

*Thursday,
22nd August, 1895*

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

LAWS AND REGULATIONS

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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,

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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 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 the Viceregal Lodge, Simla, on Thursday, the 22nd August, 1895.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.

The Hon'ble Sir A. E. Miller, K.T., C.S.I., Q.C.

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble Sir A. Mackenzie, K.C.S.I.

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble A. S. Lethbridge, C.S.I., M.D.

LEGAL PRACTITIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Legal Practitioners Act, 1879. He said :—" 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 reason 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, but on the papers being circulated the High Courts seem to have agreed that some addition to their powers of repressing this practice ought to be made, and accordingly the Government of India have come to the conclusion that it is worth while to try whether the practice cannot be restrained if it cannot be altogether abolished by increasing the powers of the High Court and by giving power to District and Sessions Judges and Commissioners of Divisions to suspend or dismiss pleaders

[*Sir Alexander Miller; the Lieutenant-Governor.*] [22ND AUGUST,

or revenue-agents who are guilty of giving commissions to or taking business through the agency of these touts, subject to an appeal to the High Court; and the Bill accordingly proposes to amend the Act, first, by extending the powers of the High Court over pleaders and mukhtars who are guilty of this unprofessional conduct; secondly, by explaining that in order to prove that a man is an habitual law-tout it shall not be necessary to prove specific acts of touting, but that it will be sufficient to prove that he is generally known as such, unless the pleader or mukhtar dealing with him is in a position to prove that he did not know that he was a law-tout. That is the effect of the first section.

"The second section proposes to amend the Act by enabling the District or Sessions Judge, or the Commissioner of the Division, instead of reporting the offence to the High Court, which is at present all he has power to do, himself to acquit, suspend or dismiss the pleader or mukhtar, subject to an appeal to the High Court.

"The other two sections merely extend the same principle to revenue-agents as I have already explained with regard to pleaders and mukhtars. That is the whole of the Bill."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am very glad indeed that my hon'ble and learned friend has taken this matter in hand, and I think his having done so is a matter for congratulation to the Court and to the Bar, and above all to the great mass of helpless and ignorant people who fall victims to the system of touting, as it is called.

"That system is an utter disgrace to certain sections of the Bar in this country, and it is within my knowledge that many of the members of the Bar—men with as high a feeling of honour as any one could find in the ranks of the profession in England—look upon this system as, in several respects, an extremely mischievous one. I am quite aware that the subject is a very difficult one to deal with, and unfortunately I did not this morning study the list of business with the care with which it behoves us to study such a document, so that I was not aware till I came into the room that this matter was coming before the Council; otherwise I should have referred to the correspondence which has previously passed on the subject, and I might thus have been in a position to make some observations on the details of the Bill as indicated by my learned friend. But, as I have explained, I was unaware that the matter was coming on; and moreover I have not yet seen the Bill. I think therefore it is wiser for me to say at this

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moment no more than this—that any measure which holds out any reasonable prospect of checking, even to a moderate extent, this most vicious system will have my most hearty support.”

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882. He said :—“ It will be in the recollection, I suppose, of every member of the Council that some time ago there was considerable disturbance in this country with reference to a proposed or anticipated restriction of the system of trial by jury, and in the result the matter was laid before a rather strong Commission, who made certain recommendations, some of which this Bill is intended to carry out. One of the principal difficulties which interferes with the usefulness of the system—a difficulty which exists wherever trial by jury exists—is that it is frequently impossible to discover what view a jury really takes of the facts laid before them. When a jury in a particular criminal case brings in a verdict of guilty or not guilty, you do not know what weight they attach to the evidence, whether they consider it insufficient to establish the facts deposed to by the witnesses or to bring home to the accused participation in the acts proved, or, if they think that the evidence is sufficient, whether the facts so established do or do not amount in their opinion to the offence with which the man is charged. In England unfortunately—I say deliberately unfortunately—in a criminal case the jury has an absolute right to bring in a general verdict of that kind whenever it chooses, whether it pleases the judge or not, but in civil cases the judges have always exercised the power of requiring a jury to bring in a special verdict; that is to say, stating certain facts, and directing the jury to find whether

