ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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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 Simla on Friday, the 30th September 1870.

The Council adjourned to the 3rd October 1870.

SIMLA;
The 20th September 1870.

WHITLEY STOKES,
Secretary to the Govt. of India.

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 Simla on Monday, the 3rd October 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*
His Excellency the COMMANDER-IN-CHIEF.
The Hon'ble JOHN STRACHEY.
The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.
The Hon'ble J. FITZJAMES STEPHEN, Q.C.
The Hon'ble B. H. ELLIS.
Major-General the Hon'ble H. W. NORMAN, C.B.
The Hon'ble F. R. COCKERELL.

MAULMAIN TIMBER DUTIES BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to legalize certain duties on timber imported into Maulmain be

taken into consideration. The Committee had made no alteration in the Bill, and recommended that it should be passed.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CORONERS' BILL.

The Hon'ble MR. STEPHEN presented a preliminary report of the Select Committee on the Bill to consolidate the laws relating to Coroners.

PRISONS BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India be taken into consideration. He said, it would be seen that the effect of the proposed amendments was to reduce the enacting matter of the Bill by about one-third of its original dimensions.

The reports of the several officers, experienced in the administration of prisons within the territories to which the Bill applied, who had been consulted on the subject, indicated a general concurrence of opinion that the Bill, as introduced, erred mainly in its attempt to arrange matters of minute detail, which could be better regulated by rules framed from time to time by the Executive.

The original Bill was clearly obnoxious to the criticism that, whilst it aimed at completeness by going into such details as the definition of the minor duties of medical officers, gaolers, and the subordinate officers of prisons, and the regulation of the food, dress, and employment of criminal prisoners, it yet virtually recognized the impracticability of dealing exhaustively with such subjects by express enactment in its supplementary provision, under which the Local Government was empowered to make rules in relation to the same matters.

In the Provinces to which this Bill was not intended to apply, such details in the administration of prisons were provided for by rules made by the Local Governments. That system had been found to work well, and it had this obvious

advantage over the plan of the original Bill, that the regulations so constituted could be constantly varied as local circumstances might require, without the necessity of recourse to the intervention of the legislature. The Committee had therefore struck out the clauses relating to the matters above referred to, leaving them to be dealt with by the Local Governments under the general power of making rules conferred by section fifty-four of the amended Bill.

The other material amendments proposed were, in relation to the following subjects, taken in the order in which they occur in the Bill:—

(1) the appointment and removal of prison officers (section eight);

(2) the power of interference in the control of prison affairs vested in the Magistrate or chief Executive Officer of the District by section thirteen;

(3) prison offences (section forty-seven); and

(4) the powers of the Superintendent to punish offences against prison discipline.

The object of these amendments and the considerations by which they were suggested for adoption were so obvious as to call for but few remarks.

The power of appointment and removal of gaolers and the subordinate officers of prisons was, by sections seven and eight of the original Bill, vested in the Local Government. Such an arrangement was not only at variance with the existing practice in regard to such appointments and dismissals, but could not possibly work satisfactorily. The effect of the amendments proposed on this head was to maintain the present system.

As in some prisons the duties devolving on medical officers and gaolers might be more than it would be reasonable to expect a single person to perform in the manner contemplated by the Bill, provision had been made for the appointment, where necessary, of a deputy medical officer and deputy gaoler.

Formerly, most prisons were under the charge of the District Magistrate, who was directly responsible for their good government. The requirements of modern prison-administration, however, demanded a closer and more constant supervision than the other multifarious duties of a District Magistrate admitted of his exercising effectively. Hence the direct connection of the Magistrate or chief Executive Officer of the District with the management and control of the details of management of prisons had been gradually severed, and under

the present system such officer was very rarely Superintendent of the prison. In most cases, however, the chief Executive Officer did exercise a general extra-official control over the management of the prison, and it was considered desirable that this practice should be recognized and placed on a legal basis. The amended Bill consequently proposed to give this officer a *quasi*-concurrent authority in the general control of officers of prisons with the Inspector General of Prisons.

The enumeration of prison-offences under Chapter XI had been extended so as to include every known offence against prison discipline, and was believed now to be thoroughly exhaustive of that subject.

