Thursday,
12th March, 1896

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXV

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1896

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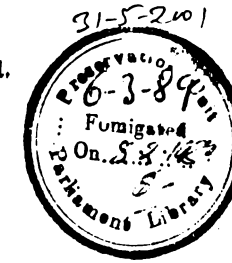

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1896

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 12th March, 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, KT., 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 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 RAO SAHIB BALWANT RAO BHUSKUTE asked :—

"1. Are the Government of India aware that the work of the Judicial Commissioner in the Central Provinces is steadily increasing?

"2. Do they consider that the time has come either for appointing an additional Commissioner to assist him or for creating a Chief Court for the Provinces?"

The Hon'ble MR. WOODBURN replied :—"The attention of the Government of India has been called by the Hon'ble Member's question to the statis-

[*Mr. Woodburn; Lieutenant-General Sir Henry Brackenbury.*] [12TH MARCH,

tics of the Judicial Commissioner's Court in the Central Provinces. It does not appear that there has been any material increase of recent years in the business before the Court, nor has any representation been ever made by the Chief Commissioner that the Court requires to be strengthened."

INDIAN VOLUNTEERS ACT, 1869, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY moved that the Report of the Select Committee on the Bill to amend the Indian Volunteers Act, 1869, be taken into consideration. He said:—" When I presented the Report of the Select Committee upon this Bill I spoke very fully and explained both the effect of the amendments in the original Bill and the general effect of the Bill as amended on the position of the volunteers. The Bill as amended, the Report of the Select Committee, and the draft Rules which it is proposed to make under the Bill, were published in the Gazette of India a fortnight ago, and my remarks made at that time have been very fully reproduced in the European Press throughout India. The Government of India has received no protest against the Bill, no representations against it have been made, and the remarks of the Press on the Bill have been on the whole favourable. I think that under these circumstances it is unnecessary for me to make any further remarks on this occasion."

The Hon'ble MR. WOODBURN said:—" As nobody has made any remarks on the motion I should like as an old volunteer to congratulate the Hon'ble Member on the success of his Bill. He has widened considerably the field of the Volunteers' employment; he has tightened considerably the discipline to which they are subject and he has offered the volunteer no compensation, or privileges or concessions of any kind whatsoever; but, as the Hon'ble General Brackenbury has himself said, I have not heard a single objection to the Bill. The Bill has been loyally accepted. And I think I may also congratulate the Government of India on possessing in the volunteers a body of men who are not behind their compatriots elsewhere in honest, faithful and ungrudging service."

The motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY moved that the Bill, as amended, be passed. He said:—" There is one remark which I should like to make. There is a clause in the Bill which says that

nothing in certain sections (that is those sections which extend the area in which a volunteer is liable to serve and which enable him to be called out on occasions of actual emergency for active military service) shall apply to any volunteer who was enrolled before the commencement of this Act unless he consents in writing to be bound by those sections.

"If this Bill is now passed, volunteers will be requested to give in their adhesion to the terms of the new Act, and I wish to express my earnest hope that they will almost, without exception, give in that adhesion. India stands almost alone in having absolutely no compulsory service of any kind. Even in Australia and in the Dominion of Canada there is compulsory service for the militia. In Great Britain the Militia Ballot Act authorises the compulsory service of all citizens within a certain limit of age, and that Act is only suspended year by year by Act of Parliament because it is not considered necessary to put it into froce. In this Bill the Government of India has laid down the very lowest—the minimum which it must require from the volunteers if they are to be a force upon which it can really depend in the time of need—a force which is not to be a broken reed under its hand in time of great emergency. I think it is a hopeful and significant sign that since this Bill was introduced by me a year ago the number of volunteers in India has considerably increased. I earnestly trust that the volunteers of India will recognize that we have asked from them as little as possible, that they will willingly and cheerfully place themselves under these conditions, which will make the volunteer force a real strength to this Government, and that it may never be necessary in consequence of any holding back on their part that India should be compelled to have recourse, in any form whatever, to compulsory service."

The motion was put and agreed to.

LEGAL PRACTITIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Legal Practitioners Act, 1879, be taken into consideration. He said:—"When I presented this Report a week ago I stated that the Select Committee had made very extensive alterations in the Bill as originally presented, alterations which really amounted to a recasting of the Bill. The position, if I may say so, was this—I am going at once to the question which is the keynote of the whole of the alterations of the Bill, namely, the question embodied in section 36 of the Act as it stands at

present. When the proposals out of which this Bill has grown were originally made to the Government of India, the proposal was considerably to increase the stringency of that section. The Government declined to take that course, but they were anxious, if they could, to alleviate the evils which admittedly existed and against which that section was originally directed. They felt, as I stated here on a previous occasion, that, although that section was one with which in principle the Government as at present constituted was not in accord, still, as they found it on the Statute-book, and as no objection had been made to it and no attempt seemed to have been made by any part of the public to get rid of it, they did not feel that as practical men it was any part of their business to interfere with the existing law, which seemed, if it was doing no good, to be doing no harm.

