

*Thursday,
2nd January, 1896*

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

LAWS AND REGULATIONS

Vol. XXXV

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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,

1896

VOLUME XXXV



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1896

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 Government House on Thursday, the 2nd January 1896.

PRESENT :

The Hon'ble Sir A. E. Miller, K.T., C.S.I., Q.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., K.C.S.I., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble A. S. Lethbridge, C.S.I., M.D.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Alan Cadell, C.S.I.
The Hon'ble J. D. Rees, C.I.E.
The Hon'ble G. P. Glendinning.
The Hon'ble Sir Lakshmishwar Singh, K.C.I.E., Maharájá Bahádur of Durbhanga.
The Hon'ble P. Playfair, C.I.E.

NEW MEMBERS.

The Hon'ble SIR G. H. P. EVANS, the Hon'ble ALAN CADELL, the Hon'ble J. D. REES, the Hon'ble G. P. GLENDINNING, the Hon'ble SIR LAKSHMISHWAR SINGH, Maharájá Bahádur of Durbhanga, and the Hon'ble P. PLAYFAIR took their seats as Additional Members of Council.

MERCHANT SHIPPING BILL.

The Hon'ble MR. CADELL moved that the Hon'ble Mr. Playfair be added to the Select Committee on the Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea.

The motion was put and agreed to.

2 **AMENDMENT OF INDIAN PORTS ACT, 1889; INLAND
BONDED WAREHOUSES AND SALT BONDING;
AMENDMENT OF FOREIGN JURISDICTION AND
EXTRADITION ACT, 1879.**

[*Sir James Westland; Sir Alexander Miller.*] [2ND JANUARY,

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to amend the Indian Ports Act, 1889, be referred to a Select Committee. He said :—" This Bill was introduced on the 21st February 1895. It was referred in the usual course to the Maritime Governments and the papers have now all been collected. The object of the Bill is the provision of certain protection for seamen during the stay of ships in Indian ports. The Select Committee which I propose consists of the Hon'ble Sir Alexander Miller, the Hon'ble Dr. Lethbridge, the Hon'ble Mr. Glendinning, the Hon'ble Mr. Playfair, and myself."

The motion was put and agreed to.

INLAND BONDED WAREHOUSES AND SALT BONDING BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to provide for the establishment of bonded warehouses at places other than customs-ports and to afford facilities for the bonding of salt in such warehouses be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Pritchard, the Hon'ble Mr. Stevens, the Hon'ble Mr. Playfair and the Mover. He said :—" This Bill was introduced on the 14th March last, and the papers were referred at that time to the various Governments. They have since been collected, and they are now ready for discussion by the Select Committee."

The motion was put and agreed to.

**FOREIGN JURISDICTION AND EXTRADITION ACT, 1879, AMEND-
MENT BILL.**

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Foreign Jurisdiction and Extradition Act, 1879, be referred to a Select Committee consisting of the Hon'ble Lieutenant-General Sir Henry Brackenbury, the Hon'ble A. S. Lethbridge, the Hon'ble Prince Sir Jahan Kadr Meerza, the Hon'ble Sir Griffith Evans, the Hon'ble J. D. Rees, the Hon'ble Nawab Amiruddin Ahmad Khan and the Mover. He said :—" It will be noticed that I have added two names to my motion which are not to be found on the notice paper, the reason being that since I gave notice of this motion a file reached me whereby it appears that it is proposed to introduce by way of amendment into this Bill certain amendments of the Act as affecting

**AMENDMENT OF FOREIGN JURISDICTION AND EXTRADI- 3
TION ACT, 1879; AMENDMENT OF INDIAN PENAL
CODE; AMENDMENT OF LEGAL PRACTITIONERS ACT,
1879.**

1896.] [*Sir Alexander Miller ; Sir James Westland.*]

thagi and dakaiti, and, under these circumstances, I have thought it desirable that Dr. Lethbridge, who, as we all know, has more authority in the matter of thagi and dakaiti than any other man in India, and Mr. Rees, who has had a great deal of experience of the same kind in Southern India, should be added to the Select Committee on the Bill for the purpose of getting the benefit of their assistance."

The motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to amend the Indian Penal Code be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller; the Hon'ble Mr. Woodburn, the Hon'ble Babu Mohiny Mohun Roy, the Hon'ble Mr. Mehta and the Mover. He said :—" This Bill was introduced during the Simla session. Its object is to extend the provisions of the Penal Code which relate to counterfeiting coinage to a class of coin as to which it is at least doubtful whether it is included in the definition as it stands, but in respect of which the same kind of fraud may be committed by counterfeiting as may be committed in respect of the ordinary current rupees."

The motion was put and agreed to.

LEGAL PRACTITIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Legal Practitioners Act, 1879, be referred to a Select Committee consisting of the Hon'ble Mr. Woodburn, the Hon'ble Babu Mohiny Mohan Roy, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Mehta and the Mover. He said :—" It is not usual to go at any great length on this particular occasion into the details of a Bill before the Council, but, under the particular circumstances of this Bill, I shall be obliged to trouble the Council with a few observations. The Bill has been subjected to a good deal of criticism, parts of it more or less mutually destructive, but still there is some of it with regard to which I think it necessary to make some explanation.

" The first objection which seems to be pretty generally taken is that the Bill will not effect the object desired. I am afraid that, to a very great extent, that objection is sound. I do not expect myself that the particular evil which the Bill is aimed against can be destroyed by legislation, or in any other way

than by the education of the legal profession in India up to a higher standard of professional morality than it appears yet to have attained. At the same time I do consider that it is the duty of the Legislature to assist, as far as it reasonably can; and although the probability is that the Bill, if passed, will not have any great effect in the direction desired, still, if it does even moderately assist in that direction, I think it is the duty of the Legislature of this country to pass a measure calculated to have that effect.

“The original proposition out of which the Bill has grown was one which, although not without precedent in India, struck me as being very far contrary to the usual principles on which such legislation is founded, because the proposal was to make the business of a litigation broker a criminal one, and to subject any man who carried on business as a law-tout, or legal broker, to fine and imprisonment. Now the point of view I take of this matter is that the profession of a legal broker, if honestly conducted, is as honest a calling as the profession of a ship-broker, or estate agent, and I have not the slightest desire to interfere—although there is a clause in the existing Act which does interfere—with the conduct by such a broker of his business, which would be to go to a client who wanted to be recommended to a proper and efficient legal adviser, and tell the client, for a remuneration coming from the client, who would be a proper man for him to go to. But when you look at it from the other side of the question I consider that the giving of any commission or pecuniary inducement by a legal practitioner to a third person for the purpose of attracting business to himself is, though not precisely a crime against the law of the land, so decidedly improper and unprofessional conduct on the part of that legal practitioner that it is impossible to punish it too highly, so far as professional reprobation or suspension from practice may be considered as a punishment. Therefore, the Bill is entirely aimed, not at the punishment of the law-tout or broker at all, but at the prevention of the giving of any inducement to these law brokers as I prefer to call them, to violate their duty to their employers, that is to say, the clients, by illegal bribes in the nature of commission given to them by legal practitioners. I am afraid there are some expressions in the Bill which are not sufficiently clear on that point, but I hope in Committee to make it perfectly clear that there is no offence whatever on the part either of the lay client or of the law broker—except of course in case of fraudulent conduct on the part of the latter, which would be punishable under the ordinary law of fraud—in the law broker advising the lay client what practitioner he should go to; but the offence entirely consists in the legal practitioner accepting on any inducement emanating from him the services of such a broker, the position being exactly the same as

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[*Sir Alexander Miller.*]

if a stock jobber were to give to a stock broker a secret commission to induce him to purchase on behalf of outside clients stocks above their market price, or which he knew not to be properly marketable. I admit that the Bill is not perhaps as clear on this point as it ought to be, but as I have said, I hope in Committee to be able to set that right.

