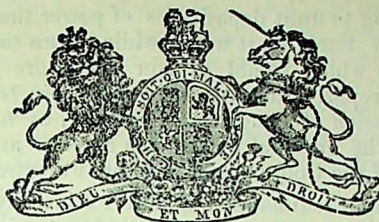


THE



# Bombay Government Gazette.

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*Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

## PART V.

### PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL 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 Thursday, the 12th October 1871.

#### PRESENT:

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 Honourable JOHN STRACHEY.

The Honourable Sir RICHARD TEMPLE, K.C.S.I.

The Honourable J. FITZJAMES STEPHEN, Q.C.

The Honourable B. H. ELLIS.

Major-General the Honourable H. W. NORMAN, C.B.

The Honourable F. R. COCKERELL.

The Honourable R. E. EGERTON.

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

#### CRIMINAL TRIBES' BILL.

The Honourable Mr. STEPHEN moved that the report of the Select Committee on the Bill for the registration of Criminal Tribes and Eunuchs be taken into consideration. He said that the Bill had been for some time before the Council, having been introduced as long as a year ago, and that, as its provisions affected only the Northern States of India, there appeared to be no objection to passing it in the Panjáb, one of the provinces principally concerned, and the chief officers of which were members of the Council. The Bill had been considered with great attention, and it had in its present form substantially received the approbation of the various Local Governments to which it had been submitted. The Bill had



several objects in view. It was unnecessary to dwell again on the unfortunate state of things at which it was levelled. In dealing with the matter the Committee had been alive to the fact that, in any measure of the sort, it was difficult not to confound the innocent with the guilty, and to avoid entrusting to unfit depositaries of power the means of exercising oppression. Still the object in view rendered it worth while to run some risk. He might give the Council one or two instances which would explain the nature of the evil and the absolute necessity for legislation. A report had been received early in 1870, from the Superintendent of Operations for the Suppression of Thuggee and Dacoity, as to the habits and proceedings of one of the principal of the criminal tribes—the Meenas at Shajanpúr—from which he would, with the permission of the Council, read one or two extracts:—

“It is a fact that Shajanpúr is inhabited almost exclusively by Meena plunderers. As many as five hundred adult Meenas have habitation there, and distant robbery is notoriously their profession and their livelihood. Their houses are built of substantial masonry, some with upper stories to them and with underground passages; fine wells have been constructed at their own expense; the land they cultivate, and for which they duly pay revenue, yields no more than would be sufficient for a fourth part only of the population,—men, women, and children combined,—which the number of their adult males represents; they maintain fleet camels, some of which may be found secreted in their premises in readiness for an expedition, or but now arrived from some unknown raid. Cows, buffaloes, and goats are among their possessions; they live amid abundance, and they want for nothing; their festivals of marriage and other ceremony, whether of joy or solemnity, are attended with lavish expenditure. Flesh is their food, and liquor their potation. Trinkets of gold and silver and fine dresses adorn, on pleasure days, the persons of their females. Gold and coral necklaces, earrings, and good turbans are the display of the men; bracelets and frontlets studded with various coins, the ornaments, and party-coloured garments the apparel, of their children. Music and every requirement without stint form the accompaniments of their feasts; revelling and quarrel mark their termination: plenty they have, plenty they spend, and plenty they bestow, and there is no end to their charity.”

Another officer describes their villages thus by way of explaining the desperate and successful resistance which they were enabled to offer to the police who wished, on a particular occasion, to arrest a criminal:—

“The Meena quarter of Shajanpúr is divided into plots, and round each of these is a thorn hedge, some twelve feet high, piled up purposely to prevent passers-by from observing what is going on inside. Every plot contains some twenty or thirty houses and round each of these again is a thorn hedge, with openings here and there to enable the inmates to escape into the adjoining premises in case search is being made for them.”

