

*Thursday,
27th February, 1896*

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,

1896

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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 Government House on Thursday, the 27th 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 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 Sir A. E. Miller, K.T., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., K.C.S.I., R. A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble Alan Cadell, 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 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.

QUESTIONS AND ANSWERS.

The Hon'ble BABU MOHINY MOHUN ROY asked :—

"1. Will Government be pleased to state the grounds of the proposed transfer of the Chittagong District and Chittagong Division to Assam, so as to enable the people of the Division to meet the same in their representations against such transfer which will be submitted through the Government of

[*Babu Mohiny Mohun Roy ; Mr. Woodburn.*] [27TH FEBRUARY,

Bengal and to which the Government of India has expressed its willingness to give attentive consideration ?

"2. Whether the attention of Government has been drawn to a paragraph in the *Amrita Bazar Patrika* of the 14th February instant, which says :— ' While on this subject (transfer of the Chittagong Division) a report that the transfer of Dacca and Mymensingh to Assam is also under contemplation along with the Chittagong Division reached us ' ?

"3. Will Government be pleased to state whether any such proposal has been made and is under its consideration ? "

The Hon'ble MR. WOODBURN replied :—

"The main grounds which led the Government of India to determine that the question of the transfer of the Chittagong Division to Assam should be considered by the Lieutenant-Governor of Bengal and the Chief Commissioner of Assam, were the following :—

"The Government of India consider it desirable, if possible, to relieve the Lieutenant-Governor of Bengal of some portion of a charge which, owing to the development of the country and the growth of the population, threatens to become too large to be administered by one Government. Assam, on the other hand, is the smallest province in British India for which there is a separate administration, and the addition to it of the Chittagong Division would not have the effect of throwing too great a burden on the Chief Commissioner. The interests of that province will be materially benefited by its being brought into direct communication with the sea, while those of the port of Chittagong are likely to receive more attention when it is annexed to Assam than can be given to it as one of several ports connecting the province of Bengal with the sea. It is desirable that the whole of the territory through which the Assam-Bengal Railway will run should be brought under one administration.

"2. The Government of India have noticed the reference in the newspaper referred to by the Hon'ble Member as to the report that the transfer of Dacca and Mymensingh to Assam is under contemplation.

"3. The Government of India have made no proposal that Dacca and Mymensingh should be transferred to Assam, nor is such a proposal at present under their consideration."

INDIAN VOLUNTEERS ACT, 1869, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY presented the Report of the Select Committee on the Bill to amend the Indian Volunteers Act, 1869. He said :—" My Lord, in March last, in introducing the Bill to amend the Indian Volunteers Act of 1869, I explained that its main object was to give power to the Governor General in Council in case of emergency to call out the volunteers for actual military service, and to enable him to make rules for the payment and provision of supplies for them when so called out, and for the grant of pay, pensions, gratuities, allowances and rewards to them, and that the Bill also provided for the Governor General in Council being able to apply such rules to any volunteers called out by the civil power for the preservation of the peace. I stated also that there were two important subsidiary measures proposed in the Bill, namely, to extend the area within which the volunteers are liable to serve from four miles from their place of enrolment to the civil district or districts within which their corps is enrolled, and to empower Commanding Officers of volunteers to dismiss from the corps for certain specified causes any volunteer other than a commissioned officer.

" A fortnight ago, in asking that the Bill should be referred to a strong Select Committee, I stated that the reports which had been received upon the Bill had led the Government of India to think that it might with advantage be modified in some respects. The Select Committee, whose Report I now present, have carefully considered all those reports, together with the criticisms and suggestions of General Officers, Officers Commanding volunteer corps, and others, and, while retaining the main provisions of the Bill practically untouched, have made very considerable changes in regard to those subsidiary measures to which I have alluded. Their Report deals with certain changes of form in the Bill as well as with the changes in substance which have been made; but I need now only refer to the changes in the substance of the Bill.

" Section 9 of Act XX of 1869, under which Act volunteers are now serving, gives power to Commanding Officers of corps, with the sanction of Local Governments, to convene general courts-martial for the trial of military offences, of which any member of such corps shall be guilty whilst on actual duty. The expression 'actual duty' is also used in section 8 of the existing Act, which places the volunteers under the Army Act 'whilst on actual duty or on parade', and again in section 13 of the existing Act, which enables any volunteer to quit his corps on giving seven days' notice, 'except whilst on actual duty.'

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But the expression 'actual duty' is nowhere defined in the existing Act, though the expression 'actual duty other than drill or parade,' which occurs in section 18, shows that it has a very extended meaning, certainly not less extensive than that proposed to be put upon it by this Bill. In the Bill as introduced last March, actual duty was defined in terms taken almost *verbatim* from section 176, clause (8), of the Army Act, and 'service in aid of the civil power,' to which the volunteers in India are liable, was added to the definition. This Bill, however, creates a new condition of service for the Indian volunteers, namely, 'actual military service,' and the Select Committee have thought it desirable to recommend that this condition of service should be kept separate from the condition of actual duty, and have struck out the words 'when their corps is on actual military service,' from the definition of 'actual duty' as it appeared in the Bill as introduced. They have, in consequence of this change, inserted the words 'or actual military service' in the new section 8 of the Act, and also in section 13 of the Act. The result of these amendments, if they are accepted, will be that the volunteers will be under the Army Act whilst on actual duty or on actual military service, that they will not be able to quit their corps on giving seven days' notice whilst on actual duty or on actual military service, but that the power of Commanding Officers to convene general courts-martial with the sanction of the Local Government, will apply to volunteers only when they are on actual duty, and will not apply when they are on actual military service. For offences committed on actual duty, the power of the Commanding Officer to convene general courts-martial, with the sanction of the Local Government, will continue, and the Local Government will have the power to confirm or commute any sentence passed by such a court-martial or to pardon the offender; but on actual military service the conditions of the Army Act alone will prevail, and courts-martial will be held under that Act with this limitation, that only those provisions of that Act which apply to officers are made applicable to volunteers of any rank. This in no way whatever curtails any existing privileges or rights of volunteers. The condition of actual military service is newly created by the Bill, and it is considered essential that the volunteers should, when on such actual military service, be exclusively under the Army Act.

