

*Thursday,
11th October, 1894*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIII

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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,

1894

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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Viceregal Lodge, Simla, on Thursday, the 11th October, 1894.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., 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, K.C.B., G.C.I.E., V.C.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, K.C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Westland, C.S.I.

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

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

INDIAN ARTICLES OF WAR AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY moved that the Report of the Select Committee on the Bill to amend the Articles of War for the government of Her Majesty's Indian Forces be taken into consideration. He said:—"The passing by Parliament of the Madras and Bombay Armies Act, transferring certain powers hitherto exercised by the Governments of Madras and Bombay to the Government of India, and abolishing the offices of Presidential Commanders-in-Chief from a date to be determined by the Governor General in Council, has made it imperative upon us to amend the Indian Articles of War so as to cause them to correspond from the same date with that Act. These Articles of War date from 1869, and experience of a quarter of a century has shown that they are capable of, and require, amendment in several points.

"The Bill now before us is the outcome of long and mature deliberation between Army Head-Quarters, the Judge Advocate General in India, the Legislative Department, and the Military Department of the Government of India. The Bill was referred to Local Governments for opinion, and all the suggestions ~~made by them were~~ fully considered by the Select Committee, on which there

[*Lieutenant-General Brackenbury.*] [11TH OCTOBER,

served the Commander-in-Chief, the Legal and Military Members of Your Excellency's Council, and the Hon'ble Member in charge of the Home Department, while the Judge Advocate General attended the meetings of the Committee in order that we might consult him on any points that might arise.

" The Statement of Objects and Reasons, which I laid before Council when introducing this Bill, went fully into the causes of most of the alterations in the existing law proposed in the Bill. The Report of the Select Committee has explained the amendments to the Bill made by that Committee, upon all of which we were unanimously agreed ; and I think it is unnecessary for me to do more than briefly to call attention to some of the chief changes which the Bill, as amended by the Select Committee, makes in the existing Articles of War.

" First, as regards offences punishable under this Act. Practically no new offences have been created : but some of the offences punishable under the Articles of War have been more clearly defined, and power has been given under this Bill for a soldier who commits certain grave offences involving violence against any person subject to military law to be tried by a Court-Martial instead of, as heretofore, exclusively by an ordinary Criminal Court ; but power is reserved to any Criminal Court having jurisdiction to require the prescribed military authority at his option to deliver over the offender to the nearest Magistrate to be proceeded against according to civil law, or to postpone proceedings pending reference to the Governor General in Council.

" As regards Courts-Martial, great simplification has been made by the reduction of their number from eight, or in reality, if we include sub-divisions, from ten, to five ; and the imprisonment which it is in the power of a District Court-Martial to award has been extended from one to two years, the amount which can be awarded by a District Court-Martial under the Army Act.

" There will now ordinarily be three kinds of Courts-Martial, namely, the General Court-Martial, the District Court-Martial and the Regimental Court-Martial, the powers of each of which are strictly defined ; and there will be two kinds of extraordinary Courts-Martial, namely, the Summary General Court-Martial, which corresponds to the Field General Court-Martial of the Army Act and takes the place of the Detachment General Court-Martial of the existing Articles of War, and the Summary Court-Martial, which already exists and which is an institution peculiar to Indian military law. But whereas under the existing Articles of War a Summary Court-Martial held by an officer commanding a regiment or corps could pass any sentence not exceeding that awardable

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by a District Court-Martial, such Court-Martial cannot under this Bill pass a sentence of imprisonment exceeding one year. And provision is made that if the officer holding the trial is of less than five years' service he shall not, except on active service, carry into effect any sentence until it has received the approval of a superior military officer.

“ In the existing Articles of War there are certain differences between Courts-Martial appointed under an Order in Council and other Courts-Martial; all such differences are by this Bill abolished. In the event of the Governor General in Council thinking it necessary to order a Court-Martial to be held for any particular purpose, his orders would issue to the Commander-in-Chief in India to convene a Court-Martial for that purpose, and the Court-Martial would be held under the ordinary procedure. The difference between the two classes of proceedings originally arose out of an Act passed during the Mutiny, which empowered the Governor General in Council to give general power to officers commanding stations and detached forces in India to hold Courts-Martial and to carry out the sentences of those Courts. Under the Bill now before Council the Governor General in Council can empower any officer to hold a Summary General Court-Martial, but there will be no difference between its proceedings and those of any other Summary General Court-Martial convened by an officer empowered by the Commander-in-Chief or by the General Officer of the Command. And any officer commanding any detached portion of Her Majesty's troops on active service can convene a Summary General Court-Martial, when in his opinion it is not practicable, with due regard to discipline and the exigencies of the service, that the offence should be tried by an ordinary General Court-Martial. And the term ‘when upon active service’ means, under the definitions in this Bill, the time during which the officer is attached to or forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country, while again the term ‘enemy’ includes all armed mutineers, armed rebels, armed rioters and pirates.