A case which occurred at Ajmere showed the nature of the operations of these men, and the impossibility of dealing with them satisfactorily under the present law. The Superintendent said:—

“Three gangs of Meenas, numbering in all fifty-seven men, were detected simultaneously quartered in different parts of that city with the connivance of certain members of the local police and of some chaprásis on the establishment of the Magistrate of the district according to the following account as furnished in the Dacoity Statements for British Districts submitted by me in the Home Department:—‘A large number of Meenas was arrested at Ajmere by the local police in December of the year, the most of whom were convicted by the Deputy Commissioners of “unlawful assembly.” They were examined soon after by the approvers of the Thuggee and Dacoity Department. At that time only a few of them were recognized, *the operations against the Meena tribe being then but new, and no more than two approvers as yet admitted*; but several of them have since been registered as dacoits. The men who composed these gangs were, at the time of their arrest, on an expedition of dacoity lower down the country. They had come down from Shajanpúr in the British district of Goorgaon near Delhi, and from the Ulwur and Jaypúr States, and had stopt at Ajmere for want of funds, intending to commit dacoity there by which to recruit them. They had already committed two dacoities in contiguous territory (the plunder in those robberies, Mr. Stephen observed, was valued at Rs. 24,000), and had marked down the house of a maháján in the city of Ajmere, which they would next have plundered but for their opportune arrest by the District Police.’



“The Deputy Commissioner of the district sentenced the whole of these men to rigorous imprisonment for seven years, and they had been transferred to the Agra Jail to undergo that punishment, when the case was reviewed by the High Court at Agra upon petitions presented by three men of the local police force who had been convicted of aiding and abetting them. The Judges recommended the remission of the sentences of the entire number on the ground of wrongful imprisonment without any legal or sufficient evidence of guilt, which, after some further local inquiry, was complied with by the Government of the North-Western Provinces. Owing to our having then only recently taken up operations against the Meenas, and to the acquaintance with Shajanpúr Meenas on the part of our two only approvers being very limited, the evidence which this Department was able to produce against these persons was of little moment, further than that all or nearly all of the arrested parties were declared to be *Meenas*, and that several of them were *Meenas of Shajanpúr*. But the Police Constable who conducted the Meena roll-calls and the Lambardár of Shajanpúr were able to claim several of them as residents of that place, of whom they pointed out *five* to be Meena leaders, and three of these (Gara, Sadasookh, and Sheolall) have since become known to us as important leaders, against whom several dacoities have been registered by members of the tribe since admitted as approvers.

“The Judges observed that the then recent *Fenian trials* in Ireland, held before a commission of three Judges, afforded examples of the course which ought to have been pursued in the present case, in which a large number of persons were similarly simultaneously charged with the same offence. The charge upon which the present prisoners were arraigned was *assembling and making preparation to commit dacoity*, and the Deputy Commissioner of Ajmere, who tried the case, considered that charge to have been fairly substantiated against them. But the Judges, on the ground that it had not been satisfactorily shown, that all were *Meenas* (this fact Mr. Stephen observed was afterwards, according to the Superintendent, satisfactorily proved), and that it was not a crime to be a Meena, nor a proof of a crime, held that the mere fact of their being congregated in Ajmere and having some of them swords and others sticks, or a few camels and horses, was not sufficient for their conviction under the particular laws under which they and their abettors had been tried. By *making preparation* they considered that the Indian Penal Code intended something more than the mere *assemblage* of persons for the purpose of committing dacoity, and that proof was necessary of some *arming or equipment* for the special purpose of committing dacoity, or some other act besides *the mere assembling*, having as its object the perpetration of dacoity, of which, in their opinion, there was no evidence, or that the different parties of Meenas had any common *felonious* object in assembling at Ajmere. An acquaintance with the habits of such criminals would have disposed me to reply to these observations that dacoits certainly *assemble* preparatory to committing dacoity; that, to preserve secrecy, they naturally conceal their weapons near the scene of the intended crime, or put them away somewhere where they might be readily found; and that they are generally only *armed* when actually perpetrating the offence. And, further, that the fact of these men secreting themselves in different parts of a city *at so great a distance from their homes*, unable, when discovered, to give any satisfactory account of themselves, those who were recognized being ascertained to have changed their names, their castes, and their places of residence, was of itself a fair proof of no *good* intention; and that, considered with the circumstance that it was well known that Meenas were habitual dacoits, *their being away from their homes in a body* was a reasonable-enough proof of *felonious* intent when taken with the other circumstances under which they were detected.”