"I now pass to that section of the Bill which amends section 16 of the existing Act and renders volunteers liable to serve within the limits of the civil district or districts within which their corps is enrolled, instead of, as heretofore, within a radius of four miles from the place of enrolment. In this section the Select Committee have made, as stated in their report, some important alterations.

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"To meet certain objections by Local Governments and others, that it might involve hardship on volunteers who belong to a corps consisting of more than one battalion, that they should be bound without their consent to serve in civil districts outside the limits of their own battalion, the Select Committee have recommended that the limit should be applicable to the corps or battalion. And, in order to meet the still further objection that in the case of some corps and battalions even the limit of the civil district is too extended, they have inserted a proviso giving power to the Local Government or the Commissioner of the Division, or other authority to whom power in this behalf may be delegated by the Local Government, to exempt from service any particular corps or portion of a corps, or any individual member or members of a corps by name, such exemption to be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribe. While thus retaining the power, which it may be necessary to use in case of some extraordinary emergency, to concentrate a whole corps or battalion at any point within the district or districts in which the corps or battalion is enrolled, it will be open to the Local Government by subsidiary orders to, for example, retain each company at its own head-quarters, or exempt certain companies altogether, and even to exempt individuals from being called out or from leaving any particular locality, should it not be considered necessary to require them to join the unit to which they belong. In this section the Select Committee have also, in deference to opinions expressed, inserted in the Bill a definition of 'civil district' corresponding to the definition in the Civil Procedure Code.

"I now come to the section of the Bill which gave power to Commanding Officers, under certain restrictions, to sentence volunteers, other than commissioned officers, to simple dismissal from their corps for such acts as they now can only punish by fine. In introducing the Bill I said that this measure was in conformity with the law of England, and had been recommended to us by the Commander-in-Chief after consultation with a number of the most experienced Commandants of volunteers. And the Bill fenced round the power thus given to Commanding Officers with conditions which safeguarded every volunteer by stating that no such dismissal should take place until the guilt of the volunteer had been established by evidence, duly taken and recorded in the books of the corps, under the signature of the Commanding Officer and Adjutant, and that every such sentence of dismissal must be reported to, and would be liable to revision by, the Local Government, which might either reverse it or substitute fine for it, or pass such orders on the case as might in

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its opinion be just and proper. Nevertheless several objections have been taken to this clause, and it is evident that there is a strong feeling amongst a considerable section of the volunteers against this power being conferred upon Commanding Officers. The Select Committee have, therefore, decided to recommend its removal from the Bill, and it does not appear in the Bill as amended by them. If this recommendation of the Select Committee is approved sections 19 and 20 of Act XX of 1869 will remain untouched, and the volunteer will in future, as now, only be liable to dismissal from his corps upon a conviction by a court-martial or by the order of his Commanding Officer in the event of his neglecting or refusing to pay any fine to which he shall have been sentenced by a court-martial.

“Section 5 of the Bill as introduced was consequent upon section 4, which has been struck out of the Bill, and section 5 has, therefore, also been struck out.

“I pass to the section of the Bill which gives power to the Governor General in Council to call out the volunteers for actual military service in case of actual or apprehended emergency and authorises him to make rules for making payments, issuing supplies, and granting pay, allowances, pensions, gratuities and rewards to them. In this section the Select Committee have recommended four alterations. The first of these alterations makes the sections applicable to any portion of a corps as well as to the whole corps. This is in accordance with an Act passed in the Imperial Parliament in 1895 to the same effect as regards the volunteers in Great Britain, following a recommendation made by the House of Commons Select Committee of 1894. The object of this change is self-evident. The second alteration authorises the Governor General in Council to make provision for transport as well as for supplies to the volunteers. The third alteration is merely verbal, changing the words ‘for the preservation of the peace’ into ‘in aid of the civil power’ to correspond with the definition of actual duty in the Bill; and the fourth, which is the most important alteration, gives power to the Local Government to exempt any corps or any portion of a corps, or any individual volunteer in respect either of time or of area, in the same way as in the proviso which the Select Committee have inserted in section 3 of the Bill as introduced (section 6 of the amended Bill).

“The select Committee have also recommended the insertion in the Bill of a new section as follows :—

‘Whenever military operations are about to be undertaken or are in progress, any member of a volunteer corps may offer himself for actual military service, and, if the

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services of such a number of members of any corps as in the opinion of the Governor General is sufficient to enable them to be separately organised are accepted, then those members may be called out either as a corps or as part of a corps, and this Act shall apply to them.'

" This section is, *mutatis mutandis*, taken from the English Volunteer Act of 1895, and is based upon a recommendation of the House of Commons Select Committee of 1894. In the English Volunteer Act of 1895 this power is given to the Secretary of State whenever an order for the embodiment of the militia is in force. The Select Committee propose that it should apply in India whenever military operations are about to be undertaken or are in progress. On more than one occasion volunteers have in this way offered their services in India. And on one occasion at least, that of operations on the Assam frontier, their services have been accepted, and excellent service was on that occasion rendered by some of the Surmah Valley Light Horse. This section simply makes legal the acceptance of such service.