[*Sir Alexander Miller.*]

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those facts are proved or not, and then from the findings of the jury the judge draws the inference as to whether the verdict should be entered for the plaintiff or the defendant. We propose to introduce the same system in criminal cases in India which is found to work extremely well in civil cases in England, and to enable the judge, if he thinks it right, to require the jury not simply to say whether the accused is guilty or not guilty of the offence with which he is charged, but whether such and such facts are true or not ; whether, for instance, he finds that the accused was a member of an assembly which is charged with being riotous, or whether they find as a fact that such an assembly took place on the day charged, and then when he has got all the facts he will be in a position to draw the proper inference, and to direct whether the order should be entered as a verdict of guilty or not guilty. It is also provided I may say hypothetically—because it is a question which will require further consideration in the course of the progress of the Bill—that after a jury have brought in a verdict one way or the other as to which the judge is doubtful, he is to be at liberty to require them to bring in a special verdict. No doubt there are very grave considerations on both sides as regards such a process, which might very easily be perverted into a kind of browbeating or cross-examination of the jury, a practice which was prevalent in England in the days of the Tudors but has not been known there since then ; but I think it is not unlikely that some form will be found before the Bill passes which will avoid any danger of that kind without too closely tying the hands of the judge where he thinks that a general verdict has been brought in perversely or erroneously. The whole of the third section of the Bill is devoted to working out the general principle which I have indicated, and I do not think I need at this stage trouble the Council with the details of the section, which is a pretty long one.

“ The fourth section of the Bill is intended to meet a difficulty of a somewhat different kind. As the law at present stands, if the Sessions Judge thinks that the verdict of a jury is entirely perverse, so perverse that it is considered necessary in the interests of justice that it should not be accepted, he has power to refer the case to the High Court ; but the High Court, from a feeling which one very well understands—a feeling which is hereditary I think in English lawyers, although I am not sure that it is a very well founded one—are very unwilling to disturb the verdict of a jury, and accordingly it is found that it is almost impossible to induce the Sessions Judge, except in extreme cases, to refer the matter to the High Court, or to get the High Court to disturb the verdict when the matter is referred to it ; and accordingly we propose, in order as far as

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*AMENDMENT OF CODE OF CRIMINAL PROCEDURE;
AMENDMENT OF LOWER BURMA VILLAGE ACT,
1889, AND LOWER-BURMA TOWNS ACT, 1892.*

1895.] [*Sir Alexander Miller ; Sir Alexander Mackenzie.*]

possible to get rid of this difficulty, to introduce certain other words—the words ‘and is clearly of opinion that it is’ essential to the interests of justice, instead of saying ‘so completely that he considers it’—for this reason that it will give the Sessions Judge rather more encouragement to refer doubtful cases to the High Court than the existing words do; and then we propose to direct the High Court, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and jury, to come to a conclusion of their own; the difference being this, that it would be pointed out to the High Court that it is not a question of whether the verdict is obviously wrong, but that they are to take the verdict as one of the elements in their conclusion and form an independent judgment for themselves on the whole record, which is what I think may be fairly said to be obviously a desirable course for them to pursue.

“The remaining sections of the Bill are only for the purpose of introducing a sort of modified special jury for the trial of such cases as the Local Government or Sessions Judge consider ought to be tried by a somewhat superior jury. I may say that this Bill, although it does not give effect to all the recommendations of the Jury Commission I have mentioned, does go a long way in carrying out their recommendations—as far probably as it is reasonable to go at one stage at any rate.”

The Motion was put and agreed to.

The Hon’ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon’ble SIR ALEXANDER MILLER 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.

