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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1896 :—

We, the undersigned, Members of the Select Committee to which the Bill to amend the Code of Criminal Procedure, 1882, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

From Agent to Governor General in Baluchistan, No. 7366, dated 13th November, 1895 [Paper No. 1].
 From Resident, Hyderabad, No. 425, dated 25th November, 1895, and enclosures [Papers No. 2].
 From Chief Commissioner, Assam, No. 180-L. & L.—5500-J., dated 2nd December, 1895, and enclosures [Papers No. 3].
 From Chief Commissioner, Central Provinces, No. 9177, dated 13th December, 1895, and enclosures [Papers No. 4].
 From Government, Bombay, No. 8899, dated 19th December, 1895, and enclosures [Papers No. 5].
 From Government, Panjab, No. 1496, dated 24th December, 1895, and enclosures [Papers No. 6].
 From Chief Commissioner, Burma, No. 661-L.—19, dated 23rd December, 1895, and enclosure [Papers No. 7].
 From Chief Commissioner, Coorg, No. 2122, dated 30th December, 1895 [Paper No. 8].
 From Chief Commissioner, Ajmere-Merwara, No. 22-C.—690-VI., dated 29th December, 1895, and enclosures [Papers No. 9].
 From Government, Bengal, No. 6038-J., dated 31st December, 1895, and enclosures [Papers No. 10].
 From European and Anglo-Indian Defence Association, No. 602, dated 7th January, 1896 [Paper No. 11].
 From High Court, Calcutta, No. 330, dated 24th January, 1896, and enclosure [Papers No. 12].
 From Government, Madras, No. 52, dated 8th January, 1896, and enclosures [Papers No. 13].
 From Government, North-Western Provinces and Oudh, No. 384, dated 14th February 1896, and enclosures [Papers No. 14].
 From Government, Bengal, No. 854-J., dated 14th February, 1896, and enclosure [Papers No. 15].

2. In view of the generally and very strongly expressed opinions against the proposal to provide for the requiring of special verdicts on issues of fact, we have decided to recommend that clause 3 of the Bill as introduced be eliminated. We do so with the less hesitation because we believe generally anticipated on

that the provisions referred to would have had less effect than seems to have been the practical working of the system of trial by jury in this country.

3. We have, in clause 4 of the Bill (3 of our revise), endeavoured to place it beyond dispute that it is not necessary that a verdict should be actually perverse in order to justify its being made the subject of a reference to the High Court, and further that it is the bounden duty of the High Court on receiving such a reference to take fully into account the opinion of the Sessions Judge as well as that of the jury and the evidence on which both should be based. This is the view of the existing law in this connection

which has been accepted by the best authorities, but there has been considerable divergence of opinion upon the subject, and that it should be authoritatively settled by the Legislature in this way is, we think, of considerable importance.

4. It seems to us that jurors should not be rendered liable to serve as such in respect of any area larger than that of an ordinary district, and we have, therefore, suggested the substitution of the word "smaller" for the word "other" in the addition to section 319 of the Code contemplated by clause 5 of the Bill as referred to us (clause 4 of the amended Bill).

5. We are of opinion that it is very desirable that the introduction of the system of special juries in the mufassal should not be allowed to result in the incidence of undue hardship on the comparatively limited class of persons who will be selected to sit, if required, on special juries. It was strongly urged upon us that, in accordance with the practice in England and also, we understand, in the presidency-towns in India, special jurors be exempted from service on common juries; but we are unable to accept the suggestion, convinced as we are that any such exemption would involve the emasculation of the common jury-lists. At the same time it should be borne in mind that service in a special jury case will, almost of necessity, be much more irksome and protracted than service in a trial by common jury; for *ex concessis*, the object of the particular amendment of the law under consideration is to enable Sessions Judges to call in the aid of "persons possessing superior qualifications in respect of property, character or education" in the trial of cases of an intricate character requiring a superior degree of intelligence and responsibility to be brought to bear on their consideration. We think, then, that some special privilege should be allowed the special juror, and with this intention we have added a clause to the Bill (clause 7 of the amended Bill) which will give the Sessions Judge power, at the conclusion of any lengthy or laborious trial by special jury, to direct that the jurors who have been engaged in it, shall not again be summoned to serve on any jury within a period of twelve months, six months only being the interval contemplated by section 326, paragraph 2, of the Code as it stands.

