

*Tuesday,
3rd July, 1890*

ABSTRACT OF THE PROCEEDINGS

OF THE

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,

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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 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 3rd July, 1890.

P R E S E N T :

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

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

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Baba Khem Singh Bedi, C.I.E.

EVIDENCE ACT AND CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882. He said :—

“ The principal object of this Bill is to amend section 54 of the Indian Evidence Act, 1872, so as to render the previous conviction of an accused person irrelevant when it is sought to prove the conviction for the mere object of showing that the accused is a man of bad character and therefore likely to have committed the offence with which he is charged. The section as it now stands is in the following words :—

‘ In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.’

“ There is no doubt that this section was deliberately introduced into the Act. In the first Report of the Select Committee it is stated—

‘ We include under the word “ character ” both reputation and disposition, and we permit evidence to be given of previous conviction against a prisoner for the purpose

[Sir Andrew Scoble.]

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of prejudicing him. We do not see why he should not be prejudiced by such evidence if it is true.'

"The High Court of Calcutta has thus been constrained to hold, in the case of *The Queen Empress v. Kartick Chunder Dass* (I. L. R. 14 Cal. 721), that a previous conviction is in all cases admissible in evidence against an accused person.

"In delivering the judgment of the Full Bench in this case, Mr. Justice Pigot, commenting upon the departure from English law involved in this result, observes:—

'The indiscriminate admission against an accused person of any previous convictions against him would not merely operate in many cases so as to work an unjust and unreasonable prejudice,' but also would admit 'a formidable novelty into the rules of evidence applied to criminal proceedings; for in a multitude of cases the section renders admissible and declares by its statutory force to be relevant facts which, in no possible sense save the technical statutory sense in which the word is used in the Act, would be relevant.'

"And, emphasizing the distinction between the English and the Indian law on the subject, he adds—

'The English legislature passes an Act for the sole purpose of shielding an accused from prejudice. The legislature in this country enacts a provision for the express purpose of prejudicing him.'

"For my part, I need hardly say that I prefer the rule of the English law. To admit prejudice in the place of proof, or to supplement proof by prejudice, is not consistent with that spirit of fair and impartial enquiry which should characterise a Court of Justice. It is an old maxim *Nemo bis puniri debet pro uno delicto*; and it is in fact punishing a man a second time for the same offence, if a previous conviction can be urged against him, notwithstanding that it may have no possible bearing upon the question of the truth of the charge on which he is being tried. Moreover, unless a previous conviction is to be taken as proof of bad character, it is difficult to understand on what ground it is admissible in evidence, and yet evidence of bad character is declared to be irrelevant, except in rebuttal of an assertion of good character on the part of the accused. The only cases in which evidence of a previous conviction should, I think, be allowed to be given are cases in which the previous conviction is a fact in issue, or is relevant under the provisions of the Act applicable to evidence in general.

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[*Sir Andrew Scoble.*]

“ It has been a work of some difficulty to frame amendments which shall carry out this principle in an intelligible way, so as to present the smallest amount of difficulty to those who will have to administer the law in its altered state. I will not attempt now to go in detail through the sections of the Act and point out the particular effect of each proposed alteration. But the amendments may be briefly stated as follows :—

- (1) the provision allowing a previous conviction to be proved in all cases will be repealed ;
- (2) a previous conviction will be relevant under section 43 when it is a fact in issue or otherwise relevant under the Act ;
- (3) a previous conviction will be relevant as evidence of bad character, when such evidence is relevant ;
- (4) a previous conviction will be relevant to prove guilty knowledge or intention ;
- (5) in cases of offences relating to coining and forgery, facts showing the existence of any state of mind, such as intention or knowledge, will be relevant although those facts do not show the existence of the state of mind in reference to the particular matter in question ;
- (6) in cases where the accused is tried under section 234 of the Code of Criminal Procedure, 1882, at one trial for three offences of the same kind, the evidence relevant to prove one offence may be used as showing guilty knowledge or intention in the case of either of the other offences ;
- (7) the fact that an act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, will be relevant to prove guilty knowledge or intention.

“ As I do not propose to carry the Bill beyond its preliminary stages in Simla, but to postpone its consideration until the Council meets in Calcutta, there will be ample opportunity in the meanwhile for discussing these amendments and, it may be, of improving upon them.

