Thursday,
15th May, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

Jan.-Dec., 1883

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1884

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1884

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 Government House, Simla, on Thursday, the 15th May, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.

LEGAL PRACTITIONERS' BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879, be taken into consideration. He said:—

"The main proposals of this Bill are two: first, to give certain non-chartered High Courts the power of enrolling advocates of their own; and, secondly, to modify the rules as to the persons from whom pleaders are allowed to take instructions.

"There is a section in the existing Act which confers upon the Chief Court of the Panjab a power to enrol advocates, and it is proposed by this Bill to confer a similar power on certain other Courts, such as the Court of the Judicial Commissioner of the Central Provinces, which are High Courts within the meaning of the Act, that is to say, which are the highest Civil Courts of Appeal for their provinces. The proposal has been objected to on the ground that it draws an invidious distinction between different classes of legal practitioners, and also on the ground that the vakils of the chartered High Courts are excluded from the benefit of the measure. Both these objections appear to me to be based on the assumption that the term 'advocate,' as used in the Bill, is synonymous with 'barrister,' and that no persons except barristers are capable of being enrolled as advocates under the Bill. But

that is not the case. If members of Council will look at section 8 of the Bill, they will find that it empowers a High Court, with the previous sanction of the Local Government, to make rules as to the qualifications and admission of proper persons to be advocates of the Court, and to enrol advocates in accordance with those rules. Under this power, if a High Court, having regard to the nature of the business to be conducted, and to all the circumstances of the case, thinks it proper to admit as advocates vakils of the chartered High Courts, it can do so. And, as a matter of fact, it appears that the Officiating Judicial Commissioner of the Central Provinces intends to make a rule to that effect.

"It is true that, if a vakil of a chartered High Court is admitted as an advocate under these rules, he may, under the Stamp Act, be compelled to pay a second fee of Rs. 500; but we think that any hardship arising from this cause might be sufficiently met by the power of exemption which may be made by the Executive Government under the Stamp Act.

"It has been pointed out that the provisions of the Bill will, in certain details, not fit in with the judicial system in force in British Burma under the Burma Courts Act. But the Legal Practitioners' Act, which it amends, does not extend to British Burma, and there is no intention of extending it to that Province. Under these circumstances, we do not think it necessary to make any modification in the Bill for the purpose of meeting the peculiar circumstances of British Burma.

"A somewhat similar remark applies to a fear which has been expressed that a section of the Bill will have the immediate effect of repealing Act I of 1846, which is in force in the Presidency of Bombay. The Legal Practitioners' Act is not in force in Bombay, and the repealing section which we propose to insert in the Bill will not take effect in Bombay unless the Local Government extends it under the power conferred by section 1 of the Act.

"So much for the provisions of the Bill relating to advocates. The only other important provision in the Bill is one which qualifies section 13 of the Legal Practitioners' Act by adding a proviso. Under that section a certificated pleader is liable to suspension or dismissal if he takes instructions in any case except from the party on whose behalf he is retained, or a private servant of that party, or some person who is the recognised agent of that party within the meaning of the Code of Civil Procedure.

"The section was aimed at the mischievous class of *quasi*-professional intermediaries or touts who intervened between the pleader and his client. But it was

found to produce inconvenience and hardship in certain cases where the client was a pardanashin woman, or was incapacitated by infirmity or old age from instructing a pleader in person, and was not in a position to employ the only intermediaries recognised by the law. Therefore, the Bill proposed, in accordance with a suggestion, which I think came from the Government of the North-Western Provinces, that in such cases the pleader should be allowed to take instructions from the relative of a client. This proposal has, however, been criticised on the ground that it affords no relief in cases where the client has no relative fit to be employed for the purpose. We thought that criticism quite just, but we found a difficulty in meeting it without relaxing the rules to such an extent as to let in the class of persons which it was our object to exclude. Under the circumstances, we think that the best course to take is to adopt the suggestion of the Madras High Court and the Vakils Association of the Calcutta High Court, that is to say, to allow a vakil to take instructions from any relative or friend authorised by the client, provided that the friend or relative receives no remuneration for his services.

