Thursday,
13th February, 1896

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXV

Jan.-Dec., 1896

ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

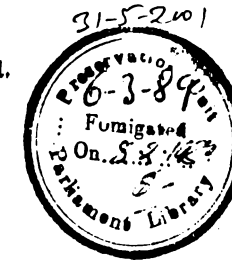
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1896

VOLUME XXXV

Published by Authority of the Governor General.



CALCUTTA
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
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 13th February, 1896.

PRESENT :

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 Lieutenent-Goovernor of Bengal, 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, KT., C.S.I., Q.C.

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., K.C.S.I., RA.

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 M. R. Ry. P. Ananda Charlu, Rai Bahádur.

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 Nawab Amir-ud-Din Ahmad Khan, C.I.E., Bahádur, Fakharuddoulah, Chief of Loharu.

The Hon'ble Rao Sahib Balwant Rao Bhuskute.

The Hon'ble P. Playfair, C.I.E.

MERCHANT SHIPPING BILL.

The Hon'ble MR. CADELL presented the further Report of the Select Committee on the Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea. He said :—" My Lord, nearly a year has now passed since the late Mr. Clogstoun presented the preliminary Report of the Select Committee, and, during the interval that has elapsed,

the Bill as amended has been republished throughout India, and has formed the subject of a good deal of criticism both in India and in England. All these criticisms have been very attentively considered by the Select Committee, and the result is the amended Bill which I have now the honour to submit.

" The passing of the Pilgrim Ships Act, 1895, has rendered necessary the removal of a few sections, but, notwithstanding this curtailment, the Bill remains a lengthy piece of legislation, extending to 341 sections, and the examination and consideration of this extensive body of law has involved a serious amount of labour to those members of the Select Committee—and they form the great majority—who have important duties unconnected with this Council to attend to.

" It is believed that the Report of the Select Committee explains sufficiently most of the more important changes which have been made, but there are several points with reference to which it may be desirable that I should add a few remarks.

" The first in order, and one which has given the Select Committee much thought, is that of native shipping. The earlier definition of ' native coasting-ship,' which, apart from the question of ownership, paid exclusive attention to rig, had been objected to in Bengal, and it was felt that it was unfair to the native shipping in the northern portion of the Bay of Bengal, which is ordinarily square-rigged, while the shipping of precisely the same class on the Western Coast is almost invariably lateen-rigged. This inequality was ultimately got rid of by the omission of all reference to rig in the definition as it now stands.

" The present legislation under which native shipping is registered in the Bay of Bengal is very similar in character and stringency to that of the present Bill, which if passed into law will supersede it, and, as the number of ships affected on this side of India is relatively small, it is not likely that the changes proposed will cause any serious inconvenience.

" But on the West Coast of India, owing to the greater safety of navigation during considerable periods of the year, as also no doubt to other causes, the number of native crafts is very great, and in the end of 1895 amounted to more than 11,000 vessels under two hundred tons. These vessels resort not only to Bombay and Karachi, in which ports registration is carried on under the supervision of officers of high rank and efficiency, but belong in many cases to petty ports in which the representatives of Government are officials on low pay and with

an imperfect knowledge of English, but who, unless great loss and inconvenience are to be caused to the owners, must continue to register such ships.

" Another point is that the present coasting-ship registration law in Bombay is compulsory ; ' every such ship employed as aforesaid *shall* be marked,' etc., and neglect to register is punishable with heavy and recurring fines. The Merchant Shipping Act, 1894, on the other hand, only offers the inducement to register, ' that, if a ship required by this Act to be registered, is *not* registered under this Act, she shall not be recognized as a British ship,' and in this respect the English Act resembles Act X of 1841.

" The Bombay authorities dreaded the confusion to which the removal of compulsory registration was likely to give rise, and distrusted the ability of the agency at their disposal in the smaller ports to carry out the more complex provisions of the law applicable to English shipping, with respect to the large number of native craft which plies on the Western Coast of India.