" Such, my Lord, are the alterations recommended by the Select Committee. It will be seen that not only do their recommendations, if accepted, impose no fresh burdens upon the volunteers, but that they very sensibly reduce the obligations required of them by the Bill as originally introduced. They remove the power which was given to Commanding Officers to dismiss non-commissioned officers and men of volunteer corps without previous trial by court-martial. They limit the area of compulsory service, in the case of the volunteers belonging to a battalion which is part of a corps, to the district within which the battalion is enrolled. They enable Local Governments to still further limit that area either for the whole corps or for any part of the corps or for any individual volunteer, and they also enable the Local Governments to limit the time during which any corps or part of a corps or individual shall be retained in actual military service ; and I feel confident that the Bill, as thus amended, will be acceptable to the great body of the volunteers.

" The rules to be made under section 7 of the amended Bill were not brought before the Select Committee, as they are for the pleasure of the Governor General in Executive Council. But as these rules were published with the Statement of Objects and Reasons which accompanied the Bill on its introduction, and as a very large number of suggestions and comments have been made upon these rules, I may with advantage here state what alterations the Government of India propose to make in them.

" The objections taken to the rules were generally to the effect that the pay, pensions, etc., laid down in them are not sufficiently liberal, and proposals

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of many different kinds were made. Some of these proposals were to the effect that the volunteers, if called out on actual military service, should receive from the Government the salary or income which they derive from their ordinary avocations as shown in the books of the Income Tax Collector. Other proposals were that a volunteer when called out should receive nothing beyond his rations and actual expenses, and that no provision should be made for pensions as regards the rank and file. Others were to the effect that wound pensions and gratuities and pensions to widows and families should be apportioned according to social status, and not according to volunteer rank. My Lord, the Government of India are unable to accept any of these suggestions. It is absolutely out of the question that they should undertake to pay volunteers, when called out on actual military service, the salaries which they were earning in their ordinary avocations. It is out of the question that they should make any difference between one volunteer and another on account of their relative social status. It is out of the question that, in the event of wounds or death, the pension to be awarded should be judged by the social status of the volunteer. The Government of India can only look to the military position in which the volunteer serves when on actual military service. This is the law in Great Britain; and I am not aware that it has ever been proposed by the great artists who have served in the Artist corps of volunteers, or by those distinguished lawyers who have served in the Inns of Court corps, that in the event of their being called out on service they should receive the incomes which they were deriving from the practice of their professions. The volunteer force in Great Britain serves willingly and cheerfully on exactly similar conditions to those contained in the rules which Your Excellency in Council proposes to make if this Bill is passed into law. And I own that I have seen with feelings of some regret these proposals that the volunteers, if called out for duty, should be paid and receive pensions at rates immeasurably exceeding the rates of pay and pension granted to the officers, non-commissioned officers and men of Her Majesty's Army, side by side with whom they would be serving, and whose comrades in the field, should occasion arise, they would be. I cannot but think too that there is a mistaken idea in the minds of those who make these proposals. It seems to be assumed in these proposals, which, I am bound to say, do not come from any large number of volunteer corps, that in enrolling himself as a volunteer a man is conferring a great favour upon the State, and that he is gaining nothing for himself. I think that this is a grave delusion. Such an idea might possibly be to some extent applicable to the volunteers at home, who are only liable to be called out in case of the actual or apprehended invasion of

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Great Britain by a foreign enemy, whose service is not limited in area, who may be taken from their homes in the north of Scotland to defend a seaport in the south of England, as was contemplated and arranged under the mobilisation scheme as it existed when I left England less than five years ago. But in India the conditions are very different. The volunteers cannot be called upon to serve across the frontier or to serve against a foreign enemy unless that enemy has actually invaded the district in which their corps is enrolled. The dangers which the volunteers may be required to combat in India are internal dangers, such dangers as this country has seen in the past, but which we all fervently hope it may never see again. In case of such danger arising, the old story of the bundle of sticks is applicable. Each stick taken by itself is easily snapped; the bundle of sticks bound together is unbreakable by human force. There can be no greater mistake on the part of men in this country than to suppose that by holding aloof from the volunteers, they can better defend their individual hearths and homes. The lesson of the great Mutiny teaches the contrary doctrine. It is only when men are banded together, instructed in arms and disciplined, that they can show a firm front to revolt or riots due to religious fanaticism or other causes. It is only by such banding together that they can protect their own families and homes; and I for one must always hold that in banding themselves together the volunteers are not only conferring a benefit upon the State, but that, having, in the words of the Act under which they serve, volunteered their services for the protection of life and property and the preservation of the peace, they are acting in their own interests as well. It must be admitted that, to quote the words of the Secretary to the Government of Bengal, it is an 'extreme improbability that volunteers will be called out for any prolonged and serious military service,' and in the words of the Secretary to the Government of the Punjab, that, 'instances of volunteers being disabled or killed in action, would in any case be of very rare occurrence.' And I think it can scarcely be doubted that, in the words of the Secretary to the Chief Commissioner of the Central Provinces, the 'occasions on which volunteers are called out are occasions which would justify a conscription.'

"I cannot conceive anything more unlikely than that the Governor General of India should declare in Council that actual or apprehended emergency has arisen, unless that emergency were of the gravest nature. When we consider what the effect of such a declaration would be upon exchange, upon trade and commerce and upon revenue, and upon the minds of those Europeans who are scattered in isolated positions throughout this widely extended Empire, it seems impossible to believe that such a declaration should ever be made except

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under most urgent necessity. And even then, such a declaration having been made, it is left, under the Bill as amended by the Select Committee, to Local Governments to exempt whole corps or portions of corps of volunteers, or even individual members, from being called out, or to limit the area within which they are to serve, or to limit the time within which they are to remain on service. And it is impossible to believe that Local Governments would call out more volunteers than were absolutely necessary to meet the occasion, in view of the disturbance to trade and commerce, and the loss of revenue to the Imperial and Provincial Governments, which must ensue from the calling out of any great body of Europeans. But, if ever this dire occasion does arise, if ever it becomes necessary to call out the whole or any portion of the volunteers, then, remembering that they are, as laid down by Lord Canning, from whose declaration to this effect the Government of India has never departed, 'a supplement to the European forces of the Crown,' the Government of India holds that they must in all respects be treated in the same way as the European forces to whom they are a supplement.