"Since that time the situation has entirely changed. From every part of the country we find that the objections to the existing system, and the suggestions which are made for its improvement, all turn on the removal of this particular section from the Statute-book. The Select Committee found that, in order to apply the special remedy which seemed to them most likely to be of any use in this matter, it was absolutely necessary to get rid of this particular provision, and the High Court, on whose suggestion the previous provisions of the Bill were framed and introduced, made in their comments on the Bill as circulated the repeal of this particular section a condition precedent to their approbation of the measure at all. Under these circumstances we have thought ourselves justified in proposing that the section, which, as I have said before, is one to which, had it not been existing law, probably no one here present would have given his adhesion, should be repealed. So long as it remained on the Statute-book it was impossible to give anything like a real supervision over this question to a domestic tribunal of any kind; because so long as the profession of a tout was by law declared to be a criminal offence for which a man would be liable to fine and imprisonment, so long to assert that such and such a man was a tout would be to expose yourself to an action for defamation, and to do as we proposed to do—to make lists of persons who were known as touts—would simply have been to expose every District Judge in India to litigation of the most indefensible character. But, if the Council consents to our proposal to repeal that section, to remove altogether from the cognisance of the criminal law any question as between law brokers or touts and those who employ them, to recognise, as I submit we ought always to recognise, that it is as much for the benefit of a lay client who does not know to what practitioner he ought to take his case when he finds himself involved in litigation, to find some one who can advise him as to who is the best man he

should go to, as it is to the interests of a man, for instance, who wishes to send his goods to Europe to have a shipping agent who will take charge of his goods and tell him to what company to apply and give him all the advice in his power as to the goods, while on the other hand, it is a gross dereliction of duty on the part of any person entrusted with the duty of the advocacy of others in the Courts to give any remuneration coming from himself or given on his behalf for the purpose of inducing an intermediary in the nature of a tout or pleader to bring him business which otherwise would not have come to him on his merits, then the difficulty of dealing with the case will be greatly diminished. The object of the Bill, as now framed, is to render it as difficult as it can be rendered by law for any legal practitioner to indulge in any improper practice of that kind. It also has endeavoured as now framed to leave outside altogether any attempt to control such legitimate business as I have mentioned, that is to say, that no arrangement which may hereafter be made when this Bill is passed between the outside lay client and the broker or tout, who is to introduce him to an advocate for the purpose of having his litigation conducted by him, will be affected in any way by the provisions of the Bill. The provisions of the Bill are entirely aimed at the improper relations between the legal practitioners and the persons who act as intermediaries between them and the ultimate clients prepared to bring them business. But, as it has been well established that although such business as I have described is not in itself improper, and is even in many instances a beneficial one, still there is a large class of people who at present live by a form of this business which is highly objectionable, and who have been rightly described in many of the papers before me as ' pests of the Court,' it has been thought desirable to enable the Judges and others at the head of the Civil Courts to take means for minimising the nuisance produced by the existence of these pests, by excluding them from the precincts of the Courts and by giving public notice to all the world that such and such persons are pests of the kind I have described, and by rendering it an act which will subject the pleader or legal practitioner to domestic discipline if he thereafter deals with a man who has been so publicly proclaimed. By being enabled to authorise such lists as I have mentioned to be framed we have also been enabled to get rid of what was one of the points of objection most strongly urged to our original proposal. I do not myself think that the objections which were taken to that proposal as originally put forward were well-founded. I do not think that there was anything unreasonable in throwing upon the practitioner or any other person the duty of saying, when he was acting with a man whose character was generally well known and reprehensible, that he was personally ignorant of the fact. But from the moment that you are enabled