6. The publication ordered by the Council has been made as follows:—

			<i>In English.</i>	
<i>Gazette.</i>	<i>Date.</i>
Gazette of India	24th August 1895.
Port Saint George Gazette	10th September 1895.
Bombay Government Gazette	29th August 1895.
Calcutta Gazette	4th September 1895.
North-Western Provinces and Oudh Government Gazette	31st August 1895.
Punjab Government Gazette	29th August 1895.
Central Provinces Gazette	31st August 1895.
Burma Gazette	7th September 1895.
Assam Gazette	14th September 1895.
Coorg District Gazette	1st October 1895.
Sindh Official Gazette	19th September 1895.

			<i>In the Vernaculars.</i>		
<i>Province.</i>	...	...	<i>Language.</i>	...	<i>Date.</i>
Madras	...	...	Telugu	...	24th September 1895.
			Hindustani	...	24th September 1895.
			Malayalam	...	24th September 1895.
			Tamil	...	1st October 1895.
Bombay	...	...	Kanarese	...	1st October 1895.
			Marathi	...	7th November 1895.
			Gujarathi	...	7th November 1895.
			Kanarese	...	7th November 1895.
Bengal	...	...	Bengali	...	1st October 1895.
			Uriya	...	10th October 1895.
			Hindi	...	15th October 1895.
North-Western Provinces and Oudh	...	...	Urdu	...	14th September 1895.
Punjab	...	...	Urdu	...	26th September 1895.
Burma	...	...	Burmese	...	14th September 1895.
Assam	...	...	Bengali	...	12th October 1895.
Coorg	...	...	Kanarese	...	1st November 1895.
Sindh	...	...	Sindhi	...	19th September 1895.

7. We consider that the Bill has not undergone such revision as to render its re-publication necessary, and we recommend that it be now taken into consideration in Council and passed.

(Signed) ALEX. EDW. MILLER.
 (") J. WOODBURN.
 (") A. CADELL.
 (") MOHINY MOHUN ROY.
 (") P. ANANDA CHARLU.
 (") G. H. P. EVANS.
 (") J. D. REES.

No. II.

A Bill to amend the Code of Criminal Procedure, 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882; It is hereby enacted as follows:—

1. (1) In the first sentence of section 269 of the said Code, after the word "may", where it first occurs, the words "with the previous sanction of the Governor General in Council," and after the word "may", where it next occurs, the words "with the like sanction," shall respectively be inserted.

(2) After the first sentence of the same section the following shall be inserted, namely:—

"The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offence shall, if the Judge, on application made to him or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order."

2. In section 276 of the said Code, before the word "thirdly" the word "and" shall be repealed, and to the same section the following shall be added, namely:—

"and

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325A."

3. (1) In section 307 of the said Code, for the words "so completely that he considers it" the words "and is clearly of opinion that it is" shall be substituted.

(2) In the same section, for the words "but it may" the words "and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury," shall be substituted.

4. To section 319 of the said Code the following words shall be added, namely:—

"or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed."

5. After section 325 of the said Code the following section shall be added, namely:—

"325A. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge, and the Collector of such district or other officer as aforesaid, shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury."

6. In section 326 of the said Code, after the words "the said revised list" the words "or the said special list" shall be inserted, and the words "on the revised list" shall be omitted.

7. After section 330 of the said Code the following section shall be added, namely:—

"330A. The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

S. HARVEY JAMES,
Secretary to the Government of India.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1896 :—

No. 13 of 1896.