Perhaps the most important of the proposed amendments was the enlargement of the powers of the Superintendent of a prison in regard to the punishment of offences. Those powers under the original Bill were limited to the award of sentences of close confinement for very limited periods and the reduction of diet.

Every expert in prison-administration could testify that the person in whom the direct control of prisoners was vested, must have the power of inflicting corporal punishment. Without such power, the efficient maintenance of prison discipline was not to be looked for.

The authority of the controlling officer was likely to be greatly weakened unless corporal punishment—the only punishment of which the majority of prisoners had a wholesome fear—could be inflicted without a regular judicial enquiry and reference even to such comparatively remote authority as the Magistrate.

The Bill as amended consequently provided for the infliction of corporal punishment, and the award of solitary imprisonment upon a summary investigation by the Superintendent of offences against prison-discipline.

It also provided that, where the punishment of imprisonment was inflicted for any offence under the Act, such imprisonment should be 'rigorous.' This was considered equally necessary where the offender was an officer of the prison as in the case of prisoners.

Experience had shown that simple imprisonment had, as a punishment for offences by the subordinate officers of prisons, no deterrent effect. Presumably,

the familiarity with prison-life acquired by such persons led them to disregard the disgrace and irksome restraint upon their personal liberty which in the estimation of others imprisonment of any kind involved.

Lastly, it was proposed to extend the operation of the Act to the North-Western Provinces.

An objection to this proposition had been made by the Local Government of those Provinces, apparently on the sole ground that their present system of prison-administration worked well, and consequently no change was required.

That objection, if of weight, as regards the North-Western Provinces, would be equally so as regards the other Provinces to which this Bill was intended to apply; for the system of prison-management now in force in the latter did not differ materially from that of the North-Western Provinces.

But the answer to the objection in either case was that the only material change that would be effected by this Bill was the legalization of the present system of administration, which, as the law stood, had no legal basis whatever.

The existing law on the subject of prisons was contained in the several enactments enumerated in the first Schedule to the Bill. Those enactments were actually in force in the North-Western Provinces only; but the spirit of them (whatever that term might imply) was equally applicable to most of the Provinces affected by the Bill.

This law, whilst it defined certain offences against prison-discipline and prescribed penalties therefor, in no way legalized the rules framed by the Local Governments upon which the present administration of prisons was based. The only possible authority for such rules was in the provisions of Act XVIII of 1844, but those provisions rested on the supposition that the Magistrate or Joint Magistrate of a District, acting under the general supervision of the District Judge, was the centre of the system, and such, as MR. COCKERELL had remarked, was not the case.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that in section fifty-one, line two, after the word 'prison' the following words be inserted: "ill-treating the prisoners, or."

He said that complaints of ill-treatment of prisoners by the officers of the prison were, as was well known to all who had had experience of the management of prisons, of constant occurrence. The Bill as amended contained no provision for such cases. This omission, if not rectified, would probably render their reference—though they are generally of a very trivial nature—to some Magistrate necessary, and the form of a regular judicial enquiry would have to be gone through, entailing no small inconvenience and detriment to prison-discipline. He proposed, therefore, by inserting the words above-mentioned to make such cases primarily cognizable by the Superintendent of the prison.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS GENERAL FUNDS BILL.

The Hon'ble SIR RICHARD TEMPLE moved for leave to introduce a Bill to transfer to the Government of India the General Funds of the Courts of Small Causes in the Presidency Towns. He said that the nineteenth section of Act No. IX of 1850 provided that the fees payable in each of the Courts of Small Causes at the Presidency Towns should be paid over to an Account, termed the General Fund of the Court. In point of fact, however, this provision had remained a dead letter, and indeed could hardly be carried out consistently with the now recognized financial principle which demanded that all public income should be credited to the general revenues of the State, while all charges were debited to the expenditure of the State. The fees in question had, ever since the establishment of these Courts, been credited to the State as "Judicial Receipts" or "Law and Justice," without any special authority for such procedure. It was obviously desirable to place the matter on a sound financial and legal footing, and to treat the receipts and charges of the Presidency Small Cause Courts in the same manner as the receipts and charges of other Courts were treated, that is, by crediting the fees to the general revenues of British India and meeting the expenditure from the same source. The Bill would, accordingly, repeal the last clause of section nineteen and provide that all fees heretofore paid over to, and now standing to the credit of, the General Funds of the Presidency Courts of Small Causes, should be paid to the Government of India for the general purposes of the State.