to authorise the production of lists of persons who are known and described to be acting in this illegal manner, it became unnecessary to provide either that the onus should or should not be thrown upon a practitioner of proving ignorance, because inasmuch as these lists are proposed to be public property and to be kept constantly exposed in all the Courts, it will be impossible for any practitioner to accept business from a man whose name is in one of these lists, and at the same time to assert that he was ignorant of the character of the man from whom he accepted such business. Therefore the Committee have found themselves justified in inserting in the Act a provision absolutely prohibiting the acceptance of business on the part of a practitioner from any person whose name is in any one of these proclaimed lists, and it has not been thought necessary to introduce any provision authorising the practitioner in question to prove his ignorance or to throw upon him the responsibility of proving that ignorance. In point of fact, if the Bill passes in its present form, the fact that a practitioner accepts business from a tout whose name is on the list in the Court in which the business has been accepted will of itself be conclusive proof that the practitioner has been guilty of an act in contravention of the Act. Of course, such a power as that requires to be surrounded with sufficient safeguards, and the Committee have made it the first condition of enabling any such lists to be made and published as I have mentioned, that the name of no man shall be included in any such list until he has had an opportunity of showing cause against it, and of providing for the exclusion of his name from the list. Of course it would be absolutely intolerable if a man were to wake up some morning to find his name in a black list of this kind without having any knowledge of the circumstances under which he was charged with acting improperly, or any opportunity of explaining the circumstances of, or showing that there was no foundation for, the charge. We have, moreover, in order to make it perfectly clear that the Bill is only aimed at the particular illegal practices I have mentioned, and is not intended to interfere with the legitimate business of an intermediary, as between the lay client and the intermediary himself, inserted a definition of the word 'tout,' as used in this Bill. The definition is one which shows that the procurement of employment in legal business is not in itself an act of touting within the meaning of this Bill, it is only when it is done in consideration of any remuneration coming from such practitioner. That at once lays down on the face of it the principle I have been endeavouring to enforce, that the objection to the practice is not the introduction of the legal practitioner to a client on the action of an intermediary, but to the procurement by the legal practitioner himself of the introduction as the reward of some remuneration given by or moving from him instead of its being a recommendation on the merits. In

order to emphasise this somewhat more fully than the Bill originally did, and at the suggestion of one of the High Courts, we have introduced into section 13 a further clause which did not exist as the Bill was originally introduced, making it objectionable for any pleader—and if for a pleader, I may state in passing, then for all classes of legal practitioners—' who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given.' So that we aim very directly not merely at the introduction by a tout to whom a remuneration has been given, but at the attempt, direct or indirect, on the part of the legal practitioner to obtain such an introduction by means of what is practically a bribe to the tout.

" We have in the other direction and in the interests of the lay client rather extended the class of persons by whom instructions may be given on behalf of a client to a pleader. As the law stands at present instructions on behalf of a client must be given direct to the pleader either by the person himself or some person who is his recognised agent under the Code of Civil Procedure—this is a very limited class of legal agents—or some private servant of the client authorised to do so. Private servants seemed to involve some difficulty, for if, as is probably the case, it means domestic servants, they are a class of persons to whom it is not the most desirable to entrust the power to give instructions. Then there was a provision which was introduced by the amending Act, that in the case of *pardanashin* women, or of persons who were for any reason unable to be present themselves, instructions might be given by any relative or friend authorised by the party. It appeared to the Select Committee that there was no reason for limiting that last provision to the case of *pardanashin* ladies or persons who were physically prevented from giving instructions themselves, and there was no reason why these instructions should not be given through the agency of any confidential servant, relative or friend, or any party whom the party chose to authorise for the purpose, and therefore, if the Bill should pass as it has now been altered by the Committee, there will be no special reference to *pardanashin* women or disabled persons at all, but the pleader will be entitled to take instructions from any confidential servant, relative or friend authorised by the party to give such instructions. That will cover the case of a tout or broker duly authorised by the party to give such instructions, provided always that he has not been paid anything by, or offered anything from, the pleader; but there is nothing in that section which will protect the pleader in case he is guilty of any of the practices prohibited in the subsequent clauses, as, for

instance, if he himself gives, or consents to the retention out of any fee payable to him, anything for the man who has given the instructions or suggested his name to the person who actually gave them, or otherwise procures the giving of them by reason of any remuneration; or in the particular case, which will be perhaps the most frequently applicable, if the person through whom the instruction comes is a tout who has been proclaimed in one of the lists I have described. Under any other circumstances the party is to be at liberty to employ any agent he pleases who is perfectly independent of the pleader for the purpose of giving instructions to the legal practitioner.

"The rest of the Bill has been practically altered so as to bring the case of revenue-agents into line with the case as I have described it as regards pleaders, the difference being of course that the Chief Controlling Revenue-authority is substituted for the High Court. That is the condition of the existing law and it is obviously a reasonable condition as regards revenue-agents.