Such was the state of things with which the Legislature had to deal—armed parties of criminals living in fortified villages, going about systematically to commit acts of violence. Could there be a doubt that Government was absolutely bound to deal expressly with such a case?

How then were they to deal with it? It was the rule of the Legislative Department not to initiate measures of general administration,—and the department had not done so, and did not intend to do so, in the present instance; but this report and other authorities, to which he (Mr. STEPHEN) had referred when the Bill was introduced, had called their attention to the fact that a great evil existed, and that the law was not only too weak to cope with



it, but had actually put a stop to the measures, weak, though beneficial as far as they went, which the Executive Government had devised for its suppression. Both in the Panjáb, Oudh, and the North-Western Provinces, systems of registration and roll-call had been adopted; but, as the executive officers had no power to punish those who broke the rules imposed on them, and as the Courts, at least in the Panjáb, expressly declared such rules to be illegal, they broke down entirely, and the persons restrained by them were left at full liberty to pursue their habits of systematic criminality, and the result had been, as affirmed by the Local Government, a most serious and alarming increase of crime. It was easy enough to understand the feelings of bitterness which such mishaps occasioned on the part of executive officers zealous for the discovery and repression of crime towards the legal tribunals, who, in the discharge of their duties, pronounced the only means for effectually dealing with criminals to be illegal. Those feelings were an illustration of a general tendency of which he (Mr. STEPHEN) had noticed many forms in India, the existence of which appeared to him to be very unfortunate. He referred to a tendency on the part of the executive officers, in whom the actual government of the country was vested, to dislike and suspect law and lawyers, as if there were something in the very nature of law by which executive vigour was rendered impossible. This was a great mistake. If the existing law was ill fitted for the state of society in which it existed, it ought to be altered. There was nothing in law as such to prevent executive officers from acting with whatever degree of vigour might be required by the general interests of the community. Indeed, nothing could possibly be more conducive to executive vigour than a distinct system of laws defining, in the clearest possible terms, the powers with which executive officers were to be invested. Such a system would be to the executive officer what precise orders would be to a soldier on active service. He would know where he was, and be free from doubt as to the legality of his conduct,—a doubt which might well paralyze the most vigorous. He (Mr. STEPHEN) did not think that the Courts were to blame for the views which they were apt to take upon such subjects. No doubt they decided according to their conscientious belief as to what the existing law actually was, and this was, of course, their duty. The Legislature, if any one, was in fault. It was undoubtedly their duty to keep a careful watch upon the course of administration, and to give expressly to their officers, from time to time, such powers as were necessary for good government. The task, however, was one of the greatest difficulty and delicacy, and was also one in which rashness might be disastrous. The present Bill was an attempt to discharge it in regard to this particular matter.