"But, my Lord, there is one point in which Your Excellency in Council has decided to alter the rules. Rule (b) made a distinction between the pay and allowances to be given to Government servants and those not in Government service. Attention was called to this in some of the reports, and it was said that it made an invidious distinction between Government servants and others. Your Excellency in Council has seen the force of this objection and all such distinction will disappear from the rules, and this rule will, therefore, simply provide 'that all officers, non-commissioned officers and volunteers shall, while on, or proceeding to, or on returning from, actual military service, be entitled to receive pay and allowances admissible to the different ranks in the British army, corresponding with those held by them in the volunteers, and rations in the same manner and on the same scale as authorised for the British troops serving in the military district in which the volunteers are serving.' Rule (i), which admitted Government servants to any higher rate of pension, gratuity or compassionate allowance admissible to them under the Civil Service Regulations, or under any special conditions of service, instead of the rates named in the rules, will also be struck out, and provision to this effect will be made by Resolution.

"My Lord, it was never the wish of the Government of India that there should be any invidious distinction between Government servants and others, and in inserting in the rules clauses, which will now disappear, that Government servants should be entitled to receive civil or military pay at their

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option when on actual military service and any higher rates of pension admissible to them under civil rules, it was only their intention to set an example to other great employers under the same circumstances. And, although this distinction will disappear from the rules, the Government, which is by far the greatest employer of labour in India, will set an example to all other employers, and will issue, simultaneously with the passing of this Bill, a Resolution in the Finance Department having the same effect as those portions of the rules which are being removed.

“My Lord, Your Excellency’s Government commends this example to all other employers of labour. I venture to remind them that, by giving every encouragement to those in their service to join the volunteer force, they will be running an infinitely small risk and will be doing their best to protect themselves against an infinitely grave, though, it is to be hoped, a very remote, danger.

“With these remarks I beg to present the Report of the Select Committee upon the Bill.”

His Excellency THE COMMANDER-IN-CHIEF said:—“My Lord, as Commander-in-Chief of the Army in India I am glad to have this opportunity of expressing my concurrence in the provisions of the Bill which have been so clearly explained by the Hon’ble Member in the Military Department.

“The extent to which military law should be made applicable to volunteers is limited by two principal considerations. On the one hand, its application should be stringent enough to maintain discipline while they are performing military duty; on the other hand, it should be as little irksome as possible at other times, lest a too serious and too constant responsibility in ordinary times should deter men from joining this valuable force.

“I think a just mean has been arrived at in this Bill between these two somewhat conflicting considerations, without any material deviation from the law under which our volunteers have hitherto served in India.

“Their position will practically be that which obtained under Act XX of 1869, with the exception of one point—they will no longer be exempt by special provision from the penalty of death for such shameful crimes committed in the presence of an enemy as involve that punishment to officers of the regular Army.

“I am confident that I am but expressing the feeling of the volunteer force when I say that any such exemption specially framed for our volunteer

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citizen soldiers would, if thought about at all, be condemned by them as not only a slur upon their manhood but as a useless one.

"I only know the reception I would expect to receive from, say, the Calcutta Light Horse if I were to tell them that the Government of India considered that it would be asking too much of them to treat cowardice amongst them in the presence of an enemy as it is treated in every army in the world. The matter for wonder is to me how such a provision ever crept into the Statute-book. It must have been framed under a misapprehension of the feelings of the volunteers themselves and in total ignorance of the moral standard which should be maintained in every fighting force; and I congratulate the volunteers and the Hon'ble Mover of the Bill on the truer appreciation of the spirit of our volunteers which has led to its removal.

"There is one very special concession made to the volunteers in this country. They are only made amenable to the Army Act as officers. This entails the necessity of trial under the Army Act being by general court-martial only, and under this concession they become exempt from minor punishments.

"If there was any prospect that it would be necessary to have recourse often to courts-martial, the machinery thus created would be cumbersome and troublesome, and as Commander-in-Chief I would have considered it my duty to press for its abolition; but we have now the experience of many years to guide us in which the conduct of our volunteers has justified the privilege, and I am quite ready to concur in its continuance.

"In conclusion, my Lord, I will only say that the volunteer force in this country has now reached a strength of some 28,000 men, that I look upon that force as a most valuable addition to our armed strength in India, and that I consider any measure passed for its better government as of the highest importance to the State."

INLAND BONDED WAREHOUSES AND SALT-BONDING BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on 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. He said :—"In presenting this Report I desire to offer some remarks on certain matters which came before the Committee in the course of their discussions over the Bill. There has been a rather curious

development of the circumstances under which the Bill was brought before the Council. It will be remembered that I explained at the time of introducing it that certain European firms interested in the salt trade had found that the provisions of the Inland Bonded Warehouses Act of 1837 were not conveniently adapted for their use, and they desired that certain amendments should be made and greater facilities should be given to them for the purposes for which that Inland Bonded Warehouses Bill was passed. However, immediately after the introduction of the Bill, their attention seems to have been more closely drawn to that particular Act, and they discovered that they would much sooner carry out their trading operations under that Act of 1837 than receive the greater facilities which they themselves had asked for. The proposal was accordingly made that the Bill as drawn on their suggestion should be now entirely withdrawn; but on my conferring with certain Native merchants interested in the salt trade, and who do not carry on their trading operations on such a large scale as the firms to which I refer, I found that they were opposed to the entire cancelment of the Bill, and desired that the facilities which the European merchants had in the first instance asked for should not be withheld.

