

Thursday,  
19th January, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

Jan.-Dec., 1882

Not to be taken away.

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1882.

VOL. XXI.

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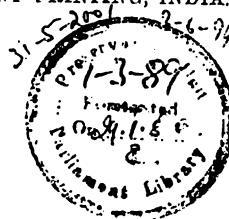


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1883.



*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 Thursday, the 19th January, 1882.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

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

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.B.

The Hon'ble H. J. Reynolds.

The Hon'ble Maharájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble L. Forbes.

The Hon'ble G. H. P. Evans.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble A. B. Inglis.

The Hon'ble Rájá Siva Prasád, C.S.I.

The Hon'ble W. C. Plowden.

The Hon'ble W. W. Hunter, C.I.E., LL.D.

The Hon'ble Sayyad Ahmad Khán Bahádúr, C.S.I.

The Hon'ble Durga Charan Láhá.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Code of Civil Procedure, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, the Hon'ble Maharájá Jotíndra Mohan Tagore, and the Hon'ble Messrs. Forbes and Evans and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

## SEDITIONOUS PUBLICATIONS BILL.

The Hon'ble Mr. GIBBS moved that the Report of the Select Committee on the Bill to amend the law relating to Seditious Publications be taken into consideration.

The Hon'ble Mr. HUNTER said that, after the lucid statement made by the Hon'ble Member, the Mover of the Resolution, when he introduced the Bill, he should not venture to detain the Council at any length. But there were one or two considerations which made him desirous of supporting this measure by more than a merely silent vote. During six years, from 1869 to 1875, it formed part of his duty to examine, week by week, the contents of the Native Press. The experience then gained led him to certain definite conclusions; and he believed that the Bill which the Council were asked to pass to-day would, notwithstanding its brevity, be accepted as an indication of the sentiments of the Council towards several questions of permanent importance to the people. The Hon'ble Member, the introducer of the Bill, had explained the circumstances which led to the passing of Act IX of 1878, the Act which the present Bill would repeal. In that year the Government of India deemed it needful, in the public interest, to obtain from the legislature special powers for repressing seditious and threatening writings in the Vernacular Press. MR. HUNTER confessed that, after perusing the published evidence, he was one of those who deplored that such powers should have been deemed necessary. But for this very reason he thought that he, and others who like himself regretted that repressive powers were then found needful, should now acknowledge the forbearance with which those powers had been used. There were no returns before the Council to show how far the Vernacular Press Act of 1878 had been resorted to in the several Presidencies and Provinces. But, after inquiry in the proper quarter, he believed he was correct in saying that in only one instance had the repressive clauses of that Act been made use of against any newspaper. Now, the Council must remember that not fewer than 230 journals were regularly published in the Native languages, and that any one of these newspapers might, by the exercise of the powers granted to the Executive in 1878, have been brought under the operation of the Act. The fact that in only one case had even a warning been issued to a Native newspaper under the Act sufficed to show the extreme reluctance with which the Executive had availed itself of the powers vested in it during the past four years. Indeed, if he was rightly informed, so serious was the desire to avoid the possibility of undue severities, that, shortly after the passing of the Act, orders were issued to all Local Governments not to have recourse to it in any case without the pre-

vious sanction of the Government of India. If, therefore, the Council resolved to-day to repeal the Vernacular Press Act of 1873, it would not do so because the provisions of the Act had been harshly enforced. For himself, he would vote for the repeal of that Act, not to correct any temporary misuse of the repressive powers which it vested in the Executive with regard to the Vernacular Press, but because he believed that such repressive powers should not form a part of the permanent law of the land.

MR. HUNTER thought, however, it would be a subject for regret, if it were supposed that, in repealing the Vernacular Press Act, the Council were either negligent of the rights of individuals who might be calumniously attacked, or careless of the true interests of the State. The Act of 1873 was directed against two classes of seditious or threatening writings. It provided against such writings in the Vernacular Press within British India, and against the importation of such publications from beyond the British frontier. Circumstances might arise which would render this latter provision a very important one. The provision was therefore reproduced by the present Bill, as a clause to be added to the Post Office Act. It was to be read in connexion with the general chapter of the Sea Customs Act which dealt with contraband articles. Under section 19 of the Sea Customs Act, the bringing in of books published in foreign countries, with a view to stirring up sedition in British India, might now be dealt with as contraband in the strict sense of the word, that is, as "contrary to a proclamation." Henceforth the introduction of disloyal writings from beyond the frontier lost the dignity of a political offence, and sank into one of those degraded classes of commerce which included the importation of spurious coin, of obscene books or pictures, and of goods bearing counterfeit trademarks.

