

Thursday, October 19, 1871

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA  
LAWS AND REGULATIONS.**

**VOL 10**

**Book No. 2**

**March to Dec.**

**1871**

**P L**

*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 Thursday, the 19th October 1871.

P R E S E N T :

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

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

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.

The Hon'ble R. E. Egerton.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárájá  
Dhiráj Sivái Rám Sing Bahádúr, of Jaypúr, G. C. S. I.

EUROPEAN VAGRANCY ACT AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to amend the European Vagrancy Act, 1869, be taken into consideration. He said that the Council was aware that the object of the Bill was to deal with the case of grooms arriving in this country from Australia in charge of horses and becoming chargeable to the State as vagrants. The European Vagrancy Act of 1869 did not fully meet the case, and the section now added would, it was hoped, make evasion of the law impossible. Some valuable suggestions had been received from the Advocate General as to the ingenious modes in which the legal obligations imposed by the Act could be shirked; and, in accordance with his advice, definitions had been inserted in the Bill, the effect of which would be that the responsibility in every case should be brought home to some one or other.

The Motion was put and agreed to.

The Hon'ble Mr. Stephen also moved that the Bill as amended be passed.

The Motion was put and agreed to.

## INDIAN WEIGHTS AND MEASURES OF CAPACITY BILL.

The Hon'ble Mr. STEPHEN presented the report of the Select Committee on the Bill to regulate the Weights and Measures of Capacity of British India.

## LAND-REVENUE PROCEDURE (PANJÁB) BILL.

The Hon'ble Mr. STEPHEN also presented the report of the Select Committee on the Bill for consolidating and amending the law as to land-revenue procedure in the Panjáb.

## BENGAL REGULATIONS REPEAL BILL.

The Hon'ble Mr. COCKERELL moved that the report of the Select Committee on the Bill for repealing certain enactments of the Bengal Code be taken into consideration. He said that he did not think that he should be justified in taking up the time of the Council with any lengthened explanation of the details of a measure of this kind.

The propriety and expediency of the repeal of an enactment on the ground that it had become obsolete, or that its retention in the present state of things was unnecessary, could only be determined after a thorough investigation of its contents. Hence it followed that the Council, when asked to accept the conclusions of this report, had necessarily to take much upon trust, and thus a more than ordinary responsibility rested upon the Select Committee in dealing with the subject of the present Bill.

In this view of the matter the proposed repeals had been weighed with extreme care and deliberation, and he (Mr. COCKERELL) could affirm with that confidence which a long study of the subject of the Bengal Regulations in some measure enabled him to express, that the proposals contained in the Bill, as amended, erred rather on the side of over-caution.

The plan of the original Bill comprehended the complete expurgation of all obsolete or unnecessary matter from the Bengal Regulations, and for this purpose two schedules were framed,—the one providing for the entire repeal of the surviving or previously unrepealed provisions of wholly obsolete Regulations, the other comprising the repeal only of obsolete parts of Regulations.

The object of this measure was of course to simplify by reducing to the smallest possible compass the operative law contained in the Regulation Code.

In the opinion of some of the local authorities the difficulties attending the ascertainment of that law would be rather increased than diminished by the repeal of mere fragments of Regulations. Without assenting to this view they proposed to omit the schedule of partial repeals, and this course had been more readily adopted in consideration of the prospect which they now had of an early consolidation of most of the surviving Regulations.

The Regulations which would remain on the Statute-book after the passing of this Bill, and a cotemporary measure which provided for several further repeals, related for the most part to the assessment and collection of land-revenue, and the codification of the entire law on this subject had been greatly simplified by the experience gained through the progress already attained in the framing of a similar Act for the Panjáb. For it had been clearly demonstrated that the operative substance of the numerous bulky and complicated enactments which represented the existing law on this subject, was capable of being reduced to a single Act of extremely moderate dimensions, and this without the sacrifice of anything which it would be desirable to retain.

After the completion of the process of consolidation of such of the Regulations relating to land-revenue, police and other subjects as were susceptible of being re-enacted in a more concise form, there would remain only a list of from thirty to forty Regulations of most of which the practical value was rather that of an historical record of rights and privileges conceded by former legislation than of a constituent part of the existing operative law.

MR. COCKERELL had only to add that he thought some acknowledgment on the part of the Committee was due to Mr. Field of the Lower Bengal Civil Service for his valuable criticisms on the subject of this Bill. A full investigation and review of the schedules of the original Bill involved, no doubt, a degree of labour which experienced officers with their many and more pressing duties had been unable to give to this matter; and, speaking generally, the assistance given by the local authorities to the determination of the proposed repeals, had been somewhat meagre. Mr. Field's paper on the subject forms a marked exception to this general absence of co-operation. Having been engaged for a long time in the compilation of a new edition of the extant Bengal Regulations,—a work which, if there was no early prospect of consolidating what remained of those enactments, would be very much needed,—he had necessarily acquired that familiarity with the subject which rendered his paper of very great value in the settlement of the contents of the schedule.