The Hon'ble MR. STEPHEN wished to remove a misapprehension which might, perhaps, arise as to the object of this Bill. It might seem objectionable

to take away from the suitors of the three Presidency Small Cause Courts Funds which the Legislature had intended to create for their benefit; but when we looked into the facts of the case, we should find that no injustice would be done. The Funds, if in existence, would belong to no one. Neither the Judges and the other Officers of the Courts, nor the suitors, nor any other assignable person, had any sort of claim upon them. They would represent merely the excess of the Small Cause Court fees over the Small Cause Court expenses, and would, as such, form a part of the public moneys as much as any other portion of the revenue. He (MR. STEPHEN) believed that the Government might from the first have made a rule under the Act that these Funds should be applied to the general purposes of the revenue, and there was, he thought, nothing unfair in doing retrospectively by an Act of the Legislature what might have been done prospectively by an Executive order, and what, in fact, had been done by the Executive without any order. It was impossible to mention any person, or any class of persons, who would be in any way injuriously affected by the passing of this Act.

The Hon'ble MR. ELLIS did not intend to oppose the introduction of the Bill, and would not have troubled the Council with any observations but for what had fallen from his hon'ble and learned colleague MR. STEPHEN. The Hon'ble Member had attempted to combat the objections which he thought it probable the public might take to the retrospective operation of the Bill. Now he (MR. ELLIS) must confess that he shared in the probable opinion of the public in this matter. He quite concurred with the Hon'ble Mover in the view that the principle of forming a special fund for Small Cause Courts was financially objectionable: there was no more reason for such a fund than there was for a special fund for the Court of a Munsif or a District Judge, and he thought it right that the existing law should be repealed, and the Small Cause Court General Funds abolished. But the law had not hitherto remained altogether a dead letter, as the Hon'ble Mover had asserted; for whenever additions to the establishments of a Small Cause Court had been desired, it had always been usual to show that there was a surplus of the special fund available to meet the charge, without trenching on the general revenues. The alteration of the law prospectively was a very different thing from the retrospective action proposed by the Bill, and he (MR. ELLIS) still retained the opinion which he had expressed when the projected Bill was under discussion in the Executive Council. He thought that it would have been far better had the Bill not proposed to sweep into the Treasury the surplus funds which had accrued under the law as at present existing, and in this opinion the public generally would, in all probability, concur.

The Hon'ble SIR RICHARD TEMPLE, in reply, said that the funds had never been formed; that to give effect retrospectively would mean the crediting to some unformed and non-existent fund the surplus, if any, of the fees after defrayal of charges, which again would necessitate the making out a separate account from the beginning for each Court—an operation which could not now be satisfactorily performed.

The Motion was put and agreed to.

PRISONERS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate the law relating to prisoners committed by a Court.

This, as before explained, was a purely consolidation measure.

Each part of the Bill contained the substance of a separate enactment, and the Bill, as a whole, comprised the entire law relating to prisoners confined by order of any Court, except that which regulated the internal management and economy of prisons.

Act XII of 1867, the substance of which appeared in the Bill as Part II, was designated the 'Presidency Jails Act;' but, unlike other prison Acts, it had no connection with the government of prisons, beyond providing for the appointment of a Superintendent. The object of that Act was to transfer to the Superintendent the legal authority for the detention and safe custody of prisoners which had theretofore been vested in the Sheriff.

CATTLE TRESPASS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate the law relating to cattle-trespass. This also was a consolidation Bill. It provided for the re-enactment of the extant provisions of the three Acts which now contained the law in regard to cattle-trespass.

The only amendments contemplated by the Bill in its present shape were the provision that damages under section fourteen should be recovered as if they were fines, and the extension of the law in regard to injury done by pigs to private property to the case of a public road similarly damaged.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved that the Bill to amend the Penal Code be re-committed. He said that he had not in any degree changed the views he had expressed upon the main provisions of the Bill, in consequence of the criticisms which had been made upon them by the European and Native Press; but as the subject was an important one, and as certain amendments of detail appeared to be desirable, he made the present motion. He was determined to bring the matter forward at the earliest possible opportunity after the return of the Government to Calcutta, and on that occasion to state, in the fullest and most public manner, the reasons which led to the introduction of the Bill, and the objects which it was meant to effect.