“The next point on which objection is taken is that it is said that the Bill entirely violates the ordinary principles of presumption of evidence, inasmuch as, in a certain case, it throws upon the pleader the duty of proving a negative; but if the thing comes really to be examined it will be seen that the negative which he is called upon to prove is one which he only could prove, and therefore it is not unreasonable that the duty should be thrown upon him; because all that the Bill says is this, that when it is already established that a particular person is a law broker, that is to say, a person who, for commission, or a part of the fees, introduces lay clients to practitioners, it shall be presumed, unless the contrary is proved, that the legal practitioner taking business from the law broker knew that he was such a person. If the business comes honestly and if there is no reason to suspect—I will not use the word ‘suspect,’ I withdraw it—if there is no reason to presume that any improper dealings in the shape of commission, or otherwise, have passed between the law broker and the legal practitioner, the fact that the man by whom the business is brought in is a law broker, will have done no harm; and all that the Bill does is, if there be a transaction between two parties, one of whom is a lawyer and the other is notoriously a law broker, to obviate the necessity of giving affirmative evidence that the lawyer knew him to be such. On the other hand, it is left open to the practitioner to prove that he did not know this, and I presume that if there was no evidence to the contrary his own oath would be sufficient, and I know of no other proof which could be so clearly directed to that particular point. the

“The third objection of any consequence, which has been taken to this Bill, is one regarding which I admit there is a good deal to be said, and it is possible that it may be necessary to make some alteration or modification in the present provisions of the Bill, which I hope the skill of the Committee will enable them to reach. The objection is that at present the legal practitioners throughout the country can only be suspended or dismissed by the High Court. It is proposed in this Bill that, subject to an appeal to the High Court, the legal practitioners in the mufassal generally shall be subject to suspension or dismissal by the District Judges. The first observation I will make on that point is that the proposal comes from the High Court of Calcutta, which itself

[Sir Alexander Miller; Sir Griffith Evans.] [2ND JANUARY,

may, I think, be taken as fairly representative of the interests both of the Bar and the public in this country, and it may be assumed that a proposal which comes backed with the authority of the Judges of the High Court is not one which (as it has been represented to be) is insidiously intended to take away the liberty of the legal practitioner. But beyond that I admit that there is a great deal to be said for the objection that this is applied only to one class of practitioners, and that the advocates and vakils of the High Court are not proposed to be subjected to the same power of the District Judges. As far as advocates are concerned, I do not see how an advocate enrolled in the High Court can possibly be disbarred or suspended by any other authority than that of the High Court on whose roll his name is found. As regards practitioners not on the roll of the High Court, it would seem on the same principle that they might *prima facie* be removable by the Court under whose authority they were practising. That I believe to be the authority of the District Judges, and in the case of revenue agents the Commissioners, who now have the power of suspending them temporarily while sending the case up to the High Court; and after all the difference between that power and the power of suspending them, which is intended to be given by this Bill, does not appear to be very great. However, I admit that that is a question for consideration. It is a question which I myself should not have raised, but when proposed by so eminent an authority as the High Court of Calcutta, it was the duty of the Government in bringing this Bill forward at all to give weight to that proposal and to put it forward for discussion and consideration by the Committee."

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The Hon'ble SIR GRIFFITH EVANS said :—"I desire to make a very few remarks at this stage of the Bill. I share the apprehension of the Hon'ble Mover that the Bill will not be able to effect the object for which it is intended. But, although that seems to be so, it may be that amendments may be introduced in Select Committee which will make it more effectual for the purpose for which it is intended. At any rate, there is no doubt that the evil aimed against is one which, as the Hon'ble Mover has said, it is desirable to deal with as far as possible. It will be for the Council to say whether, after consideration in Select Committee, it is desirable to pass it, but I should wish to reserve to myself the right of dealing with the matter as may appear to me expedient after the discussion has taken place in the Select Committee. I say this, because it is usual, on the reference of a Bill to a Select Committee, to take it for granted that the principle of the Bill is accepted, and that merely the question of details has to be settled. It may be that in a Bill of this kind, if it is found on reconsideration in Committee that the difficulties

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of turning out a working measure are insuperable, it might be necessary to drop it, though I hope that that will not be the case, and that it will be possible to pass it.