The Motion was put and agreed to.

The Hon'ble Mr. Cockerell also moved that the Bill as amended be passed.

The Motion was put and agreed to.

### INDIAN CHRISTIAN MARRIAGE BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian religion. He said that he might remind the Council that this was one of the several consolidation measures for the introduction of which leave was obtained about a year ago.

The delay in the preparation and introduction of the Bill had been due mainly to the great pressure of business in the Legislative Department during the last year.

The Bill provided for the collation into one enactment of the provisions of the Statute 14 & 15 Vic., cap. 40, and the Indian Acts V of 1852 and V of 1865, with such alterations of wording and arrangement as were incidental to the process of consolidation. It further comprised three substantial amendments of the existing law.

At the present time, only Act V of 1852 extended to the territories of Native Princes in alliance with Her Majesty, and he (MR. COCKERELL) apprehended that there was great doubt as to the validity of a marriage solemnized between the Christian subjects of Her Majesty in Native States otherwise than in the presence of a Marriage Registrar appointed under that Act, even if the marriage was solemnized by an ordained clergyman of any of the established churches, and in conformity with the ceremonies and customs of such churches.

The Bill would remove this doubt by extending the entire law relating to Christian marriages to Native States in alliance with Her Majesty.

There was also some ambiguity in the provisions of the existing law as to the submission of returns of marriages solemnized between Native Christians. For statistical purposes the Indian Government was required to transmit to England the returns of marriages solemnized between British subjects who, though resident in this country, retained their English domicile; and, to meet this requirement, the law obliged persons registering Christian marriages to submit with regularity the returns of such registrations.

The wording and arrangement of the provisions of the existing law relative to this obligation, did not clearly indicate its intended extent. There had been from time to time, since the passing of the Act of 1865, various references to the Local Governments on the subject, and the orders passed thereon did not evince a uniform interpretation of the requirements of the law on the part of the executive.

The Bill laid down clearly the rule that the returns of marriages between Native Christians howsoever they might have been solemnized, were not required.

The most important amendment proposed in this Bill was in regard to marriages between Native Christians, either of whom was a minor. The framers of the present law, actuated by the desire of making the forms of marriage between Native Christians of the poorer and uneducated classes as simple and inexpensive as possible, dispensed with all notices, and required only that the persons intending marriage should be of a certain specified age,—which, in the case of both male and female, was considerably below that which constituted majority even amongst the natives of this country,—and that they should not stand in relation to each other within the prohibited degrees of consanguinity and affinity—apparently as prescribed by the English Canon, though this is not specified.

The practical effect of this was to deprive Native Christian parents of that controul over the action of their children in the very important matter of contracting marriages which the law or custom gave to parents of all countries and creeds. He ventured to think that this result of the enactment of Part V of Act V of 1865, must have been overlooked, and he should say that he entirely sympathized with the Reverend Kristo Mohun Bannerjee and several other leading gentlemen of the Native Christian community who had memorialized His Excellency on the subject, pointing out the extreme hardship inflicted on them by the legislation referred to.

He (MR. COCKERELL) thought that they had a substantial grievance, and were entitled to a remedy. Whether the proviso to section fifty-four of the Bill gave the required relief in the best form that could be desired, he was not prepared to say. The provision had been inserted tentatively, and might be found to need much alteration when the Bill went before a Select Committee. It was intended to restore the power of controul of which Native Christian parents had been deprived by the present law without introducing the use of notices

and forms unsuited to the poorer and uneducated classes, and which it was the especial object of past legislation to avoid.

He had introduced this Bill to effect its early publication, but he did not propose to move its reference to a Select Committee until the Council met in Calcutta.

The Hon'ble MR. STEPHEN observed that it was an illustration of the real importance of the consolidation measures to which so much of the attention of the Legislature had been of late directed, that all the difficulty to which his hon'ble friend had referred in connection with Christian marriages, had been produced by the manner in which the Acts now about to be consolidated was pieced together, and by the uncertainty which arose from the cross references to one another contained in them. The grievance to which his hon'ble friend had alluded would not, of course, admit of discussion, and the present measure would, it was believed, provide a suitable remedy. In other respects it was entirely a measure of consolidation.

#### CIVIL COURTS (OUDH) BILL.

The Hon'ble MR. COCKERELL, with the permission of His Excellency the President, presented the report of the Select Committee on the Bill to consolidate and amend the law relating to the Civil Courts in Oudh.

The Council adjourned to Thursday, the 26th October 1871.

H. S. CUNNINGHAM,

SIMLA,  
The 19th October 1871. }

*Offg. Secy. to the Council of the Governor  
General for making Laws and Regulations.*