“ It will be seen therefore that under the Bill now before Council ample provision is made for such stern measures of discipline as may be necessary not only in time of foreign war but in time of internal revolt.

“ There is only one other point in the Bill to which I think it is necessary to call attention. Under the existing Articles of War persons under this Act, together with their arms, horses, clothes, equipment, regimental accoutrements

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and necessaries, are protected from arrest or seizure for debt so long as they belong to the army. That provision has now been extended to the Indian Reserve Forces, which did not exist when the present Articles of War were framed. But this privilege is only extended to them when called out for, or engaged upon, or returning from, training or service."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—"I have a number of small amendments to move with regard to this Bill, and with Your Excellency's permission, unless any Member of Council desires that they should be taken separately, I think it would be convenient to explain them all at once, in which case it will only be necessary to put one motion. The proposed amendments, as they stand on the notice-paper, are as follows:—

that the word 'and' at the end of clause (21) of Part I, clause (e), as substituted by section 4 of the Bill, as amended, be omitted;

that the following be inserted as clause (22) of the same Part, namely:—

'(22) "offence" means any act or omission punishable under these Articles and includes a civil offence as hereinbefore defined: and';

that the present clause (22) be numbered (23);

and that in clause (23) as so renumbered the words 'and not herein otherwise defined' be inserted after the word 'Articles';

that in article 47 (a) as substituted by section 16 of the Bill, as amended, the words 'makes away with' be inserted after the word 'injures,';

that in section 30 of the Bill, as amended, the figures '83' be inserted before the figures '84,' and that the following be inserted as article 83 after the word 'namely' in that section, namely:—

"Article 83.—A regimental court-martial may be appointed by the officer commanding any corps or department or detachment thereof, or by any officer when in command of two or more corps or departments or detachments thereof.;

Appointment of regimental court-martial.

that in article 117 (1), as substituted by section 42 of the Bill, as amended, the word 'military' be omitted;

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that to section 56 of the Bill, as amended, the following be added, namely:—

‘and in the same paragraph, for the words “any Presidency” the words “a command” shall be substituted.’

“The first amendment is an addition to the interpretation-clause of the Bill. On examination of the Bill it appeared that the word ‘offence,’ if not otherwise explained, might probably have been held to mean an offence as defined in the Indian Penal Code. In this Bill it includes a number of military offences which would not be offences under the Indian Penal Code, and therefore it was thought necessary to insert a special definition of this word ‘offence’ under these Articles, so that it should extend to what might be described as a military offence as well as a civil offence, that is, an offence under the Indian Penal Code. Then clause (23), which provides that the words ‘not herein otherwise defined’ shall be interpreted as they are interpreted in the Penal Code, has to be somewhat altered with the object of showing clearly that the new definition of ‘offence’ is intended to override the definition in the Code.

“Then, as regards article 47 (a), which provided for the punishment of a soldier who ‘designedly or through neglect kills, injures or loses his horse, or ill-treats any animal used in the public service,’ it was suggested that the words ‘makes away with’ might be inserted because they might well meet a case which the word ‘loses’ already in the Act does not sufficiently cover, and it was thought desirable that there should be no doubt about such a case being properly covered in the Bill.

“Then it appeared that accidentally, in the simplification of the various kinds of Courts-Martial, power to convene a Regimental Court-Martial had been more restricted than under the ordinary Act; and I propose, with the consent of the Council, to alter article 83 so as to enable the same class of officers who can at present convene a Regimental Court-Martial still to convene it. This merely gets rid of a quite accidental limitation which I do not think was in the mind of the Select Committee at the time when the Bill was considered by them.