As regarded seditious or threatening writings in the Vernacular Press published within India, the repealing Bill pursued a different course. It made no special provision for such writings, and so left them to be dealt with by the ordinary law. But that law, as expressed in the three chapters of the Penal Code on Offences against the State, Defamation, and Criminal Intimidation or Annoyance, was a sufficiently stringent one. The Indian Penal Code punished such offences by terms of imprisonment many times longer than any term which could be awarded under the Vernacular Press Act. Each of those offences was also punishable under the Penal Code by a fine which might be unlimited in amount, so long as it was not excessive. What the repealing Bill did was, not to mitigate the penalties for seditious or threatening writings in the Vernacular Press, but to replace such offences under the cognizance of the regular tribunals.

He did not think, therefore, it could be alleged that the Bill made undue concessions, or that it tampered with the legal safeguards for private reputations or for the public safety. At the same time, he believed that it would substantially improve the position of the Vernacular Press. It practically intimated that the profession of the native journalist was no longer regarded with suspicion by the Government. It set free his implements of trade from the menace of confiscation under a special law. It told him that he was henceforth trusted to carry on his industry, subject only to the same judicial procedure and to the same laws as those under which his fellow-citizens followed their respective callings.

There was, however, another aspect of the case. For the wider liberty now secured to the native journalist carried with it a heavier responsibility to use that liberty aright. He believed that the great proportion of native journalists throughout India would prove themselves worthy of unrestricted freedom. But he was compelled to add, that certain members of their profession had still much to learn, in regard to what was due, alike to the just susceptibilities of those on whom they commented, and to the dignity of their own calling. He would be a false friend to the Native Press, if he pretended that it had yet attained to that sobriety of judgment and temperance in tone, or to those high standards of public responsibility, which its well-wishers hoped to see it reach. In countries where the rise of journalism had been rapid, the power of the Press had usually tended, for a time, to increase more quickly than the capacity for employing that power wisely or well. Even in England this was, at one period, the case. "The people of Great Britain," said Mr. Danvers in 1738, "are governed by a power that never was heard of as a supreme authority in any age or country before. It is the government of the Press. The stuff which our weekly papers are filled with is received with greater reverence than Acts of Parliament, and the sentiments of one of these scribblers have more weight with the multitude than the opinion of the best politician in the kingdom."

The rise of Anglo-Indian journalism at the end of the last century disclosed a somewhat similar state of things. Any one who examined the materials for the early history of the Indian Press would be compelled to the conclusion, that the Anglo-Indian journalist occupied, for some time, a larger position in the public mind and in the official imagination, than he was entitled to either by his talents or his integrity. Yet during that very time, and indeed for more than fifty years, the Anglo-Indian journalist did his daily work under the terrors of confiscation, fine, imprisonment and deportation. More than one of the pioneers of British journalism in India edited his paper from within the walls of

a jail. Even after these rigours had fallen into disuse, the Anglo-Indian Press still remained disaffected so long as the repressive regulations remained unrepealed. It was not until Sir Charles Metcalfe, in 1835, gave the sanction of law to the liberty of the Press, that Anglo-Indian journalism became loyal. A noble hall, containing the greatest public library in India, commemorated, within a few hundred paces of the Council Chamber, Lord Metcalfe's repeal of the Gagging Act, and bore his name. But his true monument was to be found in the influence for good which a free Anglo-Indian Press now wielded throughout the length and the breadth of the land.