"The proposals of the Bill under this head have been criticised from an entirely different point of view on the ground that they do not afford any protection to pardanashin women or infirm persons against the fraud that may be practised on them by relatives or others wrongfully assuming authority to instruct a pleader on their behalf or, if invested with such authority, abusing it for their own ends. But I ought to point out that this criticism applies rather to the Act which we propose to amend than to the amendment we propose to make. The section we propose to amend was, as I have explained, directed against a class of *quasi*-professional touts, and it made the pleader liable to suspension or dismissal if he took instructions from his client through any intermediate agent except in certain specified cases. Now, what we propose to do is to add to the number of excepted cases. But neither the Act which we are amending nor the Bill touches the question of the authority which the intermediary must have in order to instruct the pleader, or the mode in which he is bound to perform his duty in instructing the pleader. I am quite aware of the dangers referred to in the papers which we have had before us, and it is possible that legislation may be necessary for the purpose of meeting the malpractices to which our attention has been directed; but no such legislation can be undertaken without further inquiry, and, if it was undertaken, we should probably find that it would have to extend to other cases besides those on which a pleader is retained for the purpose of proceedings in Court. In the meantime, the most effectual safeguard against frauds of this kind is probably to be found in the jealous scrutiny which Courts ought to apply to all cases in which

instructions are given either directly or indirectly by pardanashin women and infirm persons.

"We have not seen our way to adopting a suggestion of the Government of Bengal that it should be made necessary for a pleader in every case to declare the name of the person from whom he receives his instructions. We fear that it would be impracticable to carry out this suggestion, because it would, we apprehend, be found that in a large proportion of Mufassal cases it would be hard to say by whom in particular a pleader has been instructed. He often has to collect for himself the materials of his client's case by questioning various members of the family and the neighbours, by searching Court records, and so forth. And it is probable that when any person can be said, in the proper sense of the word, to be 'instructing' a pleader, his connection with the case will not remain a secret.

"The two provisions which I have mentioned were the only important provisions of the Bill as introduced, and remain the only important provisions of the Bill in its amended form. We have adopted one or two suggestions for amending the Act in minor particulars by supplying what appeared to be accidental omissions, such as the omission to confer upon a Judge of a Small Cause Court the same power to suspend, pending inquiry, a pleader or mukhtar who is charged with unprofessional practices as is conferred by the Act on other judicial officers; but we have not thought ourselves justified in extending the very limited scope of the Bill by dealing with any of the larger questions raised in the papers which have been submitted to us. For instance, we have not attempted to touch the vexed question whether barristers, like other legal practitioners, should be made capable of suing their clients and liable to be sued by them. Of course, I am aware that a barrister in this country, where he often receives instructions directly from his client instead of through a solicitor, occupies a somewhat different position from a barrister in England, who has to act through an attorney or solicitor. But I should not think of dealing with so delicate a question as this without consulting the profession generally and ascertaining their views upon the point. Again, we have not thought it proper to act on suggestions for re-opening questions which, after a good deal of discussion, were deliberately settled, in 1879, by the Act we are now amending. Of this kind are the suggestion that the distinction between pleaders and mukhtars should be abolished; the suggestion that communications to mukhtars should be made privileged to the same extent as communications to pleaders are under the Evidence Act; and, lastly, the suggestion that we should revert to the old rule which allowed an advocate of a High Court who had abandoned his own province to practise in any part of British India without any preliminary admission. This was a rule which was altered deliberately by the Act of 1879, and which we should not be justified in reversing now without further inquiry. All these questions

might fairly be considered on their merits when the time comes for generally recasting the Legal Practitioners' Act, but I do not think that that time has yet arrived."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA COURTS' BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the Motion that the Report of the Select Committee on the Bill to amend the Burma Courts' Act, 1875, be taken into consideration, and the Motion that the Bill be passed. He explained that the Home Office had only yesterday made another suggestion for amending the Bill which he would like to have time to consider.

Leave was granted.

The Council adjourned to Thursday, the 29th May, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 16th May, 1884.

S.G.P. L.—No. 453 L. D.—16-4-12—50—W. F.