"Another result of the alterations recommended by the Select Committee is that it has become entirely unnecessary to strengthen the hands of the subordinate Courts in the manner which was proposed by enabling them to take direct action against the pleaders enrolled in their Courts. The only objection taken to that which appeared to be at all valid, though I myself could not see that there was any point in that objection, was that it raised a purely invidious distinction between advocates of the High Court and other pleaders. Now, it is perfectly clear that it would have been not only unreasonable but unworkable to authorise within the jurisdiction of any chartered High Court that any Court subordinate to that Court should have the power of disbarring any advocate on the rolls of that Court. And yet there was nothing obviously unreasonable in saying that, in the case of a pleader who was not enrolled on the roll of the High Court, the Court on whose rolls he was should have the same power over him that the High Courts have over the advocates on their rolls. But the distinction was one which nevertheless appeared to be more or less invidious, and as the new alteration which has been made entirely alters the position of the profession, and as it is no longer a question of enforcing the provisions of the criminal law, but merely one of strengthening the domestic discipline of the profession, it has been thought unnecessary to proceed further with the proposal than I have mentioned. The High Courts in this country are the natural heads of the legal profession in the country, and it has been thought unnecessary to alter the provisions of the law by which the enforcement of internal discipline has been left, sub-

ject to recommendations and reports on the part of the inferior Courts, to the action of the High Courts alone.

"I think I have now explained all the principal alterations which the Select Committee propose to make in this Bill. The practical effect of it, I am afraid, as I have said before, will not be as great as we could desire, because, in a matter of this kind, I believe that until any particular practice is reprobated by the common feeling of the persons who are exposed to temptations to adopt it, no outside force either of law, or even domestic tribunals such as I have described, will be sufficient to put the practice down. But every step that can be taken to render the practice in question either less reputable or more dangerous than it otherwise would be is, I think, a step in the right direction, and even although it may not go so far as many of us would desire if we only saw our way to do it, nevertheless I hope that the Bill, as now modified, if passed into law, will strengthen the hands not only of the Courts, but, what is of much more consequence for this purpose, of the honest practitioners, who are desirous of conducting their business in an honourable and upright way, and that they will be able to hold their own against those who are desirous of pushing themselves into practice by underhand means to a greater extent than by the law as it stands, and certainly to a much greater extent than it ever could have been done by any strengthening of the powers of a merely criminal prosecution."

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE said:—"I shall simply be doing injustice to myself if I do not take this opportunity of conveying to Your Excellency the universal satisfaction with which the Bill as now amended by the Select Committee has been received all over the land, and especially in the Central Provinces. My countrymen have distinctly asked me to express their gratitude to the Hon'ble Sir Alexander Miller and to the Select Committee, and I thought I could not better accede to their wishes than by thus addressing myself to Your Excellency's Council. The present Bill is free from all objection. The section 36 of the original Act—that slur on an honourable profession—has been repealed. No power is given to District Judges and Revenue Commissioners to punish any unprofessional transactions on the part of a legal practitioner. The burden of proof, shifted contrary to the sound principles of any law, to the practitioner charged with misconduct, has been directed to its proper sphere. The Bill takes a more practical shape in the discouragement of touting. Responsible judicial functionaries are to make a list of touts, and any person put on the list is allowed to show cause why he should not be so dealt with. This is an important alteration in itself. It saves the tout from an arbitrary enrolment,

and enables the authorities to register the names of doubtful persons. I am sure the Bill can now have no single voice against it. Let me again express the deep gratitude of my countrymen and of myself to the Select Committee in general, and to the Hon'ble Sir Alexander Miller in particular, for having so sympathetically dealt with a measure which had so justly caused universal uneasiness."

The Hon'ble NAWAB AMIR-UD-DIN AHMAD, KHAN BAHADUR, said:—"My Lord, I was unfortunately unable, owing to my unavoidable absence from the meeting of the Council at which the Bill now under consideration was referred to a Select Committee, to submit any observations in regard to it at that time.

"It is not my desire, nor do I consider it necessary, to make any lengthy remarks in regard to the measure, but I am glad to have this opportunity of stating briefly my views, as the matter, besides dealing with the rights and privileges of a profession, affects a large section of the general community, and must be one of deep interest to every member of Your Excellency's Council.

"The Bill as introduced has been subjected to a great deal of criticism, and has given rise to several protests from members of the profession affected by it, and the various opinions which have been received show very clearly that there is not by any means a consensus of opinion as to the necessity for the proposed legislation, or in regard to the provisions that should be enacted. For myself, I am free to admit that I have grave doubts as to the necessity for, or the desirability of, legislation in the matter, and have been forced to the conclusion that it would have been better, instead of making the alterations that are now proposed, to have left the Act of 1879 as it stands. It was stated by the Hon'ble the Law Member, when he moved for the reference of the Bill to a Select Committee, that he did not expect that the particular evil which the Bill is aimed against could be destroyed by legislation or in any other way than by the education of the legal profession in India up to a higher standard of professional morality than it appears yet to have attained. He also stated that he considered it the duty of the Legislature to assist, as far as it reasonably can, and that although the Bill if passed would not have any great effect in the direction desired, still if it did even moderately assist in that direction, it was the duty of the Legislature of the country to pass a measure calculated to have that effect. The legislation proposed must be regarded more or less as an experiment, although this is not so much the case with the Bill as amended by the Select Committee as it was with the Bill as

introduced, and it is highly desirable that any undue discontent among the members of the profession whom it will touch should be avoided. As stated by the Government of Madras, 'the only complete remedy for the evils of law-touting is the gradual growth among the Native Bar of a higher professional standard and a purer public opinion.' As, however, it has been determined that legislation in the matter is called for, there are only two points on which I would wish to say a few words.