“ There is one other remark which I wish to make. No doubt, as the Hon’ble Mover has said, if there were law brokers in the sense that there are stock brokers, who really deal with clients, and for remuneration recommend them to competent persons to do their work, what the Hon’ble Member has said would be perfectly right. It may be that there are such people in the country, but I have not discovered them in this part of the world ; what we do meet here is a class of persons who get their living by entering into arrangements with legal practitioners to bring clients to them—an arrangement under which they share the fees or get a commission ; and it seems to me to be a mistake to talk of a profession or trade of that character as if it were a legitimate trade like that of a stock broker ; such a trade, so far as I know, does not exist in Calcutta, at least I have never met with an instance. If we find that in practice the only form in which the law-tout exists is as a person who makes a corrupt agreement with the legal practitioner, to whom he brings clients for a share of the fees or for commission, then I think no steps we can take can be too strong to put the practice down, provided that we can really make them effectual without doing injustice ; but, on the other hand, I am aware of the enormous difficulties there are in the way, and that touting will never be put down until the opinion of legal practitioners over the country has set in against it ; but it will be our duty to do anything we can to pass a measure which will be workable, and to put a check on this evil, which we admit to be a very great one.”

The Hon’ble BABU MOHINY MOHUN ROY said :—“ I am glad that the President, who was the mover of the Bill, has thought fit to make a further statement. I had no opportunity of stating my views at the introduction of the Bill, which took place at Simla. The Bill is now being referred to a Select Committee, of which I am to be a member. I crave permission to offer a few observations upon the principle and general scope of the Bill without entering into details.

“ By section 36 of the Legal Practitioners Act, 1879, tender or payment of any gratification by a legal practitioner for procuring his employment in any legal business is made an offence punishable with six months’ imprisonment. It would also be ‘ grossly improper conduct in the discharge of his professional duty or other reasonable cause,’ under sections 13 and 14 of the Act, for which the legal practitioner might be suspended or dismissed. I presume the deten-

tion in jail would necessarily cause his suspension from practice for the period of such detention. The same section 36 is similarly rough on touts and makes solicitation, receipt or retention of any gratification from a legal practitioner an offence punishable with six months' imprisonment. In the face of the existing law, the chief provisions of sections 1 and 3 of the Bill seem to be unnecessary and somewhat illogical. The hon'ble and learned mover of the Bill stated as follows when introducing it :

' Great complaints have been made from time to time of the practice known as dalali, or touting, under which clients are induced to go to particular pleaders, not because they are proper persons to employ, nor because the clients have for any reasons selected them, but because they have given a commission to the tout for getting them the business ; and a very strong proposal was made last year by a leading practitioner in this province to make this a criminal offence. However, on consideration, we thought that would be going much too far.'

"The Legislature had, in fact, gone too far when it enacted section 36 and made professional misconduct of legal practitioners and touting highly penal offences, differing in nothing from criminal offences. It is always a mistake to overdo a thing, and to it is largely owing the failure that has overtaken all efforts hitherto made for putting down the practice of touting. Sir Frederick Fryer, Chief Commissioner of Burma, in giving his opinion on the Bill, says that he 'adheres to the views expressed in a previous letter of treating the employment of law-touts not as a criminal offence, but as an act to be dealt with by the High Courts as a matter of discipline.' These views are quite in accordance with mine.

"It seems to me that we must repeal section 36 of the old Act in order to render our present action intelligible and logical. It would greatly simplify the proposed legislation in other respects. We might empower the District Judges and authorities to prepare and hang up lists of habitual touts in their Courts or offices. This would be a straightforward course, and far more consonant to our notions of fair play than the devious and round-about course of leaving it to legal practitioners to find out who are touts by general repute and subjecting them to serious liability for mistakes and oversights. So long as section 36 of the old Act remains in force, we cannot well ask the District Judges and authorities to prepare lists of habitual touts by general repute. It would be making lists of habitual offenders liable to be punished with six months' imprisonment.