“The fourth amendment is to leave out the word ‘military’ in article 117 (r). It is the only place in the Bill where the expression ‘military offence’ occurs, and it cannot be seriously intended to confine the clause to military offences, because it provides that when a man has been convicted of a military offence then the Court-Martial is to inquire into previous convictions with a view to determining the punishment. It is quite clear that, whether the offence is

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purely military or of an ordinary kind, the question of examination into previous convictions is equally important and pertinent.

“The last amendment I have to notice is in section 56, and is merely the result of a pure accident. The words ‘any Presidency,’ which occur in many places throughout the existing Act, it has been necessary in consequence of a recent change in the law to alter into ‘a Command.’ The expression has been left standing in one place merely because it had been overlooked, and it is desirable that the oversight should be remedied.

“I think I have now sufficiently explained the object of the various amendments, and I would ask Your Excellency to put the motion to the Council.”

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY said that he accepted all the amendments.

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY moved that the Bill, as now amended, be passed. He said:—“I confidently commend it to Council. It will simplify the proceedings of military justice. It in no way interferes with the existing rights of the Native officers and soldiers of the Indian army; it in some respects gives them increased protection; and it makes clear many points which were hitherto more or less involved in doubt.”

The Motion was put and agreed to.

REPEALING AND AMENDING (ARMY) BILL.

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY also moved that the Report of the Select Committee on the Bill to amend certain enactments relating to the Army be taken into consideration. He said:—“The Select Committee has only made one purely verbal amendment, and the Bill itself contains nothing but formal amendments to Acts to make them correspond with the Madras and Bombay Armies Act which has been passed by Parliament.”

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

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BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

—The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Burma Municipal Act, 1884, be taken into consideration. He said:—"It will be in the recollection of the Council that this is a small Bill, introduced for the purpose of enabling the Municipality of Rangoon to pay its way. Their proposal was that, whereas at present they are only able to impose a house-tax at a maximum rate of 5 per cent. on the value of the property within the Municipality, they should be enabled to raise that to 10 per cent., and the only question really before the Select Committee to which the Bill was referred was whether they should be permitted to raise the house-tax to a maximum of 10 per cent., or whether any lower maximum between the figures 5 and 10 would be sufficient for the purpose. The Committee were desirous of raising the house-tax to as high a figure as they could be permitted to do, in order that the very perfect form of scavenging which I understand they have adopted might be carried out without its being necessary to impose so heavy a tax as would be necessary if that system of scavenging was to pay its own way. The Committee, however, to which the Bill was referred thought that, having regard to the fact that the existing law enabled the Municipality to impose any tax whatever which was necessary for the purpose of making the scavenging pay its own way, such a scavenging-tax ought to be imposed as would cover the whole expenditure; but, when we came to consider the other figures, it appeared that a house-tax of 8 per cent. would be insufficient to meet the rest of the general expenditure, and considering that this is after all only a temporary measure, and that the whole question of legislation with regard to the Municipalities of Burma is intended to be undertaken in the near future, the Committee thought that the Municipality of Rangoon might in the meantime be permitted to raise the tax to the 10 per cent. which they asked for, and it is not proposed to insert any lower figure. It appeared, however, that the Bill as introduced would have enabled every Municipality in Burma to raise its house-tax to 10 per cent. if they thought fit, and, as that was never intended, the only Municipality that has any difficulty in the matter so far as we know being that of Rangoon, the Committee have altered the Bill so as to confine the extended power to the Rangoon Municipality."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, as a member of the Select Committee I wish to support what the Hon'ble Sir Alexander Miller has said in regard to the enhancement of the house-tax to 10 per cent. That percentage was agreed to because the percentage to be adopted now is a matter of a transient nature. When we have to consider the further and more

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extended scheme of legislation for Rangoon, it will be open to the Council again to consider whether 10 per cent. or any lower percentage is a proper one to take. I say this because I understand that by a considerable body of opinion in the Municipal Committee of Rangoon 10 per cent. is regarded as too high. We did not consider ourselves justified in going against the recommendation of the Local Government on that point now, but the Government has full discretion to reconsider the matter when it comes before us in connexion with the more extended legislation which is impending."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 18th October, 1894.

		J. M. MACPHERSON,
SIMLA;	}	<i>Deputy Secretary to the Government of India,</i>
<i>The 12th October, 1894.</i>		<i>Legislative Department.</i>