"The first is that the distinction drawn between barristers or advocates and pleaders or vakils is both uncalled for and undesirable. Among the members of each class in the profession it is unquestionable that men of the same stamp will, and must be, found, and it is in my opinion neither in accordance with what the existing state of things requires, nor proper to declare, as the proposed legislation practically does, that men who require to be controlled and dealt with under the law are to be found in one class and not in another and thus to cast a slur on all the members of one branch. I am naturally most interested in what is the case in the Punjab, and I take the liberty of quoting the following words from the opinion of the Government of that Province:—

'The mass of the barristers now practising in this Province is of the same stuff as the mass of the pleaders, neither better nor worse from an intellectual, educational or moral point of view, and it is absurd to make any distinction between them in this or indeed in any other respect. Theoretically, of course, a barrister is subject to the jurisdiction of his Inn, but it would be practically impossible to invoke that jurisdiction in a case of touting, which it is almost impossible to bring home to any one, even before a Court on the spot in this country. In the presidency-towns there is no doubt this practical distinction between a barrister and a pleader or vakil, that the former is subject to some control on the spot by some sort of association established among the advocates of the High Court Bar, but the association which might seem to correspond to this at Lahore is utterly powerless to exercise any control over its members.'

"This expression of opinion will not be questioned, and it is not by any means difficult to imagine that the state of things above described exists in other places. It cannot be said that the evils aimed at do not exist among barristers or advocates, and having regard to the great increase in their numbers, and the consequent struggle for existence, it is probable that the need for a remedy is now at all events as great in their case as it has been held to be in the case of pleaders or vakils; and, in any case, there is not, so far as I can see, any ground for making an honourable exception in the case of the former at the expense of the latter. The net, if it is to be spread at all, should embrace good and bad alike in the legal profession generally especially

as those among the barristers or advocates who would scorn the idea of employing a tout—and I am glad to be able to say that there are many such—would not be affected by the law if it applied to them. Under these circumstances I deem it to be my duty to express my regret that the distinction to which I have alluded has been allowed to stand in the Bill as now presented to the Council.

" The second point to which I desire to refer is the omission in the Bill as amended of the proposed provision giving power to suspend or dismiss pleaders or mukhtars to District and Sessions Judges and Commissioners. I cannot but think that, even admitting that the proposed legislation is desirable, the power in question should have formed part of the measure, the more especially as under the Bill as it now stands the repeal of the existing provisions in regard to the application of the criminal law in the matter is provided for. The discipline over legal practitioners, which it is considered necessary to exercise, could, I venture to think, be better exercised, both in the interests of legal practitioners and of those affected by their alleged misconduct, in the Courts where the practitioners carry on their calling, where they and the circumstances of each case are known, and where prompt enquiry and disposal of a complaint are possible. The remedy for the evils in question would thus have been more effectual, and the officers on whom it was proposed to confer the power referred to are, as a rule, officers to whom the power might safely have been entrusted. The provision that was proposed for an appeal to the High Court, which might reverse or vary any order appealed from, would have afforded a safeguard against the possibility of any abuse, and under the circumstances it is only left to me to express my regret that the question is not now open to reconsideration."

The Hon'ble MR. REES said:—" This Bill as it emerges from Select Committee differs very considerably from that which was originally published in order to elicit public and professional opinion upon its provisions. The alterations are in every case, I think, such as well as will render the Bill more acceptable and more suitable to the conditions obtaining in Southern India, where the rapid spread of education and the almost universal use of the English language in the Courts has greatly raised the standard of the Bar and has induced, so far as one may judge from without, a disposition to work up towards an English standard of professional conduct. Twenty years ago, in the districts Your Excellency's Government is now opening out by the construction of the East Coast Railway, the vakil of the old school, who had little law and no English, was a well-known character and one of a fairly