He would now shortly describe a few of the leading provisions of the Bill which had been settled with the greatest care in concert with the Local Governments of the provinces to which it extended. The Bill was divided into two parts,—one referring to criminal tribes, and the other to eunuchs. The part which related to criminal tribes had been very considerably altered since the introduction of the measure, in order to meet the views of the Local Governments. He (Mr. STEPHEN) had originally proposed to confine the measure to tribes who had fixed places of residence during at least part of the year. The reason of this was that it appeared exceedingly difficult to deal with tribes which had no place of residence, but perpetually wandered. To prevent them from wandering might, in many cases, be equivalent to preventing them from earning their living; and it did not follow that, because a tribe of basket-makers or grain-sellers might occasionally, or even frequently, commit thefts, they were to be treated as a criminal class, who travelled about for the purpose of committing crime, and made their ostensible occupation a mere pretence for the purpose of enabling them to do so with more convenience. The tribes who were chiefly in the mind of the framers of the Bill when it was introduced were persons like the Meenas, of whose habits he (Mr. STEPHEN) had already given a description. The Local Governments had, however, represented to the Committee that wandering gangs of criminals were both common and dangerous, and that few, if any, criminal tribes were of greater importance, or more urgently required the discipline which this Bill would provide for them. The Bill had, accordingly been so moulded as to apply to all criminal tribes, whether they had or had not a fixed place of residence. Careful precautions had, however, been taken to prevent, as far as possible, any abuse of the very extensive powers which the Bill conferred. The second, third, and fourth sections of the Bill provided in substance that, before a gang, tribe, or class could be declared criminal, the Local Government should report the case to the Governor General in Council, detailing in their report their reasons for regarding the tribe as criminal, the nature of the crimes which it was suspected of committing, and, if it was a wandering tribe, the reasons for supposing that any lawful occupation followed by it was a mere pretence for the purpose of facilitating the commission of crime. The report was also to set out the arrangements proposed to be made for enabling the tribe, when settled in any fixed place of



residence, to earn its living therein. This report would not be liable to be inquired into by any Court of Justice, but it would remain amongst the records of Government, and might be produced at any time if oppression were found to result, so as to fix the responsibility of procuring a tribe to be declared criminal on those to whom it might properly belong.

If, on the consideration of the report, the Governor General in Council thought fit, he might authorize the tribe to be declared criminal. Thereupon, a register of its members would be formed under the orders of the Local Government, according to a procedure laid down in the Bill. Persons aggrieved by an entry therein would have an appeal to the Magistrate of the district, and his order might be reviewed by the Commissioner. If the tribe had no fixed place of residence, it could not be registered until the Local Government had made arrangements which the Governor General in Council considered suitable for enabling it to earn its living in the place in which it was to be settled, and no tribe, whether wandering or not, once settled in a fixed place of residence could be removed to another, except upon similar conditions. Parts of tribes might be separately dealt with, so that their organization might be broken up, and the young instructed in better modes of life than their parents.

Criminal tribes, when registered, might be placed in either of two categories, according as the settlement in which they were placed was or was not declared to be a reformatory. If the settlement was not declared to be a reformatory, the registered persons would simply be placed under a strict system of roll-call and passes. If the settlement was declared to be a reformatory, their labour would be superintended and regulated, care being taken that its surplus produce, after providing for their maintenance, should be applied for their benefit. Any registered person who was found in any part of British India might be arrested and returned to the appointed place of residence, and violation of the rules for the regulation of such places or of reformatories was punishable by fine, imprisonment, and whipping. The duty imposed on village headmen and watchmen by the Bengal Regulations to give notice of offences was re-imposed in this Act, with regard to reporting the movements of registered persons. One part of the section empowering the Local Government to make rules deserved special notice. It enabled them to make rules as to the inspection of the residences and villages of registered tribes, "and the prevention and removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave." The object of this was to prevent persons, like the Meenas, from evading the whole object of the Act by thorn hedges, underground passages, and the like.

The result of the whole of these provisions taken together would be to enable the Local Governments effectually to coerce and restrain from crime such communities as had been noticed.

The second part of the Bill—that relating to eunuchs—had been but little altered, and the revolting nature of the subject rendered him (Mr. STEPHEN) most unwilling to say more about it than was absolutely necessary. He had, in his former speech upon the subject, stated the grounds on which the proposed measure rested. He had seen no reason to change the opinion which he then expressed, and the Local Governments consulted on the matter concurred in his views.

