chapman, as to admit that this Bill was hardly one to give a permanent constitution to the Courts in British Burma. But, as was often the case, there was a financial difficulty, and this prevented the establishment of a perfect Court. To constitute a perfect Court of appeal, it was absolutely necessary that there should be three Judges, instead of two Judges only; so that, in case of a difference of opinion, reference might be made to a third Judge. But there were not funds for a third Judge. His hon'ble friend, Mr. Chapman, had said there was a likelihood of difficulties arising in the working of the Bill; but MR. ELLIS had every hope that the officers who would be appointed under the Bill would be disposed to work cordially in concert, and that no great difficulties would arise. Still it was probable that, a few years hence, some amendments might be found necessary in order to afford the province a more perfect judicial system. He believed that meanwhile this Bill, if worked as it might be worked, would provide a very fair judicial system, and certainly one much better than that which had hitherto existed.

The Hon'ble MR. STEPHEN believed that occasion would very seldom arise for the sitting of the Special Court to be constituted under the Act. If there was a difference of opinion between the Judges of the Special Court, a reference would be made to the High Court at Calcutta. There had been a great deal of discussion about the details of this Bill, and although there seemed to be much complication in its provisions, he thought that the Bill was really simpler than was supposed, and that his hon'ble friends regarded it as complicated because they had a lively recollection of the trouble they had to take about settling its details.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXTRADITION BILL.

The Hon'ble MR. STEPHEN also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to offences committed in Foreign States.

REGULATIONS AND ACTS LOCAL EXTENT BILL.

The Hon'ble MR. STEPHEN also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the local extent of the General Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities.

In presenting this Report he wished to say a word or two on the subject. The Bill was introduced a considerable time—as much as two years—ago. Its object was to consolidate into one Act of about ten sections sixty-nine Acts and Regulations, which had been enacted for the purpose of exempting particular districts from the operation of the general Laws and Regulations. The Bill formed a very important part in the general scheme for consolidating the Acts and Regulations, which was now nearly completed, and which this Bill and other Bills before the Council would complete. In its original shape the Bill was exceedingly intricate, and it had a number of schedules annexed to it, which required to be fully studied. Several communications had been received on the subject of this Bill, and in referring to them he felt bound to observe that some persons seemed rather to forget themselves as to the language which they employed in addressing the Government. He thought that the Government of India in the Legislative Department ought to be treated with respect, especially when it was engaged in about the driest, most difficult and intricate business it was possible to conceive. Any one who knew the trouble of going through the legislation of sixty or seventy years, to ascertain what portions were superfluous and what portions were not superfluous, would have evinced a little more indulgence than was shown in several of the communications that had been received. He admitted that the Bill was intricate, and the Legislative Department accepted the reproof that had been administered to it. He thought, however, that the Bill as now framed was perfectly simple, and when read with the aid of the Select Committee's Report, would, he believed, be found perfectly clear, and would enable people to see at a glance what otherwise they would have to search through several thick volumes to ascertain. He spoke of this Bill more particularly, because it was one of the many extremely useful measures initiated and brought forward by his hon'ble friend, Mr. Cockerell. He devoted very great labour and industry to the task of putting these measures into a simple and convenient shape, and spared no amount of exertion in doing so. He was glad to have the opportunity of saying that he thought the public at large were greatly indebted to his hon'ble friend for the results of his careful and arduous

devotion, during four years, to the scheme of consolidation. There might be mistakes, such as were perhaps unavoidable in a complicated work of this kind, but MR. STEPHEN thought that, on the whole, the result of his hon'ble friend's exertions had been exceedingly satisfactory. The Report of the Select Committee would enable the Local Governments to see what had been done, and MR. STEPHEN hoped that, after a reasonable time, when the opinions of the local authorities had been received, the Bill would be passed into law.

LAND REVENUE (N.-W. P.) BILL.