“ Two other amendments of the Evidence Act are dealt with by the Bill. The first relates to confessions, as to which section 26 of the Act provides that—

‘ No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.’

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“ This is a very wholesome provision, but it has become liable to be defeated owing to the word ‘ Magistrate ’ not being defined. The High Court of Madras has pointed out that village-headmen in that Presidency are Magistrates, and that it is very undesirable that persons of this class, ‘ who are often very illiterate and never very independent,’ should by their presence make admissible what is really only a police confession. The same difficulty does not appear to have arisen in other Presidencies, and it will be effectually removed by section 3 of the Bill, which defines ‘ Magistrate ’ to be ‘ a person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure, 1882.’

“ The other amendment of the Evidence Act relates to section 86, and is effected by section 7 of the Bill. It provides for the authentication of foreign judicial records by political officers, and is intended to remove technical objections which have been raised under the existing words of the Act to the certification of such documents by officers who, though duly accredited to, are not actually resident in, the country concerned.

“ The amendment of section 310 of the Criminal Procedure Code is subsidiary to the proposed amendments of the Evidence Act in regard to previous convictions.”

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Cattle-trespass Act, 1871. He said :—

“ For many years complaints have been made, particularly by planters, that the protection which the Act of 1871 affords is very inadequate. There is a special provision as regards pigs in section 26, but for other animals the Act does no more than permit occupiers of land to seize cattle found trespassing and

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convey them to the pound, from which they are not released until a small fine has been paid, varying from eight annas for a buffalo to one anna for a sheep or goat. This throws much trouble on the person injured, while the owners of the cattle causing the damage escape altogether upon payment of a very trifling fine. It is true that they might also be sued for compensation in a Civil Court, but, if the damage done has been considerable and a suit is anticipated, the real owner generally puts forward some man of straw to redeem the cattle from the pound, and this makes it very difficult to establish his responsibility. In rural tracts the procedure provided by the Act answers well enough: the cattle are all known, as well as those to whom they belong, and nearly every owner of cattle has his own crops to think of as well as those of his neighbours. But in planting districts, as well as near towns, the case is widely different.

“The practice in Coorg is to tie up all cattle during the day time in order to secure their manure, but to let them roam about at night and find pasture where they can. In Assam the cultivators are careful to watch and tend their cattle so long as they have growing crops of their own, but as soon as their rice has been harvested the animals are turned loose untended; and they do much damage, the buffaloes especially, by trespassing in the tea gardens. The fact that they can be restrained when it is for the raiyat's advantage to restrain them makes it reasonable to insist on his responsibility when he neglects to do so. The fear of having to pay pound-fees has little effect: the animals can seldom be caught, and if by chance one here and there is seized and impounded the fine is too small to be deterrent.

“But it is not the planters only who are aggrieved. In 1886 the Raja of Bhinga in Oudh complained to the Deputy Commissioner of the ‘nightly devastations committed on his tenants' crops by semi-wild cattle belonging to some residents of the neighbouring town. They live,’ he said, ‘in ever-constant dread that in a single night their whole year's labour and expectations may be brought to nought.’ And similar representations have come from all parts of the country. In Nagpur, for instance, it is represented to be the general practice of the cowherds deliberately to turn their cows and buffaloes into private compounds at night, and doubtless the occupiers of the neighbouring fields suffer in the same way. You may see the cows, it is said, run into their owner's premises and the herdsman in attendance, but under the present law your only remedy is a tedious and expensive lawsuit. In another place, Orissa I believe, the cattle are actually trained to trespass and to take to their heels as soon as a note of warning is sounded by a man who remains at a safe distance.

[*Mr. Hutchins.*]

[3RD JULY,

“ In view of these facts the Government of India in 1888 resolved to amend the law, as I propose to amend it now, by empowering Local Governments, in any area where cattle are thus wantonly allowed to stray and trespass, (1) to increase the fines leviable for animals impounded, and (2) to extend to other animals the special provision made in section 26 for the case of pigs. This section provides that—

‘ Any owner or keeper of pigs, who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall * * * * be punished with fine not exceeding ten rupees.’