numerous class. In the present day, highly educated graduates sit in the Courts of the District Munsifs, and of the Subordinate Magistrates, to whom English is as another mother tongue, and the bar of these, the lowest classes of Civil and Criminal Courts saving and excepting those of the village-officers, has undergone corresponding improvement. It is not likely, I think, that the circumstances obtaining in the Madras Presidency would have given birth to a Bill of this character, and, though unfortunately it cannot be said that touting does not exist therein, it is apparently carried on to a less extent and manifests itself in a less objectionable manner than in some other provinces. The decision of the Select Committee to deal only with the legal practitioner who out of the client's fees remunerates the intermediary who introduced the client will, I am sure, commend itself to public and professional opinion in Southern India. Anyone who has sufficient time and sufficient Tamil may see when journeying on the Southern Indian Railway, which provides the former requirement, how artistic a practitioner is the person with whom the Bill might, if another principle were adopted, have to deal. Every train contains litigants from the villages, whose affairs, even if they were not known in the town before they started, which is unlikely, are public property before they arrive at their destination. The litigants' friends would scorn a sort of Dutch auction on the platform at which individual parties are knocked down to the lowest bidder, and it would be, I believe, impossible to deal with plausible persons who happen to be on the spot and happen to make a recommendation in such cases, or to give information which often may really be of help. I have overheard the clerk of a young English barrister secure for his master the conduct of a case in a manner to which no exception could possibly be taken, and of course wholly without the cognisance or countenance of the principal who paid him a fixed salary as clerk.

"I cannot help thinking that the touts' lists hung up in the Southern India Courts will be very short ones, but section 36 will be a valuable weapon in the hands of those empowered to use it, and the provisions of the Bill generally, seeing that they have the support of eminent barristers and vakils, should not only command the confidence of the lawyers, but of the public, and of those who serve the public, who as a body and not only in high places, I think, would hasten to acknowledge the great help they receive in the performance of their duties from the different grades of the legal profession."

The Hon'ble SIR GRIFFITH EVANS said:—"The Bill as amended will, I think, meet with scarcely any opposition. Whether, as the Hon'ble Mover has said, the effect of it will be great or not is very doubtful; but it does seem

to me to be a step in the right direction. The direction that we have to proceed is this. From the time when the English Bar first appeared in India, they brought with them certain traditions and certain rules, written and unwritten, both in regard to their own independence, the integrity of their profession and various other matters; and I think all will admit that the great change which has taken place in the Native Bar—I am not speaking of the Native members of my own profession, but of the Native Bar other than barristers, the vakils and the pleaders in various parts of the country—that the enormous change which has taken place in their status, their independence, the manner in which they exercise their functions and the way in which they are able to conduct their cases before the Courts, is very different now from what it was when the English Bar first appeared on the scene. But the English Bar have brought with them as one of its cardinal points, as a thing necessary to the integrity of the profession as they understood it and the honour of it—they have brought with them this principle, that its members were not to tout, not to give commission, and that they were not to pay the agents who brought them briefs for bringing them; that it was from the point of view of the profession an unpardonable offence against the honour and integrity of the profession to return a portion of the fee sent in one's name, and to say that one had received so much when practically one-third or the half of it perhaps had gone to the agent or intermediary. Now in the endeavour to carry out this principle a step was taken in the Act of 1879 to make it a criminal offence to deviate from it either on the part of the practitioner or on the part of the person offering the commission. But it was found in practice that this criminal section has been an absolute dead-letter, and one of the reasons is that both the giver and receiver being guilty of the criminal offence it was impossible for either of them to give evidence against the other.

"This then having been found to be a dead-letter the conclusion arrived at was that it would be better in furtherance of the object to be attained to leave it to the Courts to administer domestic discipline as regards this matter, and it has been made clear in this Bill that while the matter ceases to be a criminal offence, it having been found useless for the reasons explained by the Hon'ble Mover, we have made it clear that doing any of these things is a matter which the Court which has the power to suspend or to remove the practitioner should take due notice of and punish him in the manner thought fit when he is discovered. Now it is quite evident that the chances of discovery under the present Bill are not greater than under the old one. They are still small I admit; but we have now the principle enunciated as strongly as before and the machinery is more likely to result in at least an occasional

detection and punishment of the delinquent, and I hold that there is something in it that there should be a machinery, which we hope will not be an absolutely dead-letter like the old one, but which may result in the occasional punishment of the delinquent. It will be an example to others and will have an educative value, for there is no doubt that especially in some parts of the country the views of many of the practitioners do require to be educated by some machinery of this kind. It may—it certainly will I think—be more likely to conduce to the desired result than the Act did as it stood before. That is the most we can say about it; but it is something, and it is the furthest that we have been able to go in this direction without landing ourselves in some impracticable scheme or in difficulties too great to be safely encountered. Therefore I entirely approve of the Bill as it is at present drawn.