" In these circumstances, and as it was doubtful whether the Indian Legislature had any longer the authority to enact a law similar to Act XIX of 1838, it was decided that it was best to retain that Act upon the Statute book, and to avoid for the present all interference that is not absolutely necessary with the great mass of Indian coasting-craft. The exemption of the smaller native ships from the provisions of the general law affecting merchant ships is analogous so far as those of the smallest tonnage are concerned, with the exemption contained in sub-section (2) of section 3 of the Merchant Shipping Act, 1894. The Colonial Shipping Act of 1868 also furnished until recently an example of exemption from the general law of merchant shipping of vessels employed in the coasting-trade of British possessions, and it was at one time under contemplation that regulations framed under this Act might meet the circumstances of the native coasting-ships of India.

" The next point which I need note is section 34 of the amended Bill, which as originally drafted prevented foreign steam-ships from carrying passengers from one port in British India to any other port in British India, unless they carried master, mate, and engineer, holding British certificates. While still of opinion that the ordinary passenger coasting-trade should be restricted, as was contemplated, the Committee proposes to give power to exempt from the provisions of this section, foreign steam-ships which have been in the habit of calling at Madras or Aden, as an incident in a voyage to or from a foreign port. The relaxation in favour of these foreign steam-ships should not in the opinion of the Select Committee be allowed to affect the general rule with respect to coasting voyages, which it wishes to see upheld.

" The Bengal Chamber of Commerce recommended in connection with section 90 and other sections that the powers of Courts under this Bill should be gathered together and shown in a schedule attached to the Bill, as in the case of the Criminal Procedure Code. The Select Committee could not adopt this recommendation, for the legislation now in hand is not mainly connected with procedure, and the work desired must be left to the annotators, who will no doubt come to the assistance of those who use the law in India, as they have done in England.

" In modifying section 139 to the extent which it has done, the Select Committee was largely influenced by the opinion of the Liverpool Steamship Owners Association and of the Bengal Chamber of Commerce. The latter body observed that ' whilst apprentices are considered as part of the crew, their relations to the master and owner are more permanent than those of seamen, and are of a different character,' and, when the representatives of the owners were anxious to be allowed an opportunity of getting these lads back again, there seemed to be no strong argument against extending the discretion of the Local Government in the direction desired.

" The changes made in Chapter XIX, which deals with the official log, are of considerable importance. The addition made to section 160 authorizes the prescription of different forms of log-book for different classes of ships, and in this way renders possible the exercise of discretion, which, notwithstanding the general exemptions which have been made, can hardly fail to be useful.

" The section of the English Act, which supplied the bulk of section 161 of the Bill, did not need to prescribe the entry of births and deaths, for these were dealt with in another section. As, however, this section was not reproduced in the Bill, it became necessary to make special provision here for the entry in the log-book of births and deaths, and this has now been done.

" With respect to section 171, the Liverpool Steamship Owners Association urged that it was not reasonable to require the same provision of boats, rafts and other buoyant apparatus in the case of natives, who are ordinarily lighter than Europeans. But the clauses objected to were almost identical with the corresponding portion of the English Act, which also deals with ships, many of which carry lascar crews and native passengers. It was decided, therefore, that the law should remain unchanged, and that, if any relaxation were at any time held to be expedient, it should be left to be provided for in the rules framed by the Executive

Government. On the similar ground of the close resemblance of the provisions of the Bill to those of the English Act, and also because of their expediency, the Select Committee was unable to relax the provisions of Chapter XXII as suggested by the Chamber of Shipping of the United Kingdom.

" In the extensive revision of Chapter XXIII, which deals with the survey of steam-ships, the Select Committee has given the fullest attention to the representations made by the Chamber of Shipping of the United Kingdom, by the Liverpool Steamship Owners Association, and by the Bengal Chamber of Commerce, and by adopting the system of separate declarations for hull and equipments, and for machinery, has brought the Bill into closer accord with the Merchant Shipping Act, 1894, than was the case formerly. And it is believed that the hardships in practice which occurred under the existing Indian law, even if they were not warranted by it, will be prevented, if the Chapter as amended becomes law.