“The Bill, in the original form in which it was introduced, and in the form in which it is now before the Council, sets up two alternative systems, both intended for the same purpose, and it is intended that these two systems should be continually worked side by side, neither being intended to exclude the other, and both Native and European merchants having the choice of either one system or the other. Under the first system the salt is subject to all the restrictions which are provided in the Customs Act; we do not allow it to be in any way removed from our control; it is shipped under the supervision of our officers; it is sealed up under the supervision of our officers; it is afterwards taken out of the ship under the same supervision and kept in the inland warehouses, again under the supervision of our officers. Under these circumstances we look to the salt itself as a security for the duty which is due upon it, and we do not demand the same further security which is necessary under the second system.

“Under the second system we allow the salt to be under the control of the owner. It is intended for the case of removal of salt in ordinary Native ships; there it cannot be sealed up; as a matter of fact it is stowed away in a manner in which it remains open to the four winds; it is stamped all over to prevent dishonesty, but it is perfectly possible for the owner, either by carelessness or in any other way, to lose part of the salt in transit, and so the salt may partly at least disappear. Under these circumstances we have

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no security in the salt itself for the duty which is leviable, and we therefore require a bond to be given beforehand by the owner that he will pay the amount of duty due within a certain time. I regret to find from certain representations made to the Select Committee by the Native Chamber of Commerce that they are under the impression that there is some intention of allowing by means of the Bill a certain laxity in the administration of the salt-revenue. Their letters are at least conceived upon that principle, and I desire to make it perfectly clear that on the part of the Government there is no intention of the kind. It must be clearly understood that in the carrying into operation of the provisions of the Bill, and the levying of the salt-duty under the Bill, there is no intention that any laxity whatever should be allowed. There is a very peculiar feature in the salt trade which must be always borne in mind, and that is that the duty due on the salt is many times the value of the salt itself. The inducement, therefore, to fraud on the part of persons who are capable of committing fraud is infinitely greater than in the case of any other article on which a duty is to be levied, and by so much more is it necessary for us to take stringent measures to protect the revenue from any possibility of fraud.

“The Bombay Government in giving us advice in this matter tells us that ‘the prepayment of duty on all salt removed from salt-works either in cash or by the deposit of Government securities been considered essential for the protection of revenue in this Presidency’; and I believe that in Madras exactly the same system is in force, and that the Government will not release the salt unless it has the security of either its own public securities or some other kind of public securities for the subsequent realization of the duty. Now our intention in affording the facilities which this Bill gave us was solely this, that whereas, at present, the merchants are obliged to pay the duty before they can remove the salt to an inland warehouse whence it may be afterwards issued for consumption, we desire to give them the option of taking the salt away on their giving security under a bond for the payment of the duty, and that this bond should come under realization only when the salt itself comes into consumption. We do not intend to depart from that principle, and when the Native Chamber tells us that it ‘would be an anomaly and would defeat the object of the Bill if persons of known means and position were to be called upon to furnish security before being allowed to take away salt to the interior without prepayment of duty,’ I can only say that the object of the Bill as understood by them must be something different from what is intended by us. When we allow persons to take away salt without prepayment of duty, it is a transaction of exactly the same nature as if we were lending them for the time

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the amount of the duty which they would under the present system have to pay. It may seem to them rather hard that we are unable to give them this time to pay up the duty without taking sufficient security for it, but, as I say, we are really giving them a loan out of the Government pocket, and, so far from its being an anomaly to demand Government securities as the only sufficient pledge for this loan, I am afraid that if they were to go to the Bank of Bengal and seek to borrow on the same terms, they would find that the Bank of Bengal would equally refuse to look at their applications unless they were prepared to deposit proper security.

“There is another matter in which the Native Chamber of Commerce have overlooked the provisions of the Bill. In talking to me they certainly imagined that when a merchant takes away his salt in one of the Native ships, he will be at liberty to sell it as he finds the opportunity. The Bill never gave that permission. The object was to provide for the removal of salt to inland warehouses. If a man wants to take away salt from Calcutta for immediate sale, he must pay the duty beforehand; no part of the Bill is wanted in his case; his intention is to realize the salt at once, and under these circumstances, he ought to pay the duty beforehand. It is only when the salt is taken away and is afterwards to be held for a time in a warehouse that the facilities intended by the Bill are in any way required. For the same reason—that of looking after the salt and seeing that it does not pass into consumption before we have an opportunity of realising the bond—we intend that the warehouses shall be in only those places where they can be inspected; they will be for the most part what are called in this country ‘kutchas warehouses’; we do not prescribe any particular class of warehouses, and therefore the salt may be open to deterioration and waste as the owner pleases. This affords another reason why we should look for the ultimate payment of the revenue not to the salt itself but to the security which we hold.

“Another part of the representations received is that referring to the wastage of salt, and I here must also distinctly point out that the Bill intends to make it perfectly clear that no wastage whatever can be allowed. When the salt remains in the custody of our Customs Department and under our supervision, and in well built vessels or godowns, then, under the operation of the Customs Act, a certain allowance for wastage is given; but that allowance is guarded by the weighments made under the supervision of our own officers. But when we allow salt to be taken away on Native ships and in such a form that it is practically accessible to any person on board the ship, and allow it afterwards to be stored in a warehouse of any description which the owner