“There is another provision in the Bill regarding the expediency of which I entertain very grave doubts. The Bill proposes to empower District Judges and Commissioners to suspend or dismiss legal practitioners, subject to appeal to the High Court. Now they can only report the offence to the High Court, which alone has the power of dealing with it. It is not stated that the cases under the Legal Practitioners Act are so numerous that they may not conveniently be dealt with by the High Court. There is apparently no necessity for extending the power to suspend or dismiss to District Judges and Commissioners and the power to report to inferior Judges and officers. The probable effects of such extension will be to lower the status of the legal practitioners, to produce in them a general feeling of insecurity and to impair their independence and usefulness. All Judges, Magistrates and Revenue-officers may now have a fling at them. It is a very serious thing to have to ‘run the gauntlet’ of so many persons.”

The Hon'ble SIR ALEXANDER MILLER said:—“I would only say a few words in the way of reply. I was myself originally under the impression that the expression ‘law-tout’ would only apply to such persons as the Hon'ble Sir Griffith Evans has mentioned, and therefore the Bill was drawn in the terms in which it is; but the comments upon it, which have come in since the Bill was published, show that there are in some parts of the country men whose business it is to introduce clients to legal practitioners for a consideration coming not from the lawyer but from the lay client. I am not desirous of interfering with that, which seems to me in many cases very beneficial, and, at any rate, it is in no way open to the objections which apply to cases in which remuneration is given in fees or otherwise by the legal practitioner.

“The other observations of the Hon'ble Mohiny Mohun Roy can only be answered in this way: section 36 of the Act, as it stands, is one to which I personally should never have been a party, but as I found it law, passed years before I had anything to do with it, I do not feel, nor does the Government of India feel, any necessity, for interfering with existing law which no one has complained of, merely because it may not be such as we would originally have thought fit to pass.”

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—“The next item of business on the list is a motion of mine which I am not in a position to make. I see that it has been removed from the paper, I don't know by what authority. I think such a course is irregular and that no one has any right to expunge a notice of

10 *AMENDMENT OF LEGAL PRACTITIONERS ACT, 1879 ;
 AMENDMENT OF CRIMINAL TRIBES ACT, 1871 ;
 AMENDMENT OF INDIAN EMIGRATION ACT, 1883.*

[*Sir Alexander Miller ; Mr. Cadell ; Mr. Woodburn.*] [2ND JANUARY,

motion except the Member in whose name the motion stands. I do not know why it was removed, but in the present instance it is of no consequence, because all I had intended to do, had the notice remained on the paper, was to explain that I am not at present prepared to proceed with the motion."

CRIMINAL TRIBES ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. CADELL moved for leave to introduce a Bill to amend the Criminal Tribes Act, 1871.

The motion was put and agreed to.

The Hon'ble MR. CADELL also introduced the Bill.

The Hon'ble MR. CADELL also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Calcutta Gazette, the North-Western Provinces and Oudh Government Gazette and the Punjab Government Gazette in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. WOODBURN moved for leave to introduce a Bill to amend the Indian Emigration Act, 1883. He said :—" This is a very short Bill consisting of two sections, the object of which is clearly explained in the Statement of Objects and Reasons. The first section is intended to prevent the evasion of the Emigration Act, and the rules and regulations under it, by recruiters, who recruit emigrants and coolies in British territory but remove them from India to a foreign port.

"The other section is intended to give the Governor General in Council power to relax the regulations under the Emigration Act in certain cases in which emigrants are wanted as labourers for special employment abroad, as, for instance, on the Uganda Railway. It is thought that the restrictions imposed by Act XXI of 1883 may well be removed, when the employer abroad is Her Majesty's Government, and the Government of India can readily satisfy themselves that fair treatment will be secured for the employes. Both these proposals seem to me to be reasonable."

The motion was put and agreed to.

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The Hon'ble MR. WOODBURN also introduced the Bill.

The Hon'ble MR. WOODBURN also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Thursday, the 9th January 1896.

	S. HARVEY JAMES,	
CALCUTTA ;		<i>Secretary to the Government of India,</i>
<i>The 4th January 1896.</i> }		<i>Legislative Department.</i>