The Council could not reasonably expect from the Vernacular Press a higher standard of moderation or of public spirit than was found in British and in Anglo-Indian journalism at the same early stage of their development. The experience of many countries proved that, before journalists realised their responsibility, they were apt to write a good deal that was foolish and hurtful. But experience also proved that in Great Britain and her dependencies this state of things could not now be met by repressive regulations. It was well worth while to bear with the wild growth of immature journalism for the sake of its ripened fruits. When that wild growth led to offences against individuals or the State, the Penal Code was strong enough to vindicate private reputations and the public honour. But in dealing with the Vernacular Press there were three influences which the Council could invoke, more powerful, because more continuous in their action, than any punitive laws. There was, in the first place, a large intelligent section of the Vernacular Press itself. The editors of such journals knew perfectly well that they were the chief sufferers, both in reputation and pocket, from a low tone among their contemporaries. It was their interest, alike from a political and a pecuniary point of view, to raise the standard of the whole Vernacular Press. If they set a high example, their less instructed brethren would sooner or later follow their lead. For nothing was more contagious among the members of a profession than respectability. The Native Press had an opportunity now which it never had before. For, after all, it was the chief organ of representation in India, and never before was so serious a desire evinced by the Government to give representative institutions a fair trial. The Indian Press was a Parliament always in session, and to which every Native was eligible who had anything to say that was worthy of being heard. The Vernacular journalists should realise two things. If they now used their liberty aright they would strengthen the hands of those who wished to foster the popular element in the administration. But if they abused their liberty, they would furnish a most powerful argument for postponing the further development of representative institutions in India.

Another influence from which the Council might hope much, was to be found among the powerful body of Native journalists who conducted their papers, not in the Vernacular dialects, but in the English tongue. During the past four years this class of what he might call Anglo-Native journalists, had fought the battle of their Vernacular brethren. They themselves were not affected by the Press Act of 1878, but they had never permitted their personal immunity to temper their condemnation of what they regarded as an inequitable law. By acting as the advocates of the Vernacular Press when it stood in need of defenders, they had acquired the right to be the counsellors of the Vernacular Press in the day of its emancipation. They were well aware that personalities and violent writing still formed the besetting temptations of Vernacular journalism. The Vernacular Press owed its rise to the controversies between rival creeds during the first half of this century. Until within the past thirty years most of the Vernacular newspapers were sectarian rather than political in character, and many of them still retained the taint of their polemical origin. The Anglo-Native journals formed the advance guard of the Native Press; but their effective power largely depended upon the conduct and discipline of the main Vernacular body behind. They knew that the approval of the Press was, in England, one of the chief incentives to public virtue, and its legitimate reward. The leading Anglo-Native journals could do much to bring about a similar state of public opinion in this country; but they could only do so by insisting upon a high standard among their Vernacular brethren. For a national Press must first purify its own springs before it could become the fountain of honour.

But while the Vernacular Press could do much, and the Anglo-Native journals could do more, the Government could also do something to ensure good results from the Bill which the Council would pass to-day. The preamble to Act IX of 1878 set forth the ignorance of the people as a ground for obtaining repressive regulations against the Press. "And whereas," it said, "such publications are read by and disseminated amongst large bodies of ignorant and unintelligent persons, and are thus likely to have an influence which they otherwise would not possess," and so forth. The Council would observe that it was not the inherent character of the publications that was alone complained of; but the special effect of such publications upon ignorant men. Now, MR. HUNTER did not deny that the action of a free Press among densely ignorant masses was attended with some peril. But the only true remedy for the dangers of popular ignorance was the spread of popular education. If, therefore, in finally emancipating the Press, the Government could also see its way to more widely educate the people, it would send forth Liberty not alone upon her tra-



vels, but Liberty and Security hand in hand. A great work had already been done in public instruction upon the basis of Sir Charles Wood's despatch of 1854. But a still further extension of Vernacular schools would form the true complement of the now perfected freedom of the Vernacular Press.

The Hon'ble MR. PLOWDEN said :—" I do not wish to give a silent vote on this Bill. At the same time I shall not tresspass far on the attention of the Council. I heartily approve of the Bill which is now under consideration. Whatever may have been the circumstances which led to the passing of the Act this Bill proposes to repeal, I think both the country and the Government are to be congratulated that the latter finds itself able to repeal a law uncongenial to English feeling and most distasteful to the Native population."

