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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th December 1873, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

Bill No. 24 of 1873.

A Bill to amend the Code of Criminal Procedure.

For the purpose of amending the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Code of Criminal Procedure Amendment Act, 1873."

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the passing thereof.

2. After section sixty-four, the following section shall be inserted:—

64A. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case, or appeal, or class of cases or appeals, from any Criminal Court to any other Criminal Court of equal or superior jurisdiction,

or may order that any offence shall be enquired into or tried in any District or division of a District, other than that in which the offence has been committed:

Provided that it appears to the Governor General in Council that such direction or order will promote the ends of justice, or tend to the general convenience of the parties or witnesses.

3. In the second paragraph of section two hundred and seventy-two, Amendment of Section 272. for the words "and the rules of limitation shall not apply to appeals presented under this section," the following words shall be substituted (namely)—"but no appeal shall be presented under this section after one year from the date of the judgment complained of."

4. In the second clause of section two hundred and seventy-four, for the last four words, the following shall be substituted (namely):—"and not in addition thereto."

5. To sections two hundred and seventy-eight, Amendment of Section 278. the following clause shall be added:—"In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence."

6. To section two hundred and ninety-six, Amendment of Section 296. the following words shall be added:—"upon the matter of such complaint or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged."

7. To section two hundred and ninety-eight Amendment of Section 298. the following clause shall be added:—

"For the purposes of this section, any Magistrate in a Sessions Division shall be deemed to be subordinate to the Session Judge of the Division."

8. In the fourth paragraph of section three Amendment of Section 302. words "the sentence," the words "a sentence of transportation or imprisonment" shall be substituted.

9. After the first paragraph of section three hundred and thirty, the Amendment of Section 330. following shall be inserted (namely):—

"If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the Court dispensing with his personal attendance may direct a Commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him."

And in the third paragraph of the same section after the word 'Magistrate,' the words 'or Police Magistrate' shall be inserted.

And after the fourth paragraph of the same section, the following paragraph shall be inserted (namely):—

"After any Commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the Commission, the return thereto, and the deposition of such witness shall form part of the record."

10. To section four hundred and twenty-five, Amendment of Section 425. the following clause shall be added:—

"The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court."

11. In the second paragraph of section four hundred and sixty-four, after the word "language," the words "free of cost" shall be inserted;

and to the seventh paragraph of the same section, the following words shall be added (namely):—

"where such error or defect is in a mere matter of form not affecting the merits of the case."

12. In section five hundred and twenty-seven, for the words "four hundred and twenty-one," the words "five hundred and twenty-one," shall be substituted.

13. In this Act 'section' means section of the Code of Criminal Procedure.

STATEMENT OF OBJECTS AND REASONS.

When a Court inferior to a Court of Session sentences an accused person to whipping, the new Code of Criminal Procedure, Section 302, paragraph 4, is so framed as to render it necessary to send him, for the execution of the sentence, to the jail of the district in which the trial is held. The result is (as the Panjáb Government has pointed out) that Magistrates at out-stations and places distant from any jail are now practically prohibited from inflicting sentences of whipping. The primary object of the present Bill is to amend the provision in question so as to make it apply of such sentences only when passed by the Court to Session or the High Court. This amendment is effected by Clause 8.

2. The opportunity has been taken to make certain other amendments of the Code, which seem either necessary or highly expedient. These may be shortly stated as follows:—

3. Clause 2 of the Bill proposes to insert, after Section 64 of the Code, a new section empowering the Government of India to transfer cases from any Criminal Court to any other Criminal Court in British India of equal or superior jurisdiction, or to order that any offence shall be enquired into or tried in any district other than that in which the offence has been committed. This power is expressly made exercisable only where it appears that the transfer or order will promote the ends of justice, or tend to the general convenience of the parties or witnesses. A somewhat similar provision was contained in the repealed Bengal Regulation XVI. of 1810, Section 3, and reference may be made to the power to change the venue conferred by 33 Vic., Chap. 9, Section 29.

4. Section 272 of the Code declares that the rules of limitation shall not apply to appeals against acquittals prescribed under that section. This provision was doubtless intended only to get rid of the very short limit fixed by Act IX. of 1871, but it leaves the right of appeal by the Crown without limit, and Clause 3 of the Bill proposes to fix a period of one year within which such appeals must be brought.

5. The last four words of the second clause of Section 274 ("and in addition thereto") are meaningless when considered with the context. They clearly were intended to be "and not in addition thereto." Clause 4 makes this amendment.

6. The Bombay High Court has lately held that, in rejecting an appeal under Section 278, the Appellate Court has no power to enhance the sentence. The Bill, Clause 5, adopts this ruling.

7. Section 296 is incomplete, and might be held to authorize any Session Judge or Magistrate who considers that an accused person has been improperly discharged, to direct him to be committed for an offence with which he had not been charged. Clause 6 therefore (in accordance with the ruling of Phear, J., in *Regina v. Tarucknath Mookerjee*, 10 Bengal Law Reports 285) declares that the committal must be for trial upon the matter of which the accused has been improperly discharged.

8. Sections 37 and 295 have given rise to doubts as to the meaning of the expression "any Subordinate Court" in Section 298, as to directing inquiries into complaints dismissed under Section 147. The Bill (here following the second paragraph of Section 295) declares that, for the purposes of Section 298, any Magistrate in a Sessions Division shall be deemed to be subordinate to the Session Judge of the division.

9. The object of Clause 8 has already been explained in the first paragraph of this statement.

10. Section 330 empowers the Court of Session and the High Court to issue commissions, for the examination of absent witnesses, to the Magistrate of the District or a Magistrate of the first class in whose jurisdiction the witnesses may be. But the section omits to provide for the case of witnesses in the Presidency towns, and it also fails to say what shall be done with the Commission when it has been executed. Clause 9 of the Bill amends these defects.

11. A question has been raised as to whether, when a person committed before a Court of Session appears to be insane, the trial of the fact of his insanity is or is not part of his trial before the Court, and whether, therefore, the fact in question is or is not to be determined by a jury, or with the aid of assessors. Clause 10 of the Bill (following the ruling of Phear, J., in *Regina v. Bheekoo Kalwar*, 10 Bengal Law Reports App. 10) decides this question in the affirmative.

12. The last paragraph of Section 464 enacts that "no error or defect in any judgment shall invalidate the proceedings." The intention of the legislature was of course to confine the operation of this clause to merely formal errors and defects. Clause 12 of the Bill expresses this clearly.

13. The remaining clauses explain themselves.

(Signed) A. HOBHOUSE.

The 8th December 1873.

WHITLEY STOKES,
Secretary to the Government of India.