The Motion was put and agreed to.

CRIMINAL TRIBES BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to provide for the registration of criminal tribes and eunuchs. He was glad to be able to say that as far as his experience had gone, he did not think that the natives of India were by any means a peculiarly criminal people. He thought that Bombay and Calcutta might, in this respect, compare by no means disadvantageously with Liverpool and Birmingham, and he was informed that many parts of the Mofussil produced far less crime in proportion to their population than parts of England. There were, however, certain parts of India, and in particular the North-Western Provinces, the Panjáb and Oudh, in which crime was carried on in a manner altogether dissimilar to anything which was known in Europe. In certain parts of the country there were tribes of criminals who carried on theft and robbery as regularly, as systematically, and with as little sense of criminality as if they were following the most legitimate pursuits. Accounts of these tribes had reached the Government from various quarters. He (MR. STEPHEN) would read a few selected passages from the papers before him; but, if necessary, he could increase the amount of evidence upon the subject to almost any required amount. The following description of the habits of these tribes was given by Major Nembhard, the Commissioner of East Berar—a District which did not form the home of these tribes, but was one of their principal places of resort for the purpose of plunder. After enumerating several tribes he proceeds:

"We all know that traders go by castes in India: a family of carpenters now will be a family of carpenters a century or five centuries hence, if they last so long, so will grain-dealers, blacksmiths, leather-makers, and every other known trade. A carpenter cannot drop his tools and become a *banya*, or a

lohár, or anything else. The only means of subsistence open to him other than the trade to which he is born is agriculture; but in ninety-nine cases out of a hundred, if he is born a carpenter, he will live and die a carpenter.

"If we only keep this in mind when we speak of 'professional criminals,' we shall then realize what the term really does mean. It means a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usages of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in the manner of the thugs.

"Therefore, when a man tells you he is a Badhak, or a Kanjar, or a Sonoria, he tells you (what few Europeans ever thoroughly realize) that he is an offender against the law, has been so from the beginning, and will be so to the end; that reform is impossible, for it is his trade, his caste, I may almost say his religion, to commit crime."

This general description was fully borne out by other evidence; but a fuller notion of the character of these tribes might be obtained from a consideration of a very full account of one of them, it took, indeed, the shape of a regular history, which had been forwarded to Government by order of the Chief Commissioner of Oudh. This tribe was called the Burwar tribe, and its home was in the Gondah District. Its history began with a very significant and characteristic myth:

"More than four centuries ago, one of the tribes was ploughing a field close to a river. A woman who belonged to the family of a rich banker came to the river bank to bathe, and having taken off her necklace of pearls of great value, put it on the ground and went into the water. A kite or crow took the pearl necklace in its claws or beak and flew away. This jewel fell into the field which the Kurmí was ploughing. He took it up, was pleased with the prize, and went home and gave it to his wife. He then thought to himself that when a bird could take away such a valuable article, why should not he, who was a human being, betake himself to freebooting. After considering this matter deeply, he started on a journey, and in a short time obtained so great a wealth that all his forefathers could not have earned it by means of ploughing. Flushed with this success he spent the whole of the remainder of his life in predatory occupation, and laid the foundation of the Burwar clan. He proselytised a hundred men of his class, who after his death made further improvement in their

art of freebooting. But the rest of the clan who still adhered to their peaceful occupation of agriculture, excommunicated and even turned them out of their villages. The party was then small in number, and began to live a nomadic life in the groves of Putna, and subsisted on no other occupation than freebooting. As this kind of robbery, which is done openly and is termed Buryar, these men acquired the same appellation, which was afterwards corrupted into Burwar. About 250 years ago, being chased by the people and rulers of the day, these Burwars left the groves of Putna, and having separated into three gangs, one (from which the Sonoria tribe appear to have sprung up) proceeded towards Delhi; the other, who appear to be the same as the Ahírias and Udhs, went to Sítapúr and Hurdui, and the third to Buhrolí in Zila Gorakpúr."