[*Sir James Westland ; Mr. Playfair.*] [27TH FEBRUARY, 1896]

may set up, then it is obvious that we cannot be responsible for the wastage which will occur; we do not look to the salt in that case, but to the security, and therefore it is very carefully provided in the bond—and I wish that the attention of these Native gentlemen should be drawn to this—that the payment of the full amount of all Customs duties and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of ‘the said salt.’ The necessity for this provision will be very obvious, if we consider the kind of transaction that might take place. I will suppose that one of these merchants takes away 100 maunds of salt and gives a bond for the duty leviable on this salt, say, R250. The 100 maunds of salt are worth in the market about R50. He might therefore at the price at which salt can be supplied sell his 100 maunds of salt for R50 *plus* the duty. He would afterwards come back to us and demand permission to pay duty not upon the 100 maunds but upon the 10 maunds less the wastage. The consequence is that he makes by the pure allowance of wastage a profit of R6 or R7 upon a transaction of R50; and it is obvious that a transaction of that sort carried on at the cost of Government would not be permissible under any proper revenue system. If these native merchants desire to have the advantage of the wastage allowance given under the Customs Act, they can have it; that is to say, they can have their salt removed under the same supervision and kept in the same way as the European merchants propose to do it. But, if they desire to take advantage of the greater facilities which the other system of removal gives,—that is to say, the advantage which the removal in Native ships and the keeping in kutchra warehouses will give them,—then they must be content to go without the wastage which under these circumstances might probably be excessive, but in regard to which the Government and the Salt Department can obviously accept no responsibility”.

The Hon’ble MR. PLAYFAIR said:—“My Lord, with Your Excellency’s permission, I should like to observe, with reference to certain remarks that have fallen from the Hon’ble Member, that the European salt merchants made the request for better legislation in connection with the bonding of salt in the mofussil, before the rules under Act XXI of 1887 were published. Eighteen months elapsed before these rules were framed. These rules have been found to work satisfactorily. When this Bill appeared, it was thought to be required to legalise some of these rules, and, when this was found to be incorrect, the European salt merchants suggested that the Bill was unnecessary. As section 4 of the Bill provides for a continuance of the provisions of Act XXI of 1887, I think the European merchants will elect to conduct their business

*INLAND BONDED WAREHOUSES AND BONDING OF 167
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EXTRADITION ACT, 1879.*

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under this section as formerly. With regard to the requests made by the Native merchants and provided for under section 5 of the Bill, I fear they may consider that they have asked for bread and received a stone, as I do not think the new provision will be of much use to them."

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

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Foreign Jurisdiction and Extradition Act, 1879, be taken into consideration. He said:—"When I asked leave to introduce this Bill I pointed out that it had two objects—one to deal with an act of desertion from the Imperial Service Troops, and the other to provide for the taking of bail in certain cases of extradition where the Political Agent requiring the extradition thought bail could properly be taken. In these respects the Bill has not been practically altered by the Select Committee. They have provided for making more definite the reference to the Code of Criminal Procedure introduced into the original Bill, but they have not made any difference in substance, and in that respect the Bill remains precisely as it was when introduced. But two somewhat important additions have been made by the Select Committee at the instance of the Thagi and Dakaiti Department—one that in section 3 of the Act, which enables an 'officer in British India' to be appointed Political Agent in certain cases, for the words 'officer in British India' the words 'an officer of the Government of India or of any Local Government' should be substituted. This is in order to enable the Government to appoint to act for the Political Agent officers who might not be resident in British India. It is obvious that an officer who is resident in the Native State in respect to which he is intended to act as a Political Agent must often be a more convenient officer to appoint than an officer resident over the border in British India, and I believe that the difficulty has been greatly felt with regard to officers in the Berars, and that the alteration has been asked for mainly for the purpose of meeting cases arising there.

"The other alteration made is to add a clause to section 17 of the Act. By an alteration made in the Code of Criminal Procedure two years ago the Magistrate may under certain circumstances authorise the arrest in British India of persons who have been charged with committing offences outside the limits of British India, but it was not perceived at the time that the processes follow-

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[*Sir Alexander Miller ; Nawab Amir-ud-Din Ahmad, [27TH FEBRUARY, Khan Bahádur.*]

ing subsequently upon such an arrest would not be quite the same as those which would have followed if the offence had been committed in British India, and the object of this section, 17A, is merely to put such arrest in the same position as they would be in if the offence, instead of being committed near the frontier, had been committed in British India. Obviously that was the original intention of the alteration made in the Procedure Code by the Act of 1894, and this is simply supplementary to that alteration for the purpose of giving full effect to it.

"Several other proposals were made in Select Committee for additions to this Bill, but the Committee came to the conclusion that it was better not to accept any of the proposals—not that they were rejected on the merits: in fact, one at least of them was accepted on the merits—but because they felt that inasmuch as no previous notice had been given about these proposals, their adoption by the Committee would necessarily involve a republication of the Bill and cause considerable delay in passing it; and as the particular point which I have already mentioned was not controversial and was practically accepted by every one, it was thought better to confine the Bill to these points, leaving any gentleman who desires to do so to introduce a separate Bill of his own on any of the other points if he feels so disposed."

The Hon'ble NAWAB AMIR-UD-DIN AHMAD, KHAN BAHÁDUR, said:—
"My Lord, I had the opportunity of taking part in the discussions of the Select Committee on the Bill now under consideration, and I may say at once that the Bill as amended by the Committee may confidently be recommended to Your Excellency's Council as one that should be passed into law.

"Speaking for myself, I may be permitted to say that I regret that the Bill does not, in the matter of giving power to release accused persons on furnishing security, except deserters from any body of Imperial Service Troops. It is in my view of great importance that there should not be any distinction between deserters from such troops and troops of Her Majesty's army, and that, although the power to release on security may never be exercised in the case of the former, it would be better in every respect that it should not exist. I have, however, not deemed it expedient to move an amendment in the matter, and content myself with the opportunity I now have of giving expression to my personal feeling.