" Chapter XXIV, which deals primarily with unsafe ships, but in doing so has to provide for the marking of deck and load-lines, is another portion of the Bill which gave rise to much criticism on the part of various public bodies, and to much deliberation on the part of the Select Committee. In this chapter we have made various necessary alterations and additions in order to give effect to those provisions and regulations under the Deck and Load-Lines Act of 1891 which apply to vessels trading east of Suez and the Cape of Good Hope. By the proviso to section 201 we have, it is believed, while maintaining the directions of the English law with respect to the disc, met in a satisfactory manner the requirements of vessels trading east of Suez and the Cape of Good Hope during the Indian summer season, and loading it may be in fresh water. And the addition of section 236 and the alterations made in section 237 will facilitate the framing of rules which shall be applicable to vessels loading in Eastern waters and at all seasons of the year. The rules adopted will probably follow the lines of those of the Board of Trade, and in this case the certificates granted, and the load-lines fixed and marked under them, will be capable of acceptance by the authorities in England.

" The addition which has been made to section 281 will, it is believed, prove the best practical solution of a difficulty, which was held to be a very serious one by those whose interests were chiefly affected, and which would probably have been felt to a greater extent in past years, if the provisions of the law had not been

relaxed by executive practice. If supplies of food are laid in for people who do not consume them, the cost of the voyage is necessarily increased, without any corresponding advantage, and the Local Government can always ensure by means of an additional supply of rations for the crew or otherwise, that there shall be sufficient food for the native passengers in the event of an unforeseen accident.

" Throughout its deliberations the Select Committee has been in communication, on the one hand, through the Hon'ble Mr. Playfair, with the Bengal Chamber of Commerce and with other representatives of the shipping interest, and on the other with the different officials, who here and in Bombay are chiefly interested in the measures. We trust that as a result of this communication we have succeeded to a great extent in removing from the Bill defects which might have interfered with the smooth working of the law, and that the Bill as it now stands will, subject to such amendments as the Council may see fit to make in it, be found to be a useful practical piece of legislation, which cannot fail to be of essential service to those who have to use the law, and will not at the same time to any serious extent that could be avoided prove detrimental to those whose interests are affected by it.

" It has been our object to provide in a consolidated and amended form the control that is required over the merchant shipping which trades to and in Indian waters, without at the same time unduly harassing the very important interests with which we have been brought into contact, and I trust that to a large extent we have achieved this object.

" The changes which we have made, although numerous and in many cases important, have been chiefly in matters of detail, and have been designed to meet objections which have been made, and in no way tend to excite controversy. And, as this Bill has been so long before the Council and the public, I trust that four weeks will be considered a sufficient time for the consideration of the amended Bill by Hon'ble Members, and that it may be possible to take the Bill into consideration, with a view to passing it into law, at the second meeting of this Council in the month of March."

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1889. He said :— " The criticisms which the Select Committee had to consider were, in almost every case,

favourable to the Bill, with the exception of one from the Bengal Chamber of Commerce, and the Bengal Chamber rather criticised the uses to which the Bill might be put than any actual provisions intended to be included in the Bill. I rather think that they got frightened at the remarks made by an enthusiastic health-officer who had visions of his being permitted to roam about the shipping of the Hooghly ordering miscellaneous changes in the form and construction of the vessels there in accordance with his own notions of what was fitting and proper. When we came to look into the details of the Bill we certainly then found that the wording of it did not sufficiently indicate that the powers which the Government intended to take were powers only to impose provisions of a purely temporary character. The task of the Select Committee has been confined mainly to making changes in the wording so as to show more clearly than was done before that nothing whatever is intended in the way of altering the form or structure of the vessels. I think that the Hon'ble Mr. Playfair, when we take up this Report for consideration, will be able to assure the Council that the changes which we have now made have met the objections which the Chamber of Commerce presented to the Bill."

INDIAN VOLUNTEERS ACT, 1869, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said :— "My Lord, the Bill to amend the Indian Volunteers Act which I introduced last season has been referred to Local Governments and has been published in the several Gazettes. The result has been that we have received a number of reports containing suggestions, some of which are of considerable value, and which have led the Government of India to think that the Bill might with advantage be modified in some respects. As the Bill affects not only those in Government service, but a large number of all classes of Europeans in this country, I think it is very desirable that it should be referred to as strong and representative and influential a Select Committee as possible. The Hon'ble Sir Griffith Evans, the value of whose time we all know, has kindly expressed his willingness to serve, as has also the Hon'ble Mr. Glendinning. I therefore beg to move that the Bill to amend the Indian Volunteers Act, 1869, be referred to a Select Committee consisting of His Excellency the Commander-in-Chief, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Woodburn, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Rees, the Hon'ble Mr Glendinning and myself."

The motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Hon'ble Rai Ananda Charlu Bahádur be added to the Select Committee on the Bill to amend the Indian Penal Code. He said :—" The reason for this motion is that we have lost the services of Mr. Mehta, who was appointed on the Select Committee at the first meeting of the Council in January."

The motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Woodburn, the Hon'ble Babu Mohiny Mohun Roy, the Hon'ble Rai P. Ananda Charlu Bahádur, the Hon'ble Sir Griffith Evans, the Hon'ble Mr. Cadell, the Hon'ble Mr. Rees and the Mover. He said :—" This Bill has been the subject of circulation for opinion, and a very large number of opinions have been received in respect of it, of a character which renders it necessary that in making this motion I should say a few words, mainly in respect to the third section of the Bill. The remainder of the Bill, though I cannot describe it as altogether non-controversial, is practically approved by all the opinions we have received, subject probably to some further alterations, such as are always found necessary in every draft—I should be surprised indeed to find a draft of any importance which when it came to be considered did not require some alteration, greater or less. In fact, I remember one of the most skilled draftsmen I ever had the pleasure of knowing was found of quoting as a maxim *nihil simul factum, est, et perfectum.*

" But as regards the third section of the Bill, which deals with section 303 of the Code of Criminal Procedure, the opinions are very much more varied, and I may say by way of general remark that I think one of the great advantages of the system of legislation which prevails in this country is that we are not obliged, as some other Governments of which we known something practically are, to stick to every proposal which we make, right or wrong, from a instinct of self-preservation ; but that we have the opportunity, and freely use it, of discovering, after we have put our proposals into the form that *primâ facie* recommends itself to ourselves, what the opinions of persons who are capable of giving advice in the matter from the outside are, and are able and willing to accept the advice we receive from outside persons and bodies so far as it commends itself to our judgment. I know it will be said—I know it has been said—that that is a weak

thing ; that having made up your mind you ought to stick to it, right or wrong. I confess that my opinion (and I am glad to feel that it is the opinion of my colleagues in the Government of India) is very contrary, and that obstinacy of the kind described is a sign of weakness, not of strength, and that it is a proof of strength after having asked for opinions to be able to accept them so far as they seem to be well-founded. I say this because I am about to propose a very material modification in the section in question, a modification founded mainly on the opinions we have received from the responsible bodies whose opinions we have asked, and because we feel that whatever may have been the view which led originally to the proposal in question, it is one which ought to be modified in the manner in which I am about to describe in consequence of the concurrent opinions which we have received upon the point.

" But before I go into the details of the clause in question I desire to point out what the existing law and practice on the subject of verdicts is, because I think that that is not altogether understood. First of all, everywhere, as far as I known where the principle of trial by Judge and jury—bacause it is not strictly trial by jury—prevails, there is a marked line of demarcation between the functions of the Judge and the functions of the jury. It is the business of the jury to determine all questions of fact ; it is the business of the Judge to lay down all points of law. The only exception I know to that anywhere is in the trials in England for libel in which under Mr. Fox's Libel Act the jury have, to a certain extent, the power of entering into questions of law. That distinction is very strongly brought forward in sections 298 and 299 of the Indian Penal Code, and there is no doubt that in India, as in England, it is the duty of the jury to take the law from the Judge in very case, even if they disagree with the law as he lays it down. In fact, the meaning of a ' perverse verdict ' is not one which is opposed to the justice of the case, but one where the jury have refused to accept the Judge's ruling as to the law. A verdict may be erroneous without being perverse ; such verdicts are to be met with every day and everywhere, but what is a more exceptional case is that a verdict may be perverse without being erroneous. Now, the present law in India is that the jury shall return a verdict on each of the charges on which the accused is tried and the Judge shall so direct them, and that, if the Judge has any doubt as to the meaning of the verdict returned by the jury, he may ask such questions as may be necessary to ascertain what their verdict is, and that every such question and answer shall be recorded. That is the law as

it stands in section 303 of the Indian Penal Code. In the proposed section we break that up into five sub-sections, three of which, with a very slight modification, accurately represent the existing law and practice. The other two, on which I shall have to comment, are new.