"But there is one criticism which has been made upon it by the Hon'ble the Nawab of Loharu, and which I have seen made in the papers, and that is that barristers and advocates are exempted from the provisions of the Bill. Now I am not going to trench on a matter which can be dealt with by the Legal Member of Council—the Hon'ble Member will no doubt be able to dispose of that—I am going to answer it in a different way. The High Court has the power of enrolling barristers as advocates, and on being enrolled they have the power to practise within the jurisdiction of the High Court; the High Court has under clause 10 of the Letters Patent of 1865 in the case of the Calcutta High Court, and of other clauses in the case of other High Courts—I say that the High Courts have, under their Letters Patent, together with the power of admitting the advocates, the power to suspend or remove them for reasonable cause. It has been suggested by nobody, nor could it be suggested, that it would not be a reasonable cause for removing or suspending an advocate if found guilty of practices of this kind. Of course up to the present time it has not only been a professional misconduct, but it has also been a criminal offence. We have now taken away the criminal offence, but have in other sections emphasised the fact that it is so gross a professional misconduct that even the lowest and most ignorant practitioners ought to be dealt with, as a matter of domestic discipline, by suspension or removal by the Court whenever they are found doing these things; and I do not suppose for a moment it can be contended that for grave professional misconduct even the most ignorant of mufassal practitioners would not be liable to be dealt with for having committed this offence; or that it can be doubted for a moment that, if a sufficiently reasonable cause could be shown, the High Court would not similarly deal with a barrister or advocate. As a matter of

fact there does not appear to be anything in the criticism at all, and Hon'ble Members will understand that, when there is this provision in the Letters Patent, this Council ought to be very chary about meddling with the Letters Patent at all. No one has even doubted that the words 'reasonable cause' are quite sufficient to cover the whole of this class of offence."

The Hon'ble P. ANANDA CHARLU, RAI BAHADUR, said:—"Against the Bill, as it originally stood, I had a great deal to urge. Against it as it has come out of the hands of the Select Committee I have nothing to say except to move the small amendment of which I gave notice and which I shall submit to the Hon'ble Members later on. For the many radical changes that were capable of being introduced by the Select Committee, the thanks of the country at large are due to Your Excellency's Government for having given that Committee a free hand, as also to my colleagues on that Committee for having worked in a harmonious and considerate manner, regarding all suggestions that were placed before them. I am sure that the Select Committee have succeeded in suggesting a piece of legislation such as is possible and may be beneficial under the circumstances."

The Hon'ble BABU MOHINY MOHUN ROY said:—"When the original Bill was referred to a Select Committee I pointed out certain defects and objectionable features in it. The Bill which is now before the Council is very different from the original Bill. I had some little hand in the framing of the amended Bill. I see nothing in it but what is good. All the objectionable provisions have disappeared."

The Hon'ble MR. WOODBURN said:—"As I was the only lay member of the Select Committee, I think perhaps it is as well that I should say in a few words that I heartily agree with the conclusions arrived at. In matters of this kind we are naturally guided by the opinions and views of the judicial authorities, who, as the Hon'ble Sir Alexander Miller has said, are at the head of the legal profession. In this case the Select Committee followed very closely the advice given by the High Court of Calcutta, advice which, with all deference to my friend the Nawab of Loharu, I think was right. The ultimate object of the Bill was to raise the tone of the lower grades of the legal profession, and in the Bill, as it originally stood, jurisdiction was given to a lower tribunal than formerly existed for the punishment of professional offences. If that lowering of the jurisdiction of the tribunal lowered the status of the ranks of the profession in the eyes of the public, I think with

the High Court that it was most desirable that it should not be carried out. The immediate object of the Bill was to lessen the notorious evil of touting, and, in spite of what the Hon'ble Mr. Rees has said about his experience of Madras, I confess I have no very confident hope myself that the effect of this measure will be an immediate success, because at the bottom of it all is the fact that in many parts of the country, from the crowded state of the profession, where there are ten candidates for business, which will only give a living to five, there is strong temptation to struggling practitioners to obtain a share by means which the sense of the profession will not approve. I do, however, think that the system which the Select Committee has adopted in the present Bill is the most practical and the most sensible of all the suggestions made to it, and I do entertain a hope that the evils of touting will at all events be lessened, and that by the exclusion of the more notorious and more determined touters from the Court that there will be material relief to the litigants and a lessening of temptation to struggling practitioners."