The Hon'ble RÁJÁ SIVA PRASÁD said he should vote in favour of the Bill. He wished to bring to the notice of the Government that the word "Vernacular," in the former Act, in his humble opinion, had done more mischief than good ; because, as far as his experience went, the Vernacular papers threw the responsibility off their own shoulders by taking extracts from the English papers and publishing translations of them in the Vernacular, and these translations were circulated amongst the more ignorant and poorer classes of the country. At this very time, during the present disturbed state of Ireland, extracts from Parliamentary debates were taken from the English papers, and translated and published here in some of the Vernacular journals, and circulated amongst the ignorant masses of the people. This practice of taking a little from here and a little from there gave only a one-sided view of the question and could not do justice to the whole subject—did more mischief than anything else, and, in his opinion, poisoned the minds of the ignorant. At the same time, the editors of the Vernacular papers thought that they were not fairly treated. They quoted the Act as the Vernacular Press Act, and the people believed that what was written in those papers was written under restraint. If the Penal Code was not effective, it might be amended ; but he did not think that there was the least necessity for passing such a strict Act, which, he thought, had done more mischief than good.

The Hon'ble MR. EVANS said that, having been a member of the Legislative Council when the Act was passed which was now about to be repealed, he desired to say a few words on the subject.

It was only paramount considerations of public safety that could induce him to vote for an Act which deprived certain classes of Her Majesty's subjects

of the protection of the ordinary Courts and placed their property at the mercy of the Executive.

At that time the Executive Government represented to the Council that the Vernacular papers were representing constantly to the ignorant millions of India that all their hardships and misfortunes arose from the incubus of the British *rāj*; that these representations were growing more frequent; that the natural effect of such statements would be to give rise to a desire to shake off the incubus; that the political horizon was clouded owing to the Russo-Turkish war and other circumstances; and that the public safety demanded that stringent measures of this character should be taken at once to stop the growing danger.

He was glad to learn that the present Government did not consider that considerations of public safety now rendered necessary the existence of such harsh and repressive legislation, and, under these circumstances, it was clear that such an Act should not be allowed to remain on the Statute-book longer than was necessary. No fetters should be placed upon the Press, Vernacular or English, unless the exigencies of the State clearly rendered it necessary.

The Hon'ble MAHARAJA JOTINDRA MOHAN TAGORE said that he must take the liberty to congratulate the Government on the decision which it had come to, to repeal that very unpopular measure which was known by the name of the Vernacular Press Act, and the grateful thanks of the Native community were due to His Lordship personally for the interest which he had been pleased to take in bringing about a consummation so devoutly to be wished. He deemed it due to himself, however, to take this opportunity to say a few words in explanation of the part which he took when this Act was passed.

When the draft Bill of the Vernacular Press Act was laid before the Council in 1878, he said that, though "an advocate of the liberty of the Press," he had no sympathy with "the low class Vernacular papers which had taken to a course that was, to say the least, extremely reprehensible." But he thought and said that, to check the vagaries of these writers, "the existing provisions of the Penal Code were sufficient for all practical purposes," as, indeed, he was glad to find, was the opinion of the Hon'ble Member in charge of the present Bill and of his hon'ble friend opposite (Mr. Hunter). The Government of the day, however, thought that the then condition of the country rendered it absolutely necessary to pass a more strict and summary measure for the better security of the Empire. As this was the deliberate opinion of the responsible rulers of the land, who were presumably much better acquainted with the circumstances of the country than he could be, he thought he was bound in all loyalty

to give his humble support to the Government, but without expressing any opinion as to the merits of the proposed measure in its details. Happily, however, seldom, if ever, had any occasion arisen to put into force the provisions of the Act, and it had remained almost a dead-letter in the Statute-book.

The present Government, he was glad to find, was of opinion that a special law was no longer necessary to regulate the Vernacular Press of India. Who could after this wish to see for a moment this most unpopular measure encumber the Code, especially as its very existence served simply to keep up a feeling of irritation in the minds of the people? It had, therefore, been wisely decided to repeal the Act, and his hon'ble friend opposite (Mr. Gibbs) had been charged to consign it to the grave. It was a matter of no small gratification to him that he had the honour still to hold a place in the Council, and thus had an opportunity of adding his shovel-full of earth to bury this measure, which, it was no exaggeration to say, had caused the greatest amount of dissatisfaction among the Native community from one end of the country to the other.

This would be a memorable day in the history of His Lordship's administration, and he felt sure it would be gratefully remembered by his countrymen as the day on which, under His Lordship's auspices, the lost liberty of the Vernacular Press was once more regained.