His Excellency the COMMANDER-IN-CHIEF said that it was impossible to listen to the interesting statement which had been made by the Honourable Mr. Stephen regarding this measure without much satisfaction,—a measure which, though apparently one of executive severity, was really calculated to be of great benefit to large classes of the people of India, who, though in a certain sense criminal, were yet wanting in one element of criminality, inasmuch as they were unconscious of the nature of their acts, having been educated to consider them as innocent, and trained from their earliest youth for the purposes of crime. Another advantage of such measures as the present was that they were a step in the direction of knowing what the people subject to our government were doing,—a branch of knowledge in which the Government had hitherto made very little advance. On the whole His Excellency would express his entire satisfaction with the manner in which the subject had been treated by the Legislature.

The Honourable Mr. EGERTON wished to add a few words to the remarks of his honourable friend Mr. Stephen on a subject which he (Mr. EGERTON) considered as especially interesting and important. Most of the provisions of the Bill dealt with the case of adults, but there was one section which enabled the Local Governments to remove any part of a criminal tribe and to locate it in a reformatory settlement, and he earnestly hoped that this provision might be enforced for the purpose of establishing reformatories for the youths of



criminal tribes, who were at present trained from their earliest years in habits of theft and violence. No one who had had to do with the police execution of a district could fail to know how deeply inbred in certain classes of the population these lawless habits were, and how impossible it was for a child so unfortunately circumstanced to break away from the traditional habits of the community in which it was born. These children were brought up to look upon theft as an honourable duty, and as a matter of daily occurrence. The Sonorias, for instance, were a wandering tribe, of which the children were systematically trained for, and employed in, practices of theft. The skill and intelligence of the children were very remarkable, and it was a pity that they should not be utilized for right and useful purposes instead of being directed to mischievous and depraved ends. If the State exercised a wholesome severity on the one hand, it was only right that on the other it should extend the opportunity of improvements to every class of its subjects. Mr. EGERTON approved also of the measures by which village headmen and watchmen were made, to a certain extent, responsible for the maintenance of public order. He knew by experience what valuable aid they could give in the discovery and repression of crime, and how successfully they could baffle the proceedings of the police if they chose. It was a wise policy to put their responsibility in this important particular on a legal footing.

The Motion was put and agreed to.

The Honourable Mr. Stephen also moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### EXTRADITION BILL.

The Honourable Mr. STEPHEN in moving for leave to introduce a Bill to consolidate and amend the law relating to offences committed in Foreign States, said that the object of the Bill was to consolidate the existing laws on the subject, and to amend them in several important particulars in which they were at present defective, as well as to give the express warrant of law to certain executive measures which had been taken in connection with the subject. Considerable dissatisfaction had been occasioned to Native allied Princes by these deficiencies of the law, which it was now intended to remedy. The Bill involved several questions of a delicate and difficult nature, which he would defer touching upon till the Bill was introduced.

The Motion was put and agreed to.

#### EUROPEAN VAGRANCY ACT AMENDMENT BILL.

The Honourable Mr. STEPHEN presented the report of the Select Committee on the Bill to amend the European Vagrancy Act, 1869.

#### NORTHERN INDIA CANAL AND DRAINAGE BILL.

The Honourable Mr. EGERTON presented the report of the Select Committee on the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation, and Drainage.

The Honourable Mr. COCKERELL, having obtained the permission of His Excellency the President to make a few observations in regard to the presentation of the report, said:—"My Lord,—I do not wish to raise any discussion on the merits of the Bill to which this report relates, as it is not now before the Council. My object in asking leave to say a few words on the present occasion is simply to deprecate the apparent intention of proceeding to the consideration of this report and the passing of the Bill, which the presentation of the report at this time seems to indicate, whilst the Council holds its sittings at Simla, and to express the hope that that intention will not be persevered in.