" The first provides, almost in the terms of the existing law, that the jury shall be at liberty to return a verdict on each of the charges on which the accused is tried, and the Judge shall so direct them. Then sub-section (2) proposes to do that which is the common practice both in England and in India, but which is not expressly provided for by law in either country, namely, it enables the Judge to require the jury to give a verdict as to their belief or disbelief on any specified issues of fact and to deduce from the findings of fact the result of the trial. I say that is not at this moment expressly the law in either country, but it is the practice in both. At present it is perfectly true that a jury may—I suppose in India, certainly in England—if requested by the Judge to find a special verdict on the facts laid before them, refuse to do so, and bring in a general verdict of guilty or not guilty ; but I have never heard of an instance in practice in which any jury has done so. On the contrary, I suppose there is not an assizes in any county in England in which it does not happen at least once that a jury is either requested to state its opinion on the various points of fact which arise in the case and does so, or does so voluntarily of their own accord, and I happen to know that the same thing occurs, if not frequently, at least sometimes, in India also.

" I do not wish to detain the Council at any great length on this point, but I will give two illustrations, one from my own personal knowledge and the other which I came across the other day. In the very first criminal case—a case in which a man was charged with burglary—in which I ever was concerned myself—and the fact has fixed it in my memory—the jury returned the following verdict : ' That the prisoner was found in possession of the stolen articles which he knew did not belong to him, but that there was no evidence as to whether he had taken them out of the house or had found them in the wood where they were found in his possession.' That was distinctly a special verdict : and on that Mr. Baron Platt directed a verdict of ' not guilty ' to be recorded. The other day I came across in the course of my reading—I did not take down the reference and I cannot now specify where, but I can easily find the case, if necessary— a case where a jury in this country found that the accused had killed the deceased not in self-defence and without provocation, but that, inasmuch as there was no evidence of a previous quarrel or motive, they declined to find him guilty of murder : and on that

the High Court of Calcutta ordered a verdict of guilty of murder to be entered.* Both of these are instances of special verdicts in which the Judge had entered a verdict in accordance with the facts found by the jury, disregarding any opinion on questions of law given by them. Therefore, I say that sections 1, 2 and 5 of the proposed Bill accurately represent the existing practice. They only vary from the existing law in this : that sub-section (*2*), if carried, would enable a Judge to require that to be done which in practice constantly is done without his being able to enforce it. At the same time I am bound to say that the variation between the proposal and the existing law is so slight that no very great harm will be done if the Select Committee should prefer to preserve the existing law unaltered, and neither I as an individual, nor as carrying out the views of the Government, would feel bound in the least to interfere with the discretion of the Select Committee if that should be the form which their discretion would take.

" Sub-section (*5*); however, has at present a very important addition attached to it, which is not part of the existing law of India, and that is, that a Judge shall not in any case enquire of the jury their reasons for any verdict, nor whether they have believed or disbelieved any particular witness.

" That proviso was added to sub-section (*5*) because it was feared that if the general power of the Judge to require verdicts on questions of fact were extended as proposed by sub-section (*2*), he might amongst other questions of fact ask these particular questions, and it was thought not desirable that the minds of the jury should be investigated as to how they arrived at the facts, the only object being to discover what conclusions of fact they had in effect arrived at.

" If, however, sub-section (*2*) is not passed by the Select Committee, it will not be necessary to introduce the proviso in sub-section (5), and in that case the law may remain as it stands at this moment in the Code.