"The Bill, as it has now been presented to Your Excellency's Council, is calculated to promote the objects for which the Extradition Act was framed, and as an instalment of the reforms that are not only desirable but necessary

1896.] [*Nawab Amir-ud-Din Ahmad, Khan Bahádur ; Mr. Rees.*]

may be regarded with satisfaction, and the new provisions which it is proposed to enact looked forward to as in the interests both of Government and of Native States.

“It could hardly have been expected that the Local Governments to whom the Bill as introduced was forwarded for opinion would miss the opportunity of making suggestions for further amendments in the existing law which appear to them to be desirable or which past experience has shown to be necessary.

“The Chief Commissioner of Coorg, for example, has proposed an addition to the schedule to the Foreign Jurisdiction and Extradition Act, and the Government of the Punjab, whose opinions are necessarily always of great value, has among its proposals recommended that offences under the Criminal Tribes Act should be included in the schedule. It is not necessary, nor would it be fitting, for me to urge at the present time anything in particular in regard to such proposals, and I merely refer to them as showing clearly that it has been found that the law stands in need of still further amendment. I would only wish to say that while all Native States are, I am convinced, most ready and anxious to do all in their power to afford and secure the fullest reciprocity in the matter of the arrest and punishment of criminals, it seems specially desirable that Native States should be permitted to authorise officers of their respective States to pursue and arrest in British territory accused persons who escape from the limits of their States into such territory. The matter is in my opinion one of the highest importance to all Native States, and, in the words of Sir Dennis Fitzpatrick, ‘it is most desirable that all the reciprocity possible should be given to Native States, and claimed from them in order to secure real co-operation in the suppression and detection of crime.’ While, therefore, the Bill before Your Excellency’s Council may receive cordial support, I would venture to express the hope that the matters to which I have briefly referred will be considered at an early date in view to the enactment of the further necessary provisions.”

The Hon’ble MR. REES said :—“The Hon’ble Member, the Nawab of Loharu, has referred to several matters outside the scope of the Bill as presented. It is understood, however, that the presentation of the Report only indicates that the members of Your Excellency’s Council serving on the Select Committee consider that the Report, as presented, adequately deals with the matters to which the Bill relates. A member of the Select Committee does not commit himself by signing the Report to the position that further amendments or addi-

[*Mr. Rees; Sir Alexander Miller; Sir James* [27TH FEBRUARY, 1896.
Westland; Rao Sahib Balwant Rao Bhuskute.]

tions to the law may not in future become, or are not at present, necessary or desirable. Indeed, it may happen that proposals, in which great interests are involved, are not for the moment ripe for the full and careful treatment they require or that they can with greater advantage be brought forward on another occasion. I had not intended, and do not now intend, to refer to matters which for reasons good and sufficient in the opinion of the Select Committee are not included in the Bill as presented, because I believe that some inconvenience may result from mere passing references in Council to matters which may be of as great or even greater importance than those included in the Bill for the moment before the Council. As, however, the Hon'ble Member has referred to proposals and suggestions outside the Bill, I think these few remarks may not be superfluous. And, with reference to what fell from him with regard to the desire of Native States to afford and secure the fullest reciprocity with regard to the arrest and punishment of criminals, it may certainly be said that the Native States in South India have shown every desire to co-operate with the British police, in order to the suppression of crime, and that they take every step that can possibly be taken with the agency at their command to bring about this very desirable consummation."

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to amend the Indian Penal Code be taken into consideration. The Council would, he said, remember that this Bill embodied an amendment of the definition of "Queen's coin".

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE said:—"My Lord, after carefully going through the papers, I find that learned authorities, like Mr. Obbard and Mr. Henderson, consider the Bill unnecessary, and the offence it aims at punishing already provided for. Other learned authorities regard the amendment as expedient and necessary. When there is such a vast difference of opinion as to the necessity of the Bill, it is but necessary that it

27TH FEBRUARY, 1896.] [*Rao Sahib Balwant Rao Bhaskule ; Sir James Westland.*]

should be embodied in clear unmistakeable language. In such cases the best way to decide the question is to try it by definite prosecution and thus obtain the distinct ruling of the highest judicial authority. But High Courts may take different views, and it cannot be ascertained as to what interpretation may be put on the words 'used for the time being as money.' It is also doubtful if the coins, after being called in by the Government, can be considered as being in use for the time being as money. There is every possibility of the Judges not agreeing. It is not advisable then to let the defect go without further legislation. It is, therefore, advisable to have the amendment embodied in the sure unerring words of laws. It also serves a useful purpose, as the tendency to counterfeit coins is a recurring one.

"As regards the illustration (e) to be appended to section 230, it is clear that though the Furrukhabad rupee is not considerably used as current coin and accepted as such, it is melted for the purposes of art and manufacture. The metal of the genuine coin is of rare purity. There is a demand for it in the market for this reason. In proportion as the coin is disappearing, wicked people are tempted to throw a spurious kind of it on the markets. The inscription on the coin has thus come to be regarded as a test of its genuineness, and hence the purity of its metal is no further questioned. This illustration too is necessary for preventing the counterfeiting of such coins for sale like other market commodities.

"It is suggested that counterfeiting obsolete coins for sale would appear to be cheating and ought not to be specially provided for in Chapter XII of the Indian Penal Code. But for cheating a direct and an utter misrepresentation by actual words is necessary. The offence dealt with in the proposed Bill cannot come under the head of cheating, namely, under Chapter XVII of the Indian Penal Code. It must fall under the offences grouped in Chapter XII.

"Considering all these facts I approve of the Bill."

The motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND moved that the Bill, as amended, be passed.

The motion was put and agreed to.