**LOWER BURMA VILLAGE ACT, 1889, AND LOWER BURMA TOWNS
ACT, 1892, AMENDMENT BILL.**

The Hon’ble SIR ALEXANDER MACKENZIE moved for leave to introduce a Bill to amend the Lower Burma Village Act, 1889, and the Lower Burma

[*Sir Alexander Mackenzie.*]

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Towns Act, 1892. He said :—" Under section 14 of the Burma District Cesses and Rural Police Act, II of 1880, one of the duties imposed on a village-headman was that of 'affording all assistance in his power to Government officers, and on the order of the Deputy Commissioner to other persons in procuring food, labour, carriage and other requisites of travel.' When the Lower Burma Village Act of 1889 was passed, this with other sections of the Act of 1880 ceased to have effect in places to which the later enactment was applied, and under clause (g) of section 6 of the Village Act the duties of the headman in respect of supplies were limited to 'furnishing on the written order of a Magistrate and on payment supplies of food or carriage for troops or police posted in or near or marching through the village.' Clause (n) of the section, however, bound him generally to 'assist all officers of Government in the execution of their public duties,' and it is on this last clause that district and other officers have had to rely for getting carriage and supplies when on tour. It has been found by experience that the clause is of doubtful efficacy for this purpose, while private travellers are left entirely to the good will of the villagers—not at all times and everywhere in Burma a very reliable factor. It is in Burma especially desirable to prevent any collision between European travellers, prospectors and explorers, and the village populations, while it is essential that officers of Government in all departments should be able to move freely about their jurisdictions in the performance of their duty. It has therefore been decided to amend clause (g) of section 6 of the Village Act so as to make it clearly the duty of the headman to lend his aid in the collection of supplies, carriage and means of transport generally when required for Government officers travelling on duty and on the written order of the Deputy Commissioner for other travellers. The supplies will always be paid for in advance at sanctioned rates, and the section is safeguarded by three provisos to the following effect :—

'Provided, *first*, that no headman shall be bound to collect supplies beyond the limits of the village of which he is headman, or to furnish carriage or means of transport for more than twelve hours' journey from such village :

'Provided, *secondly*, that no headman shall requisition for personal service any resident of such village who is not of the labouring class and accustomed to do such work as may be required ; and

'Provided, *thirdly*, that no headman shall requisition, for any person whomsoever, any cart, boat, labourer or animal that is at the time in actual use for or engaged on agricultural work.'

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[*Sir Alexander Mackenzie.*]

"The Chief Commissioner will have to consider whether the case of supplies for troops and police is sufficiently met by the Bill as drafted.

"The next point of importance in the Bill is an amendment of the Village Act and Lower Burma Towns Act to enable the district authorities to regulate pwès. I may explain that a pwè is in Burma a public entertainment, usually dramatic, to which the public in general are admitted without payment or special invitation. It may be held either in a public place or on private ground, but there is no restriction on the composition of the audience. Any one can walk in. Unfortunately in many villages there are rival factions who make gatherings of this description the occasions and scenes of party quarrels and fights. In the Pegu and Irrawaddy Divisions alone during the last three years there have been 12 murders, 101 cases of grievous hurt, and 72 cases of simple hurt at pwès. The Burmese are an excitable, quick-tempered people, and it is essential to bring this, their favourite form of amusement, under police regulation. In Upper Burma the law already provides for this, and it has been usual to do the same in Lower Burma by executive orders. Now, however, legal sanction for the control of pwès in Lower Burma is considered necessary, and the Bill provides that none shall be held without a license. The Deputy Commissioner will be at liberty to refuse this at times when public feeling is excited or riots, affrays or quarrels may reasonably be expected. Ordinarily he would grant the license, for which no fee is imposed, and arrange for due notice to the police when their presence is required to maintain order.

"Section 3 of the Bill will enable the Chief Commissioner to confer on village-headmen any powers or privileges of police-officers. It is not intended to convert them into policemen. That would be contrary to the policy of the Village Act, but to give them any powers necessary to the efficient discharge of their duties such as that of arresting persons guilty of cognisable offences.

"Section 4 of the Bill is merely intended to make it clear that certain penalties under the Lower Burma Towns Act can only be inflicted on conviction by a Magistrate and not by executive order."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also introduced the Bill.

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AND LOWER BURMA TOWNS ACT, 1892.

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The Hon'ble SIR ALEXANDER MACKENZIE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 5th September, 1895.

SIMLA;
The 23rd August, 1895. }

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

NOTE.—The Meeting originally fixed for the 15th August, 1895, was subsequently postponed to the 22nd idem.