" Sub-section (*4*) is really a portion of the same question as sub-section (*5*) ; that is to say, the object of sub-section (*4*) is, if it is not clear what the verdict is, to enable such questions to be asked as will show what that verdict really is. That is, as I say, a part of the existing law, and although it is considerably elaborated

---

* On further reference to the case I find that though the statement in the speech is substantially accurate, it is not perfectly so. The Judge refused to receive such a verdict and directed the jury to reconsider it : they then, by his direction, found a verdict of guilty of murder : and the High Court held that the Judge was right in his action, and refused to disturb the second verdict.

A. F. M.

in the sub-section in order to make the process perfectly clear, it does not vary from the existing law in any respect, and I shall leave it to stand or fall with sub-section (*2*) according to the judgment of the Select Committee.

" There only remains sub-section (*3*). Sub-section (*3*) is the sub-section which provides that after a general verdict of guilty or not guilty has been given, if the Judge is dissatisfied, he may then require a special verdict on any question or questions of fact. This sub-section, as the Council will probably recollect I explained when introducing the Bill, is one which, if passed at all, would require to be safeguarded very carefully in order to prevent it from degenerating into a cross-examination of the jury. It is one which I stated the Government of India had put forward tentatively and for opinion, rather in deference to the high authorities who advocated its introduction,—and I may as well state at once that the persons to whom I am alluding are not now directly connected with the Government—in fact, I do not think any of them is even resident in India at this moment ; I say it was put forward rather in deference to high authorities who considered that this would be a useful addition to the law than because they had themselves made up their minds upon the question as to how such a sub-section would work. We have found however, that, varying as the opinions have been in other respects, the opinions of the responsible officers in the country, Local Governments and others, are almost unanimous against the introduction of any power of requiring a further verdict after a general verdict ; and I am authorised to state that, if this Bill goes into Select Committee, I will in Select Committee move for the omission from the provision in question of that particular sub-section. I do so without the slightest hesitation and without feeling that in so doing the Government of India are in any way retreating from the position which they took up in introducing this Bill. Their sole object from first to last has been to improve the operation of the jury system as a means of the administration of justice. I admit that in my own personal opinion that instrument for the administration of justice is so very faulty that it can never be made quite satisfactory ; but my desire has been to make it as useful and efficient as it is capable of being made, and, being satisfied that the particular provision in question is not apt for that purpose, we withdraw it without hesitation and without regret."

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE said :—" My Lord, the Bill now referred to the Select Committee is, from a different point of view, even more important than the Cotton Duties Bill passed a few days ago. There never

was till now a discussion of the principle of the Bill itself. I certainly agree to the present motion on the supposition that this discussion is reserved."

The Hon'ble SIR GRIFFITH EVANS said :—"After the statement made by the Hon'ble Sir Alexander Miller it is evident that the Bill must go into Select Committee. There is no objection to the Bill going into Select Committee, and I feel that it would be worse than useless at present to discuss the matters raised by the Bill. The statement made by Sir Alexander Miller requires very careful attention. The whole matter will have to be discussed in Select Committee, and it is quite possible that when the Bill emerges from the Select Committee it will contain little or no disputable matter with regard to which there will be any acrimonious feeling."

The Hon'ble ANANDA CHARLU, RAI BAHÁDUR, agreed with the Hon'ble Sir Griffith Evans that the Bill should go into Select Committee after the excellent observations which had fallen from the lips of the Hon'ble Mover. He should like some explanation to be given with regard to certain other parts of the Bill, but, as the Bill would be before the Select Committee, and as he happened to be upon the Committee also and would have an opportunity of advancing his views, he thought it was undesirable to take up the time of the Council at present.

The Hon'ble BABU MOHINY MOHUN ROY said :—" May it please Your Excellency,—I crave permission to offer a few observations upon this Bill. I had no opportunity of stating my views at its introduction, which took place at Simla. The Bill is now being referred to a Select Committee. This seems to be an appropriate time for making a statement.

" The Bill seeks to introduce three important changes in the law—

First, empowering Sessions Judges to require the jury to return a special verdict and a further special verdict (clauses (*3*) and (*4*) of section 3 of the Bill) ;

Second, enlarging the power of the High Court to deal with cases where the Sessions Judge, disagreeing with the verdict of the jury, makes a reference to the High Court (section 4 of the Bill) ;

Third, formation of a special jury for the trial of offences which may be specified by the Local Government (section 6 of the Bill).