“ In other words, in the case of pigs damage by negligence has been recognized as a ground for criminal liability cognizable by a Magistrate in a summary manner, whereas similar damage caused by other cattle involves only a civil liability and constitutes a ground for civil action. The reason advanced by the Hon'ble Mr. Cockerell, in submitting the Select Committee's Report in 1871, was that there are peculiar difficulties in the way of seizing pigs and also of conveying them to the pound, but there are at least equal difficulties in regard to the capture of the trained or semi-wild cattle which cause so much mischief in Coorg, Assam, Nagpur, Orissa and other parts of the country. Such cattle are quite as mischievous, quite as agile and quite as difficult to seize as pigs, and it seems necessary to treat them in the same way.

“ It has been said that those who complain ought to fence their properties, but no ordinary fencing would keep out the active cattle in question. The lighter animals will jump almost anything; the heavy buffalo crashes through any ordinary obstacle. Anyone who, like myself, has seen a strong fence of barbed wire completely wrecked by a sambhar plunging through it, would at once cease to urge this objection.

“ Proposals for a local Regulation have been received both from Coorg and Assam, and a Bill to the same effect as that which I am about to lay on the table has been lately introduced into the Legislative Council of the Government of Bombay, in order to check the ravages committed by cattle in Gujarat and some other parts of that Presidency. But the Act to be amended is an Imperial Act, and it does not seem right to pass on to a Provincial Legislature the duty of making it effectual. The mischief exists in special parts of almost every Province, and this Council alone can make provision for them all.

“ I have stated that as long ago as 1888 the Government of India at one time determined on legislation of the same character as that which I propose,

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It was however, dropped for two reasons—on account of the difficulty of identifying the cattle or herdsmen, and thus bringing home the damage to the right persons; and because it was supposed that the amendments would not meet the requirements of the planters and others who had made special representations. As to the latter objection I have here a general memorial from representatives of all the planters of India, both Northern and Southern India, unanimously praying for the extension of section 26 to other animals than pigs and accepting this single amendment as all that they require; and the former objection is only the latter in another shape—it was because it was thought that the owners could not be identified that the amendment was deemed insufficient. It might therefore be enough to say that it has now been accepted as sufficient—at all events by the planters; but I may add that the very fact that the unfortunate occupier of land will now have an easy remedy will induce him to take measures to secure the identification of trespassing cattle which he has not hitherto found it worth while to take.

“The main provision of my Bill, then, is to enable Local Governments in special areas to extend to other cattle the section which now applies only to pigs, and at the same time to raise the penalty from 10 to 25 rupees. But, in order to make this effectual by reaching the owner, I propose further to insert certain words in section 25, which authorizes the recovery of any fine imposed for mischief by sale of the cattle which cause the damage. Mischief implies an intention to cause wrongful loss or damage; but the keeper of cattle in this country is very generally a child of tender years and almost certainly a pauper. Proof of the offence of mischief against a child must always be difficult, while it would be useless to take proceedings against a pauper cowherd unless the fine could be enforced against the owner by sale of the animals. This will be secured by the third section of my Bill.

“By the second section Local Governments are empowered in special areas to raise the fines on impounded cattle to double the scale prescribed by the Act. But even these sums are very trifling, particularly in comparison with those which it has been found necessary to impose by the Forest Act on cattle trespassing on reserved forests. To prevent possibility of hardship I have reserved power to the magistracy to remit any amount above the fees laid down in the Act, and in view of this safeguard I am not sure that a higher maximum than double the standard scale might not be authorised. This, however, can be considered in due course by the Select Committee.”

The Motion was put and agreed to.

[*Mr. Hutchins.*]

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The Hon'ble MR. HUTCHINS also introduced the Bill.

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

The Motion was put and agreed to.

CENSUS BILL.

The Hon'ble MR. HUTCHINS asked leave to postpone the Motion for leave to introduce a Bill to provide for certain matters in connection with the taking of the Census. He explained that the Bill was not quite ready, as some of its sections required to be reconsidered. He hoped to introduce the Bill at the next Council Meeting.

Leave was granted.

The Council adjourned to Thursday, the 10th July, 1890.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 4th July, 1890.