The Hon'ble Mr. GIBBS said that, as far as the observations which had been made by hon'ble members on the subject of this Bill, he found that there was nothing to which he need reply. He only wished to say that he trusted the editors of the Vernacular Press would benefit by the good advice which the Hon'ble Mr. Hunter had given them in regard to the future conduct of their papers. He would only repeat what he had said when he asked for leave to introduce this Bill, that, should the Government hereafter find it necessary to take stronger measures than were contained in the provisions of the Penal Code, he might safely say that this Government, and, he hoped, any future Government, would follow the example of Lord Canning on an emergency, and take effective measures to put a stop to any writings which were likely to endanger the public safety. He had nothing to say in respect of the speeches which had just been made in approval of the course which the Government had taken in this matter, but he had one observation to make of a personal nature. He saw from the reports of the Vernacular papers in Western India, which he had carefully read, that he was credited as being one of those who entirely approved of the measure which formed the Act which they were to-day about to repeal. All he would say in reply to that was, that he never saw that Act until he saw it as a law in print, and, therefore, it could not be

said that he ever consented to the passing of that Act, nor had he given his opinion, before it was passed, that it was a proper measure. He gave his opinion upon a very different measure, as would be seen from the Blue-book in which it was published.

His Excellency THE PRESIDENT said that he did not wish to detain the Council by any observations of his own, nor did he think that he was in any way called upon to review the reasons or motives for which the Act was originally introduced. All he desired to say was that it would always be a great satisfaction to him that it should have been during the time that he held the office of Viceroy that the Act had been removed from the Indian Statute-book.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES asked for leave to postpone the presentation of the final Report of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property.

Leave was granted.

The Hon'ble MR. STOKES also asked for leave to postpone the Motion that the further and final Reports of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property be taken into consideration.

Leave was granted.

The Hon'ble MR. PLOWDEN also asked for leave to postpone the Motion that, in section one, clause two, of the Bill to define and amend the law relating to the Transfer of Property, for the words "the first day of April, 1882" the words "the first day of January, 1883" be substituted.

Leave was granted.

The Hon'ble MR. STOKES then asked for leave to postpone the motion that the Bill, as amended, be passed.

Leave was granted.

## CRIMINAL PROCEDURE BILL.

The Hon'ble Mr. STOKES presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Criminal Procedure. He said that the Committee had made in the Bill only three important amendments :—

First, they thought that the present law gave too great latitude to the Courts with regard to the examination of an accused person. The object of such examination was to give the accused an opportunity of explaining any circumstances which might tend to criminate him. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. They had, therefore, limited the power of interrogating the accused by adding to the first paragraph of section 342 the words "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him." They thought the accused should always have this opportunity of explaining, and the Committee had, therefore, required the Court to question him generally for that purpose before he entered on his defence.

Next, they had amended the law as to whipping. They had provided, in section 392, that no Magistrate of the second class should pass a sentence of whipping unless especially empowered in that behalf by the Local Government, They had also provided, in section 392, that whipping should be inflicted with a light ratan not less than half an inch in diameter, and they had abolished whipping with a cat-o'-nine-tails. They had also prohibited the infliction of whipping on any person whom the Court considered to be more than 45 years of age.

Thirdly, they were of opinion that it was unnecessary and inexpedient to retain in section 423 the power, which Appellate Courts had at present, of enhancing sentences on appeals presented by convicted persons, and they had accordingly withdrawn it. The High Courts, however, in exercise of their revisional jurisdiction, would still have power to enhance sentences.

They had also made several minor amendments in the Bill, most of which were specified in the report drawn up by the Officiating Secretary, Mr. Crosthwaite, to whose ability, zeal and care the Select Committee were greatly indebted.

## HINDU AND BUDDHIST WILLS' BILL.

The Hon'ble Mr. STOKES then moved that the Hon'ble Mr. Hunter be

*HINDU AND BUDDHIST WILLS.*

added to the Select Committee on the Bill to declare the extent of the testamentary powers of Hindus and Buddhists, and to regulate their Wills.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 26th January, 1882.

*R. J. GROTHWAITE,*  
*Offg. Secy. to the Govt. of India,*  
*Legislative Department.*