A Bill to render it permissive to the members of the Memon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Memons, and questions have from time to time arisen as to the law by which such persons are in certain particulars governed ;

And whereas some of such persons consider that they are, or desire that they should be, governed in those particulars by the Muhammadan law as established in the Hanafi School ;

And whereas it is expedient to provide a procedure whereby the applicability of that law to such persons in those particulars may be placed beyond dispute ;

It is hereby enacted as follows :—

Title, extent and commencement. 1. (1) This Act may be called the Memons Act, 1896 ; and

(2) It shall come into force at once.

2. (1) When any Memon who has attained his majority has declared, in manner next hereinafter provided, that he desires to be governed by the

Muhammadan law as established in the Hanafi School, that law shall thereupon, any custom to the contrary notwithstanding, apply to him, and to his children (if any), being minors at the time of such declaration or born thereafter, and to all property of which he or they shall then be or thereafter become absolutely entitled, in each part of British India, in the same particulars and to the same extent as it applies in the same part of British India to other Muhammadans and their property.

(2) No declaration made as aforesaid shall be capable of being revoked.

3. A declaration to take effect under section 2 shall be made by a written instrument signed by the declarant and in the form set forth in the schedule or in a like form, and shall,—

(a) if made in any part of British India in which the Indian Registration Act, 1877, III of 1877, is for the time being in force, be registered under that Act during the lifetime of the declarant ; and,

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

4. When declarations under the foregoing provisions have been made by a Memon and by any one of his sons, the Muhammadan law as established in the Hanafi School shall thereupon, any custom to the contrary notwithstanding, apply to all the lineal descendants of such son in the same manner and to the same extent as to other Muhammadans governed by it in the same part of British India.

5. Nothing in this Act shall be construed—

(1) to prevent any person being or becoming subject to any form of the Muhammadan law in any manner other than that herein provided, or

(2) to affect the rights of any member of a declarant's family other than such children and lineal descendants as are referred to in sections 2 and 4.

SCHEDULE.

FORM OF DECLARATION.

I, *A. B.*, son of *C. D.*, being a Memon and of the age of not less than _____ years, hereby declare that I desire to be governed, to the extent provided by the Memons Act, 1896, by the Muhammadan law as established in the Hanafi School.

Given under my hand, this _____ day of _____ 18 _____

A. B.

STATEMENT OF OBJECTS AND REASONS.

The persons belonging to what is known as the Memon community are persons of Hindu extraction whose ancestors embraced Muhammadanism, but, although they are now generally regarded as Mussulmans, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu custom instead of by Muhammadan law. It has on more than one occasion been represented to the Government of India that this position is unsatisfactory, and that it should be declared by legislation that Memons are governed by the Muhammadan law of the Hanafi School. The Government of India do not think it would be right to take this course unless it were shown to be in accordance with the wishes of the entire Memon community, and they are not satisfied that that community is unanimous on the subject. At the same time it seems perfectly reasonable and open to no objection that individual Memons, who are so minded, should be enabled to secure to themselves, by means of a declaration, the application of the Muhammadan law on the footing of ordinary Muhammadans, and so to avoid the risk of being held to be governed by a customary law which they repudiate. With this object a Bill was prepared in

1885, and was actually introduced in Council; but a difference of opinion arose as to whether the onus of making a declaration should be made to rest upon the innovators or upon the conservative party, *i. e.*, upon those Memons who desired to be governed by the Muhammadan law, or upon those who preferred to be regarded as Hindus like their remoter ancestors; and in consequence the measure was not further proceeded with. The proposal has lately been revived on the submission through the Government of Bombay of another petition on the subject, and it is proposed to re-introduce the Bill of 1885 with four amendments and additions, providing (1) that a declaration made by a father shall bind his children (if any) who are minors at the time of such declaration or are born thereafter, (2) that a declaration once made shall be irrevocable, (3) that, after similar declarations have been made by the father and also by the son, all the lineal descendants of the latter shall be bound thereby, and (4) that nothing in the proposed enactment shall affect the rights of any member of a declarant's family other than the children and lineal descendants just referred to.

(Signed) J. WOODBURN.

The 19th March 1896.

S. HARVEY JAMES,
Secretary to the Government of India.