"I am not unmindful of the fact that a change of title and the proposed restriction of its immediate local extent have given to the Bill the external appearance of a purely local measure. I do not forget the presence in the Council, during its sittings at this place, of the head of the Panjáb Government and the chief revenue officer of that province, nor do I presume to underrate the very great and peculiar advantages which the consideration of a measure of this kind must necessarily derive from their presence. I anticipate and admit all that can be said by the advocates of no further delay in this matter in favour of prosecuting to completion the enactment of this Bill ere the Council adjourns. But nevertheless I venture to express a very decided opinion that the attempted assertion of the principles which govern some of the most important provisions of this Bill is calculated to give an effect to the measure which must reach far beyond its nominal local extent, and thus takes the Bill altogether



out of the category of mere local enactments ; and I say that, whether regard be had to that effect, or to the circumstances under which the Bill was originally introduced, and the loud protests and expressions of disapprobation which the enunciation of those principles then drew forth from many eminent public officers, it will be unwise and impolitic to press on the enactment of such a measure at a time and place where the only semblance of the representative element which this Council possesses—I mean the presence of those non-official members who as British subjects are amenable to the laws which they aid in enacting—is necessarily wanting.

“ My Lord, if I stood alone in the strong objection which I entertain to the principles which it is proposed to affirm by the enactment of this Bill, I should feel great hesitation in urging my present point against what I believe to be the views of the majority of my colleagues. But when the strongest opposition to the assertion of those principles has been repeatedly expressed in what I conceive to be unanswerable language by the ablest and most experienced revenue officer in India—the Lieutenant-Governor of the North-Western Provinces; when I know that the same strong objection was felt by at least two of our colleagues, now absent, who took a most active part in the consideration and discussion of some of the details of the Bill during its early progress in committee at Calcutta—gentlemen whose long standing in the public service, varied experience, and especial familiarity with the working of canal irrigation,—the blessings which, when wisely regulated, it can confer on the people, and the no less certain evils which an inefficient or indiscreet management of it carries in its train,—necessarily entitle their opinions to mature consideration; under such circumstances, I do feel justified, my Lord, in appealing to Your Excellency and the members of Your Excellency’s Government as strongly and earnestly as I can, to allow the further progress of this measure to be stayed until the Council meets in Calcutta.

“ If the imposition of such altogether novel and peculiar taxation as is aimed at by this Bill is to be allowed by an enactment of the Legislature, then, my Lord, I submit that it should be done with all the emphasis and appearance of deliberation that a full assembly of the members of Your Excellency’s Council for making Laws and Regulations in the capital of the empire, and specially the presence in that assembly of that important constituent part of the Council to which I have just referred, can give to the proceeding.

“ It is just three years since, in this place, I made a similar appeal to Your Excellency’s predecessor to defer, under like circumstances, the adoption of that curious piece of legislation—the Panjáb Tenancy Act. And I believe that I am justified in saying that much of the dissatisfaction with which that enactment was received by the public was undoubtedly due to the manner in which it was hurried through the Council, and to the fact of its having been passed at Simla.”

The Honourable Mr. STRACHEY said that his honourable friend’s observations appeared to him very irregular, and certainly had not carried out his promise of not raising a discussion. The fact was that the question raised by Mr. Cockerell was nothing short of this—should or should not the Bill be taken into consideration at Simla? It was impossible to go into this question without discussing the whole policy of the Bill, which he (Mr. STRACHEY) had no intention of doing. With regard to Mr. Cockerell’s somewhat sensational appeal to the public, he would state what the plain truth of the case was. Some years ago the Panjáb Government had come to the Government of India for a Canal Bill, which it was said was urgently needed. It was then proposed to extend the measure to the whole of Upper India. Afterwards difficulties, which he (Mr. STRACHEY) on a recent occasion explained to the Council, had arisen in doing this, and it was accordingly determined to revert to the original plan and legislate for the Panjáb alone. So far from the Government of India having had any special desire to adopt this course, it was, as he was sure the Lieutenant-Governor would testify, the earnest wish of the Panjáb Government for this Bill that had led to its being now proceeded with; and as the Bill was now a strictly local one, and as the Lieutenant-Governor, the Financial Commissioner, and other officers of local experience were present to assist the deliberations of the Council on the subject, it seemed to him only a natural and proper course to proceed with it while the Council was sitting in the Panjáb—at Simla—rather than at Calcutta, when all these advantages would be wanting.