" There is nothing objectionable in the second item of change. The Bengal Government approves of it. The Calcutta High Court likewise approves of it and shows it is necessary in that ' it settles the law expressed in section 307 of the Code of Criminal Procedure, about which the judgments of the different High Courts have been somewhat contradictory.' The Bombay High Court is against it, but the Bombay Government is not so adverse. It says ' any modification of section 307 of the Code is unnecessary. The proposed amendment, however, does not appear to be open to objection.' The Madras Government and the Madras High Court express no opinion upon this point. Reason and balance of authority are certainly in favour of the proposed amendment. The people of the country have more confidence in the High Court than in the Sessions Court and will not grudge an enlargement of the power of the High Court in cases of difference between the Sessions Judge and the jury. The Asansol outrage case is still fresh in their memory.

" The formation of a special jury in districts where practicable seems to be equally unobjectionable. But the proviso that the inclusion of the name of any person in the special jury-list shall not exempt him from liability to serve as an ordinary juror is open to very serious objection. Mr. Stevens, Judicial Commissioner of the Central Provinces, says :

' At best the number of special jurors would be but small, and as presumably they would be called upon to act in those classes of cases which are most serious, most difficult and most complicated, they would apparently have a great deal more than their fair share of work, as compared with the common jurors.'

" The Chief Commissioner of the Central Provinces has expressed his general concurrence with the views of the Judicial Commissioner. I would humbly submit, for the consideration of Your Excellency and Council, that the proviso would be very unfair to special jurors. Without it they would have ' more than their fair share of work.' It would serve no useful purpose to make the special jury service a work of hard labour and an object of dislike to jurors.

" Now I come to the first item of change. The hon'ble and learned mover of the Bill candidly stated when introducing it :

' No doubt there are very grave considerations as regards such a process which might very well 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.'

" Jurors are now, as they ought to be, treated with more consideration. They are not starved into unanimity. Nor ought they to be heckled or browbeaten into a surrender of their independence. The clauses of section 3 of the Bill referred to above will greatly lower the status of jurors and render the entire jury service extremely distasteful. I would always deprecate any change in the law which might lead to such a result. The High Courts of Calcutta, Madras and Bombay are all against such change. The Bengal Government ' considers that this section might be so safeguarded as to be unobjectionable ; but, in view of the feeling of the educated Native community in regard to it, it is clearly of opinion that it is not worth while to press the proposal.' The Bombay Government thinks there is no objection to the Judge asking the jury in some cases ' what their verdict is on each essential point for determination.' But His Excellency the Governor of Bombay dissents from his Council on this point. The Government of Madras has expressed no opinion upon it. The further statement which the Hon'ble Mover has made to-day renders it unnecessary that this matter should be discussed at any length.

" In this connection I would draw the attention of the Council to section 319 of the Code of Criminal Procedure and to section 5 of the Bill and point out that under the present law (section 319) ' all male persons between the ages of 21 and 60 ' are, with certain exceptions, 'liable to serve as jurors or assessors at any trial held within the district where they reside.' Now a district is a large area, and the sadr station, where sessions trials are held, is often two or three days' journey from remote parts of the district. It would clearly be a great hardship to persons residing in such remote parts to have to come up to the sadr station to serve as jurors or assessors. The area of liability to such service may justly be circumscribed to a radius of short and easy distance from the sadr station so that the liability might not entail any great hardship or unreasonable sacrifice of time and money upon the persons subject to it. If there is railway communication, that circumstance may be taken into consideration in fixing the distance. The Madras Government is of opinion that ' the practical difficulty in working the law would probably be met by a provision that only persons resident within five miles of the District Court should be included in the list of special jurors.' There is no reason why a different rule should obtain in regard to common jurors and assessors. In framing or amending any law regarding the jury system, two paramount interests ought always to be kept in view, namely, the interests of criminal justice and the interests of justice to jurors."