The Hon'ble MR. STEPHEN also introduced the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal. He said that this Bill also had been drawn by his hon'ble friend, Mr. Cockerell. It consolidated into one, as he hoped perspicuous, Act no less than thirty-seven Regulations and four Acts, in which the law on this subject was now contained. The whole matter was disposed of in 102 sections. This subject in its present form was so intricate, if he could judge from his own experience in the matter of the Panjáb Land Revenue Act, that no officer ever learnt his business from the law itself. All officers were compelled to learn it by practice, though its inherent difficulty was by no means great. The land-revenue system of the North-Western Provinces was founded on Regulation VII of 1822. It had been amended and supplemented and re-amended, until it was necessary to go through thirty-seven Regulations and four Acts, scattered over the Statute-book, in order to ascertain what the law on the subject was. He had had occasion to speak of this intricacy more than once when introducing the Bill for regulating the land-revenue system of the Panjáb. He need not now repeat what he had then said; he would confine himself to one or two observations for the special consideration of the Government of the North-Western Provinces and of His Honour the Lieutenant-Governor of Bengal. The Bill would extend to those parts of the Lower Provinces which were not subject to the Permanent Settlement. He had on a former occasion suggested for the consideration of His Honour whether it would be best to pass this Bill for the North-Western Provinces only, or whether those parts of the Lower Provinces which were not subject to the Permanent Settlement should be included within its scope. That was a point upon which His Honour and his advisers would, perhaps, while the Bill was under consideration, form an opinion which would no doubt be acted upon.

The Bill, as at present drawn, was simply a consolidation, with very few alterations, of the existing law. There were some points in which the system of land-revenue administration in the North-Western Provinces

differed from that in the Panjáb. It appeared to MR. STEPHEN that it would be well to consider whether certain matters inserted in the Panjáb Land Revenue Act should not be introduced into this Bill. Various provisions were introduced into the former on the strength of statements made by the Pánjab officers as to the way in which they conducted settlement proceedings and the view which they took of the law. It was impossible to read Regulation VII of 1822 without seeing that various matters not contained in it were inserted in the Panjáb Act, and that it was desirable that they should be inserted. There were two points in particular to which MR. STEPHEN wished to draw attention. One was that Regulation VII of 1822 was completely silent as to the effect of the record of rights; it did not even state whether it was admissible in evidence, which, however, it would be under the Evidence Act. Another was that the Regulation, which was drawn up with a view to the settlement operations under Lord Hastings' Government in 1822, did not provide specifically for re-settlements; accordingly, there was nothing in the Regulation to show how far the record of rights of a preceding settlement was to be regarded as conclusive, or how far it might be revised on re-settlements. That matter was provided for, after a great deal of consideration and discussion, in the Panjáb Act, and he would suggest that it should be provided for in this Bill also. He alluded to the subject now, as the Bill, as it was drawn, merely reproduced the existing law.

Another matter of some moment required notice. There was no provision in the present Bill or in the Regulations which it would supersede as to the form which the record of rights was to take. In the Panjáb Act a form was provided. Section 14 of that Act contained such a provision taken from the *Directions to Settlement Officers* drawn up by Mr. Thomason, and which had been universally acted upon. There were some other matters with which MR. STEPHEN had no doubt his hon'ble friend, Mr. Inglis, was well acquainted, and upon which the Government of the North-Western Provinces was a better authority than MR. STEPHEN could possibly be. He might specially notice what were called revenue cases and revenue appeals. As he understood the matter, a person might appeal from the decision of a Settlement Officer, through all the stages, up to the Board of Revenue; and a suit might then be instituted in the Civil Court, which might be carried in appeal from the decision of the Munsif to the Privy Council. He did not pretend to say how that matter should be dealt with. It was a question which the Government of the North-Western Provinces would no doubt consider, and one upon which they were better qualified to deliver an authoritative opinion than he could possibly be. On that point, also, there had been much discussion

in connection with the Panjáb Act; and he thought some of its provisions on this point might be taken into consideration by the Government of the North-Western Provinces. Of course, the great difference between the land-revenue system of the North-Western Provinces and the land-revenue system of the Panjáb was, that the Panjáb Settlement Officers almost uniformly had judicial powers. The consequence was that their decisions were in most cases judicial decisions, and bound the parties in the same manner as other judicial decisions. That was not the case in the North-Western Provinces. He thought that, if that distinction was kept in mind, there would be no difficulty in adapting the provisions of the Panjáb Act to the circumstances of the North-Western Provinces. He (MR. STEPHEN) wished to observe in reference to this that the Panjáb Act had been settled in consultation with experienced men who had served in both those provinces—His Honour the Lieutenant-Governor of the North-Western Provinces, Sir Richard Temple, and Mr. Egerton, the Financial Commissioner of the Panjáb.