His Excellency the President said :—“ Before this Bill is taken into consideration at its next stage, the observations of the Honourable Mr. Cockerell will receive the attention of the Government. But I must at once take exception to a view which is suggested by the honourable member’s remarks, and which ought not to pass unnoticed—the view that certain measures cannot be discussed and disposed of by this Council with equal and even more advantage at Simla than at Calcutta. The Bill before us is one which affects the Panjáb, and the Panjáb alone; the necessity for it is strongly urged upon the Government by all the



local authorities. Members of this Council, who are also members of the Panjáb Government, and therefore most competent to advise upon the subject, are present; these gentlemen cannot, from the nature of their official duties, attend at Calcutta. It appears to me, therefore, that the present is the most fitting time, and Simla the most fitting place, for discussing this measure.

“It is not fair to assume that measures which are considered fit for the Panjáb must necessarily, in consequence, be considered suitable in all their details for every other part of the empire. Canal Bills for other provinces will be discussed and settled on their own merits, with reference to the wants of the particular case and to the opinions of the local authorities. As a matter of principle, the Government has long since declared its opinion in favour of a compulsory rate to be levied under fixed conditions and certain well-defined limitations. I believe the principle asserted by the sections forty-four, &c., to be not only sound and useful, but absolutely essential to the success of those great schemes of irrigation by which alone large portions of the country can be preserved from periodical famines, and the country permanently enriched; but because the Council adopts that opinion and applies these clauses to the Panjáb it does not necessarily follow that all the details now provided will be necessarily applied in future legislation to other parts of India. Such an assumption is without foundation. This sound principle may be applied in other forms and by other means.

“With regard to this particular Bill, looking to the history of past attempts at legislation on the subject,—to the absolute necessity which exists for legislation of some sort, to the advantage the Council enjoys in the presence of officials of experience and authority connected with the administration of this province,—I think that the Government have adopted a wise course in dealing with the Bill here, and in declining to run the risk of another year’s delay, simply because gentlemen connected with other parts of the country, and who have no particular and special knowledge of the Panjáb, do not happen to approve a measure which the officials best acquainted with this province regard with approval and satisfaction. I repeat that this Bill is not to be taken as laying down an absolute and unalterable formula for the whole of India, but is to be considered on its own merits as affecting the Panjáb: and it seems to me that the Panjáb is the place in which such a measure can be best disposed of.”

The Honourable Mr. ELLIS suggested that the proper course would have been for the Honourable Mr. Cockerell, if he objected to the passing of the Bill at Simla, to wait till the motion for taking the Bill into consideration was made, and then to move as an amendment that the consideration of it should be edferred till the return of the Council to Calcutta. At present there was no motion before the Council, and the honourable member was therefore out of order in remarking on the Bill.

The Council adjourned to Thursday, the 19th October 1871.

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the Governor General  
for making Laws and Regulations.*

SIMLA :

*The 12th October 1871.*



*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.

**PRESENT:**

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 Honourable JOHN STRACHEY.

The Honourable Sir RICHARD TEMPLE, K.C.S.I.

The Honourable J. FITZJAMES STEPHEN, Q.C.

The Honourable B. H. ELLIS.

Major-General the Honourable H. W. NORMAN, C.B.

The Honourable F. R. COCKERELL.

The Honourable R. E. EGERTON.

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

**EUROPEAN VAGRANCY ACT AMENDMENT BILL.**

The Honourable 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 Honourable 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 Honourable 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 (PANJA'B) BILL.**

The Honourable 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 Honourable 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 contemporary 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 that 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 Honourable Mr. Cockerell also moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### INDIAN CHRISTIAN MARRIAGE BILL.

The Honourable 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 control 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 control 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 Honourable 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 honourable 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 honourable 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 Honourable 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,

*Officiating Secretary to the Council of the Governor General  
for making Laws and Regulations.*

SIMLA :

*The 19th October 1871.*