The Hon'ble SIR ALEXANDER MILLER said :—" It is scarcely necessary that I should, considering the explanation I have already given, say anything further by way of reply again, but I wish to take advantage of my right of reply merely to mention that I originally intended and promised to insert the name of the Maharaja of Durbhanga on the Select Committee and have been in communication with him on the subject, but I have not put on his name on account of his recent illness which would have made it merely an empty compliment to have done so."

The motion was put and agreed to.

INDIAN RAILWAYS ACT, 1890, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Indian Railways Act, 1890. He said :— " By section 81 of that Act as it was passed, a section which I have reason to believe was intended to be copied from one of the sections of the Railway and Canal Traffic Act, 1873, at home, steamers belonging to or chartered by a railway company are put as regards their liability as carriers on the same footing as the railways instead of being on the same footing as other inland navigation companies. This was felt by the inland navigation companies—and I think justly felt—to be a hardship, and on the matter being duly represented to the Government, and after communication with the Government at home, it was determined that the hardship should be removed, and accordingly the main object of the present Bill is to get rid of that distinction, to repeal the clause of the Act which puts railway companies when they are acting as inland navigation companies on a different footing from other inland navigation companies, and in other respects to do equal justice as between such steamers.

" Advantage has been taken to amend the Act in three or four purely verbal non-controversial particulars where by accident certain words have been omitted that were wanted. To give you an illustration. In section 73, a section which provides that in the case of certain animals being damaged the liability of the company shall not extend beyond a certain amount for each animal, there is no mention of either mules or donkeys, and a question has arisen in consequence whether they must be brought under the general provision of ' other animals,' which would make the limitation a great deal too low, or whether they ought to be classed as ' horses,' which would make the limitation ridiculously high : and it has

been thought desirable to introduce 'mules' and 'donkeys' specially into the section, putting in each case a proper limitation upon their value.

"I only mention that not as exhausting all the matters of detail in the Bill but as a specimen of what the clauses of the Bill amount to, and I think the Council will agree that it is scarcely necessary to trouble them with the details of all the matters of that kind which are disposed of in the Bill."

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India and in the local official Gazettes in English. He said :—"I would take this opportunity of saying that it may be convenient to Hon'ble Members to know that I do not as at present advised propose in a small matter of this kind to wait for the return of opinions from all parts of the country for consideration, and, unless I find that there is some such serious objection to the Bill as would render it necessary to delay, I would propose to ask the Council to take it into consideration this day three week."

The motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Presidency Small Cause Courts Act, 1882. He said :— "When that Act was being amended by Act I of 1895, section 38 was repealed and a totally new section 38 was introduced having nothing to do with the applications for retrials of small causes which were the subject of the original section 38. By section 71 of the Act certain fees were made payable in respect of these applications under the old section 38, and by an oversight, for which I suppose I was responsible, the words 'section 38 or' in section 71 were left standing, although they had absolutely no application whatever to the subject-matter of the new section 38. The result, however, has been that a question has arisen as to whether fees are chargeable for proceedings under the new section, proceedings for which it would be utterly unreasonable to charge fees, and for which nobody ever intended that fees should be charged. The sole object of the Bill which I now ask leave to introduce is to remove the words 'section 38 or' from section 71, leaving the

remainder of the section applicable to cases in which fees are properly chargeable, and thus removing the ambiguity arising out of the reference to the abolished section which is still standing on the face of section 71."

The Hon'ble ANANDA CHARLU, RAI BAHÁDUR, said he was very glad that this alteration was suggested, because there were several instances in which fees had been extorted from the litigant.

The motion was put and agreed to.

The Hon'ble Sir ALEXANDER MILLER introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India and in the Fort St. George Gazette, the Bombay Government Gazette and the Calcutta Gazette in English. He said :—" Following the same lines with regard to this Bill as to the small Bill I mentioned a few minutes ago, I propose, unless I hear something to the contrary from some of the parties interested or liable to be affected by the Bill, to ask the Council to take the Bill into consideration this day fortnight."

The motion was put and agreed to.

The Council adjourned to Thursday, the 20th February, 1896.

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

CALCUTTA ;
The 14th February, 1896.

CALCUTTA : PRINTED BY SUPDT. GOVT. PRINTING, INDIA, 8, HASTINGS STREET.