The custom of these people, as of most of the other wandering tribes, was to live quietly for a considerable part of the year in their own District, and to spend the rest of it in wandering about the country to great distances plundering. They had a regular organization for the purpose, and their pursuits were carried on under the sanction of religion. Every Burwar child went through a sort of religious initiation on the twelfth day of his life, which was supposed to be essential to his success as a thief. When he grew up, he was a thief, as a matter, so to speak, of duty and necessity. "If a Burwar in his sound body and physical health, and without any sufficient cause, renounce his thieving profession, he is excommunicated from the brotherhood and excluded from participation in its spoils." The brotherhood, as he (MR. STEPHEN) had already observed, was a regular organization. The Burwars were divided into gangs of from 20 to 50 men each under a chief, called Sehwa. "All the household expenses of the family of a Burwar of the gang are supplied on emergency by its head. While the Sehwa remains at home, looking after the families of his gang, the gang goes out to remote places for thieving purposes, and whatever property it acquires in theft, it places entirely before the Sehwa, who divides the same," according to a fixed rule, "among his subordinates. None of the gang is allowed to withhold any portion of his property from the Sehwa, who is looked upon as absolute master of the whole." At the end of the rainy season the Sehwas consult astrologers as to the most auspicious time for starting on their journey. They perform ceremonies, attend to omens, and travel in all directions and for great distances upon their business of plundering. On their return their plunder is divided according to a fixed rule. They first set aside $3\frac{3}{4}$ per cent. for offerings to their gods; of the remainder 28 per cent. is divided between the thief and the Sehwa, and the remainder equally amongst the whole clan.

He (MR. STEPHEN) had described the proceedings of these people somewhat minutely, because they might be taken as a specimen of the classes against which the proposed Bill would be directed. The Burwars, however, were by no means the most important or dangerous of the criminal tribes. After all they were only petty thieves; but others, as, for instance, the Mínas of Gurgaon, were robbers and dacoits, capable of the commission of the most desperate concerted crimes. Others, as was the case with several of the Panjáb tribes, were habitual cattle-stealers. Mr. Mayne, the Commissioner of Allahabad, and formerly the head of the Police of the North-Western Provinces, had given a list of no less than twenty-nine tribes who lived in the North-Western Provinces and carried on criminal pursuits of various kinds. The proceedings, however, of each of these tribes had this leading point in common; they had during part of the year a fixed residence, and during other parts of it they wandered about for criminal purposes.

This fact suggested the remedy which had, in fact, been tried in the Panjáb with respect to these tribes, and which it was now proposed to establish by law in that Province, in the North-Western Provinces (where somewhat similar experiments have been tried), and in Oudh. The remedy was to put the tribes under supervision in such a manner as to confine them to their homes, or, at all events, to provide the means of giving notice to persons likely to be injured by their depredations. The supervision consisted in forming a register of the members of the tribes, compelling them to reside within certain local limits, forbidding them to leave those limits without permission, and authorizing their apprehension if they should be discovered beyond them, and their transmission to the place where they ought to live. This last provision is the only one in the Bill which would be made applicable to the whole of India. The provisions as to registration would apply to those Provinces only which had been ascertained to form the place of residence of the tribes in question.

This system was in force, and, as the Government are informed, with very good results, for about twelve years in the Panjáb; but, at the end of that time, the question of the legality of the Executive rules upon which it was based was brought before the Chief Court, and they decided that the rules were illegal. The result of this naturally was to put an end to the whole system, and this, in its turn, is stated by the Government to have produced very bad results. In a memorandum on the subject Sir Donald McLeod made the following remark:—

"The existing law is wholly insufficient, and I do not think that any one who has had much experience in the detection and prevention of organized crime

will attempt to assert that it supplies all that is urgently required, while the remonstrances which have poured in upon the Panjáb Government from Police, Deputy Commissioners, and Commissioners, and even from Tahsíldárs and other members of the Native community since the ruling of the Chief Court in regard to the surveillance of criminal classes was issued, sufficiently attest the difficulties which have resulted from this course."