When this Bill, the Local Extent Bill and one or two others introduced by his hon'ble friend, Mr. Cockerell, were passed, there would remain in the Bengal Code, unrepealed, only about thirty Regulations, which, for one reason or other, it was undesirable to touch. The Government of India would then be able to comply with the direction contained in the Statute 37 Geo. III, c. 142, s. 8, that the Regulations "should be formed into a regular Code." Hitherto, the Government had unfortunately been able to do but little towards that object; but as, after the passing of the few Bills alluded to, the Regulations would be pretty well disposed of, the useless parts being repealed and the useful parts re-enacted in a simple form, that direction could be carried out by issuing an authorized edition of the surviving Regulations, which would be contained in a very thin volume indeed.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to regulate the procedure of the High Courts in the exercise of their original criminal jurisdiction, said that in the Preliminary Report of the Select Committee on the Criminal Procedure Bill, presented some weeks ago, the Committee expressed their opinion that it was desirable that the criminal procedure of the High Courts should be regulated by the same law as that which applied to the other Criminal Courts of the country. In that opinion MR. STEPHEN entirely agreed. He thought it was clearly desirable that the procedure of the High and other Courts should be as much as possible the same. The Committee did not, however, introduce into the Code of Criminal Procedure the requisite provisions on this subject, because it would be necessary to

obtain the opinions of the Judges of the High Courts and other authorities before carrying out so important an amendment of the law. That would perhaps have led to considerable discussion and have indefinitely delayed the passing of the Code, on the revision and settlement of which great labour had been expended. The Committee accordingly recommended that the subject should be separately dealt with; and MR. STEPHEN hoped, before the Council broke up its sittings here, to introduce a Bill which would put that matter on a sound foundation. The procedure of the High Courts was regulated according to their respective charters; and although, at the time when the High Courts were established, the English criminal procedure was probably superior to anything obtaining in the Courts in India, the pains since taken to improve the criminal procedure of the Mofussil Courts had resulted in a better system being introduced into the Mofussil than that which was in force in the Presidency-towns. It appeared to him that, in the present Mofussil procedure, there was this advantage, that it began at the beginning and went straight through to the end. With regard to the English procedure, which prevailed in the High Court, it was quite impossible to say where it began or what it was. To understand and become acquainted with the system, it was necessary to study many English text-books; to learn the most elaborate rules about indictments—how they were shaped; whether a particular form applied to a particular case; whether particular Acts of Parliament relating to indictments applied to India—and when this study was completed, the labour bestowed upon it would most likely prove to be useless. There was an unnecessary air of mystery and solemnity about the procedure of the High Courts, which it was desirable to remove. He thought that they ought to proceed in the same manner as the other Courts, and differ from them, not in having a strange language and strange rules, but by having better Judges and better lawyers to practise before them. The opportunity should be taken to regulate what was called the Crown practice of the Courts, their practice, that is, in issuing prerogative writs, such as the writ of "*Habeas Corpus*," the writ of "*mandamus*," and the like. There was much needless intricacy about these writs. Only the other day there was an application for a writ of *mandamus* to issue against the Justices of the Peace for Calcutta. It was astonishing to see how many intricate and difficult questions were raised on that application. There was a question whether a Statute of the 9th of Anne would apply; then whether a Statute of William IV would apply; and, if that did not apply, whether the truth of the return could be denied; and, if not, whether an action could be brought against a man who made a false return; and so on. In this way the Judge and Barristers wrangled together for a couple of days, to the great

waste of public time and money, about matters of absolutely no importance at all. All that would be done away with by a very few words put into a simple and rational form.

His Honour the LIEUTENANT-GOVERNOR would only say that the Council were very well aware that the country was under great obligations to the hon'ble and learned member, and that he would very greatly add to those obligations by leaving us, as a legacy, a Bill to carry out the great object which he had just explained to the Council. HIS HONOUR would express his entire concurrence in the observations which had been made by his hon'ble and learned friend.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 6th April 1872.

CALCUTTA,
The 2nd April 1872.

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

Office of Supdt. of Govt. Printing.—No. 186 L. D.—27-10-91.—50.—A. E. deS.