[*Sir Alexander Miller.*]

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PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Presidency Small Cause Courts Act, 1882, be taken into consideration. He said:—"When I moved for leave to introduce this Bill a fortnight ago I thought I had sufficiently explained the object of the Bill, which is a very small one. I find, however, that in at least one quarter the Bill has not been entirely understood, and therefore I take this opportunity of going a little more into detail as to what has actually passed.

"By the Presidency Small Cause Court Act of 1882 as it stood before its amendment by Act I of 1895, the provision for applications for retrial in the Small Cause Courts themselves was contained in section 37. Section 38 provided for applications to the High Court in the nature of appeals from decisions of the Small Cause Court. Section 71 provided that applications under section 38, that is, appeals to the High Court, or section 42, which is a totally different matter with which we have nothing to do, should be liable to the *ad valorem* fees laid down in the Act. But applications under section 37, which were applications in the Small Cause Court itself, were not liable to *ad valorem* fees, but merely to the ordinary fee for applications by way of petition. In the alteration of the Act made by Act I of 1895, section 38 was swept away altogether, and a totally new provision dealing with the High Court, with which we have nothing to do, and with which the provisions as to taxation are contained in the subsequent sections of the Act itself, was substituted for the application by way of appeal to the High Court; but in the renumbering of the sections the old section 37, which provided for applications in the Small Cause Court itself, became section 38, and consequently it has since been argued—I believe some ingenious gentleman has been able to insist on payment of the fee—that by the operation of the mere change of the numbers of the sections, these applications, which for thirteen years had been made under section 37 without any special taxation, became suddenly liable to pay an *ad valorem* fee. Obviously that never was intended. I do not think myself that on the true construction of the Act as amended that result arises even as it stands; but inasmuch as the question has been raised it has been thought desirable to set it finally at rest, and to leave these applications now made under section 38, which do not differ in the least degree on the merits with those which used to be made under section 37, in the position they were in when they were made before the late Act was passed; and that is the entire operation of this Bill."

AMENDMENT OF PRESIDENCY SMALL CAUSE COURTS ACT, 173
1882.

1896.] [*Sir Griffith Evans; Rao Sahib Balwant Rao Bhuskute; Sir James Westland.*]

The Hon'ble SIR GRIFFITH EVANS:—"I entirely agree with what has been said by the Hon'ble Legal Member, that the words proposed to be expunged were left in by mere inadvertence and that this Act is necessary to correct the error."

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE said:—"My Lord, if we were to go back to the time when the limit of the pecuniary jurisdiction of the Presidency Small Cause Courts was raised from Rs. 1,000 to Rs. 2,000, the extension of the limit was evidently necessitated by the expediency of relieving the High Courts of a portion of their work. Thus the public were deprived of a right to adjudication in the Supreme Courts and were required to have their disputes settled in the Presidency Small Cause Courts. The proceedings of the latter Courts are summary, and the Government have wisely provided for the public, in section 38 of Act XV of 1882, a right to apply to the High Court for a re-hearing, if it thinks that it has not obtained a reasonable hearing from the other Court.

"The Presidency Small Cause Court does administer justice in suits exceeding one thousand rupees virtually on behalf of the High Court, and is, so to say, an authorised agent of that Court, when the party applies for re-hearing and makes affidavits. The High Court makes an order *ex parte* for such re-hearing if it be of opinion that there are grounds for such re-hearing.

"My hon'ble friend Rai Bahadur Ananda Charlu has told us of cases in which a second fee has been extorted from litigants. The Hon'ble Sir Alexander Miller himself has observed that a second fee has been charged on the same action. We cannot but admire the rare goodness with which he admits 'and by an oversight for which I suppose I was responsible the words "section 38 or" in section 71 were left standing."

"My Lord, no one can possibly be more informed about the original intention of any section or law than the hon'ble mover himself. The present Bill only aims at the rectification of an error, and it is but just that the measure should be supported."

The Hon'ble SIR JAMES WESTLAND said:—"I took the opportunity in conference with my hon'ble colleague very carefully to examine this Bill with all the suspicion which the Department over which I preside is bound to bring to bear when a proposal for the abandonment of revenue, however small,

174 *AMENDMENT OF PRESIDENCY SMALL CAUSE COURTS ACT, 1882; AMENDMENT OF INDIAN CONTRACT ACT, 1872.*

[*Sir James Westland ; Sir Alexander Miller.*] [27TH FEBRUARY, 1896.]

is put forward. I satisfied myself independently that what has been stated by him is perfectly correct, and that it was entirely by an inadvertence that the words which he proposes to remove from the Act were allowed to stand in section 71. I perfectly agree in the Bill which it is now proposed to pass in Your Excellency's Council."

The motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill be passed.

The motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER asked for leave to postpone his motion that the Bill to amend the Indian Contract Act, 1872, 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 Bahadur, the Hon'ble Mr. Glendinning and the Mover, with instructions to report in a week. He said :—"I would like to take the opportunity of saying a few words on this motion. The Bill in question is one which has been the subject of a great deal of discussion and which I thought had been finally settled after consideration by Local Governments and Administrations in a form which would be acceptable. I find, however, that there is at least a desire for some further consideration, and certainly that is not a matter in which I feel at all inclined to disagree. I understand that some of the persons interested think that in some way the passing of the Act may affect the Government revenue. I should like to put that at once aside. The Bill only deals with charges on the interest of the defaulter and interests paravail to his. The interest of the Government must always be paramount to that of the defaulter. It cannot possibly be touched by any charge created under this Bill. At the same time I have been asked to give some more time for the consideration of the Bill, and therefore, with Your Excellency's permission, I beg to postpone for the present the motion which stands in my name on the paper."

Leave was granted.

The Council adjourned to Thursday, the 5th March, 1896.

S. HARVEY JAMES,

CALCUTTA ;
The 28th February, 1896. }

Secretary to the Government of India,
Legislative Department.