This led him (MR. STEPHEN) to speak of the objections which had been made to the rules proposed to be enacted. They might be resolved into two: one objection was that they would lead to oppression by the police, and another that they constituted an interference with the liberty of the tribes in question, and that the ordinary criminal law, which made it an offence to belong to a criminal tribe, and which enabled Magistrates to take security for good behaviour from habitual offenders and persons of known bad character, was sufficient for all purposes.

With regard to the question of Police oppression, he (MR. STEPHEN) fully admitted that the danger did exist. He thought, however, that it might be guarded against and reduced to a minimum, and he believed that if the Magistrates worked the Act carefully, this might easily be done. That annoyance and interference would be experienced by the tribes subjected to the operation of the Act was probable, but that could not be helped. When it came to a question whether the criminals were to be annoyed by the police, or the public annoyed by the criminals, he (MR. STEPHEN) would prefer the first branch of the alternative.

As to the second objection, he had always observed that English lawyers and law-courts had a most exaggerated estimate of the power of the ordinary criminal law to cope with organized crime. To suppose that the ordinary processes of law would ever put down crime was like supposing that sportsmen would exterminate game. The very utmost that the ordinary course of criminal justice ever had done, or ever would do, was to impose a certain amount of check upon crime, to keep it down to a certain level. A man proposing to commit a crime knew that he ran a risk of punishment, and this no doubt was a motive to a certain extent for not committing it; but all experience showed that the motive was not progressive. Ordinary criminal law did not put an end, or tend to put an end, to crime; it dammed or embanked the stream, but it neither diverted or drained it. When criminals formed, as in the case in hand, an organized class, a sort of body corporate, it was a fortunate circumstance for

society, for it rendered them far easier to deal with than if they acted individually. It was possible to attack and break up the organization, and when that was done there was reason to hope that the individuals would not continue the crimes which they learned from it and carried out by its means.

This naturally suggested the question of reform,—a question which had been raised by the High Court of Allahabad in a paper very lately received. This paper admitted that the legislation on the subject was necessary, but suggested that its object should be to encourage the Local Governments to settle the tribes in question upon waste lands or elsewhere, where they might be gradually accustomed to a course of honest industry. He (MR. STEPHEN) thought that such a course might, in many cases, be highly beneficial, but he did not see what legislation was required for the purpose. The course he apprehended might be somewhat as follows:—The Local Government might inform a criminal tribe of their intention to put them under the regulations imposed by the Act. The tribe might then very reasonably enough say,—"give us then the opportunity of living as honest men," and if the Local Government were able to make a grant of waste lands, and subject the tribe settled on them to rules passed under the Act, the arrangement would no doubt be an excellent one. The Bill, as framed, would enable the Government to make such rules. No Bill was required to enable them to grant lands.

There was one important omission in the Bill on which he (MR. STEPHEN) would say a few words in order that it might not be supposed to have been made through ignorance. No provision was made for the case of wandering tribes who had no fixed place of residence during any part of the year. There were many of these tribes grain-sellers, mat-makers, and others who led a vagrant life, and who, it was said, were much addicted to crime. There was, however, this difference between them and the tribes at which the Bill was levelled. The wandering tribes had, for the most part, honest occupations which were by no means a mere pretence, and which made it necessary for them to wander. Many of the grain-sellers, for instance, were exceedingly useful members of society, and though others frequently committed crimes, they did not make a regular profession of it under the rules of a regular organization like those of the Burwars or the Mínas. Without stronger facts than were at present before the Government upon the subject, it would hardly, MR. STEPHEN thought, be justifiable to subject such tribes to a passport system. If, however, any real necessity for such a step could be shown to exist, it would probably not be difficult to provide the legislative measures necessary to carry it out.

MR. STEPHEN now came to the second part of the proposed Bill which was directed against eunuchs. The subject was so disgusting that he felt the greatest reluctance in approaching it at all, and nothing but an imperative sense of duty could have induced him to refer to so loathsome a subject. The matter to which he was about to refer had been known to the Government of India for many years, as appeared from various papers on official record; but successive Governments had not seen their way to legislation, partly, perhaps, because more freedom of action was formerly entrusted to the Executive than was consistent with our present views, partly because doubts were entertained as to the proper course to take, and, perhaps, to a certain extent, because of the extremely disgusting and filthy nature of the subject. Whatever might have been the cause of the delay which had taken place, MR. STEPHEN was of opinion that it ought now to terminate. The eunuchs of the North-Western Provinces were as great a disgrace to human nature and to every Government which permitted their infamous association to exist as thuggee, infanticide, suttee, or any other abomination of the same sort. In plain words, it was officially proved that there existed in the Provinces in question an organized association of eunuchs who carried on a system of unnatural prostitution. They perpetuated their class by kidnapping and castrating boys whom they either bought from the kidnappers or stole themselves. The boys were used for the purposes of their trade. The men solicited employment by public exhibitions of singing and dancing often dressed as women. These facts had been proved on many occasions from 1852 (to go no further back) down to the present time. In some cases, men had been tried and convicted for kidnapping, mutilation, and other specific offences under the Penal Code, and had been punished with the severity which their crimes deserved; but the system still continued, and MR. STEPHEN was convinced that it would continue till a direct attack was made upon the organization itself, apart from the punishment which would, of course, continue to be awarded to the abominable crimes in which its character was occasionally displayed. It was unnecessary to shock the Council by going into details. They were printed in horrible abundance in the proceedings of the North-Western Provinces Government, and the depositions of the children who had been kidnapped and mutilated were, perhaps, as frightful stories as were ever told in the world. One circumstance specially deserved notice: these wretches had a sort of king or head man, and formed a community having considerable property. The then Inspector General of Police wrote in 1866,—"These creatures live under a government of their own; they have a king (Dilsukh Raí is his name, and he is, or was, resident in Delhi), and in these Provinces Náibs or Deputy Governors at Farakhabad, Mainpúri, Jaloun, certainly, and it is believed also at Amba in the Bareilly District, and at Jounpúr.

Under the Naibs are Gurus who are the Surgeons of the class, and their assistants who were also guardians or keepers of the boys after emasculation and until sold or apprenticed for most infamous purposes." In some instances, persons joined this association voluntarily and with a view to participation in its property.

Such were the facts with which the Government had to deal, and MR. STEPHEN was of opinion that the evil was one which ought to be crushed at all hazards, and no matter who objected to the process. He did not, however, believe that any considerable section of Native society, when they know these facts, would regret or restrict the interference of Government. He thought, on the contrary, that the vast majority of the people would feel that the existence of an organized class of kidnappers and mutilators of children for such purposes as these was an affront and injury to every honest man in the country.

What, then, were the measures which Government proposed? They were that a register should be formed of all such eunuchs as there was ground to suspect of any connection with proceedings of this sort. Such registers had, in fact, been formed in many Districts, as the facts were notorious, but at present the Government had no legal power to form them, and no legal consequences followed from a man being registered. The task, of course, was one of delicacy and difficulty, and it could be discharged only by the aid of local knowledge and experience. This the Local Governments and District Officers would, no doubt, be able to supply. The course taken would be as follows:—The Local Government would be empowered and directed to form registers of such classes of eunuchs as they thought ought to be registered with a view to the suppression of the system described. It would become their duty to take care that no persons came upon the register to whom the Act was not intended to apply. Domestic servants, for instance, in Muhammadan families of rank would not be registered, and probably other classes might be exempted. When, however, an eunuch was placed on the register, he would be put under very stringent disabilities. He might be required to register his property, and would be incapacitated from disposing of it by will or otherwise, so that none of his associates would get any share of it at his death. He would be prevented from travelling without permission as a member of a criminal tribe. He would be made liable to heavy penalties if he had in his house, or in any way under his orders or control, any boy under sixteen years of age. He would be forced to account for any castrated boy under that age who might be found under his control or care, and would be presumed to have obtained possession of such boy for an unlawful and immoral purpose unless he could prove the contrary. Lastly, all eunuchs would be absolutely

forbidden to appear in public in women's clothes, or to dance for hire or otherwise either in the public streets or in private houses. Stringent as such measures might be, he (MR. STEPHEN) believed that nothing less would break up the infamous association to which he had described.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

SIMLA;
The 3rd October 1870.

WHITLEY STOKES,
Secretary to the Govt. of India.