The Hon'ble SIR ALEXANDER MILLER said:—" I do not know that, in view of the general consensus of approval of these proposals, I need say much further in reply. I would only say that, on the point raised by the Hon'ble Nawab, that it was not with reference to that point at all, and that I had no part of that point in my mind, when I said that the use of the word ' pleader ' would extend to the vakils and barristers, but merely as pointing out that what was an improper act on the part of the lower branch of the profession would necessarily be, *à fortiori*, improper on the part of the higher branch. But I entirely agree with what has fallen from the Hon'ble Sir Griffith Evans that it is only reasonable that the provisions of this particular Bill should deal with pleaders and mukhtars alone; in the Legal Practitioners Act itself advocates and vakils are left to the control of the High Court under its unwritten law and with reference to the powers given to the High Courts by the Charter. Chapter III, which is the one which in this Bill is amended, deals with pleaders and mukhtars alone, and is intended for the protection of pleaders and mukhtars from what might otherwise be too arbitrary action against them; and so far from its being the case that the non-mention of advocates in this particular amending Bill leaves them in a freer position than the pleaders in these respects, the very contrary is the fact: the liabilities of the pleaders are defined in the Act, while the advocates are left as completely as before to the unwritten constitutional jurisdiction of the High Court, which, as the Hon'ble Sir Griffith Evans has said, is quite strong enough to take care that what the Legislature will have pronounced to be an

improper act on the part of a pleader will never be considered to be a proper act on the part of a barrister or vakil."

The motion was put and agreed to.

The Hon'ble BABU MOHINY MOHUN ROY moved that to the definition of "tout" proposed to be inserted in the Act by section 1 of the Bill, as amended by the Select Committee, the following be added, namely:—

> "or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration."

He said:—"The object of this amendment is to enable the Courts to deal more effectually with the class of gentlemen called touts. The original definition was—

> '"Tout" means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner.'

"Under this definition it would be difficult to obtain evidence that the person had received any remuneration from a legal practitioner. For the legal practitioner would be chary of making any disclosures which might implicate himself. The amendment would have the effect of rendering ample evidence available against persons who habitually practise touting.

"A tout is a tempter who gets hold of a suitor or case and goes about making poposals to legal practitioners to give him something out of their fees. Such proposals are an insult and sometimes resented as such. I am sure many legal practitioners would be glad to see him excluded from the precincts of the Court. There would be no lack of evidence against him."

The Hon'ble SIR ALEXANDER MILLER said:—"I think that this proposed amendment is a very good one. The Bill as drawn might be so interpreted—I do not think it was so intended, but it might be so interpreted—as to mean that a tout must be proved to have actually succeeded in his attempt to procure employment for an illegal consideration; and no doubt it ought to be just the same, he should equally come within the definition whether his attempt has succeeded or failed; and the proposed amendment will make it quite clear that the attempt to procure employment for an illegal consideration is as much within the Act as if it had been successful, and I think it will be an improvement to the definition."

The Hon'ble P. ANANDA CHARLU, RAI BAHADUR "I consider, my Lord, the suggestion an excellent one."

The motion was put and agreed to.

The Hon'ble P. ANANDA CHARLU, RAI BAHADUR, moved that the following be added as an *explanation* to clause (*a*) of the new section proposed by section 2 of the Bill, as amended by the Select Committee, to be substituted for section 13 of the Act, namely :—

"*Explanation.*—The term 'instructions' in clause (*a*) shall not include information obtained by a pleader already duly employed in a suit or criminal proceeding, during the course of such suit or criminal proceeding, from any other person not being a person proclaimed as a tout, though such person may not have been authorized by the client to give such information."

He said :—"In submitting the amendment to the Hon'ble Members I shall first read the section to show that a pleader is permitted to take instructions (1) from the party, (2) from a recognised agent as defined in the Civil Procedure Code, (3) a servant, (4) a friend, and (5) a relative. The recognised agents, as has been already pointed out, are a very limited class. As regards servants, friends and relations, the words that follow 'authorised,' etc., attach themselves to each of them. Those words therefore determine the right to give instructions. The words 'taking instructions' are nowhere defined, so far as I am aware. There is a well-recognised traditional signification of it which is clear to men having a large experience of the legal profession. But there are persons who are misled into construing the words of the Act too literally. One such case did occur. A suit was brought on behalf of a minor by his next friend, his widowed and literate mother. According to the habits of Hindu women she did not stand by the elbow of her pleader to give instructions at the trial. At the trial it transpired that there had been an earlier litigation in which persons who represented the parties, then before the Court, were arrayed against each other. The pleader in the second case desired the pleader in the earlier case to tell him all about the former litigation. This has been viewed as a professional misconduct, as the former was not authorised by the party.

"A second case is this. Between a Bombay man and a Madras man a contract was settled by a broker. The contracting parties had not come face to face with each other. At the trial of a suit, which arose out of that transaction, the Bombay man figured as a witness, and it was of the utmost import-

ance whether he was to be believed or not. The Madras man knew very little of him. But it so happened that there was in Court an attorney who had been engaged in a prior litigation, and who knew a lot about the witness, who was also connected with that previous suit. The pleader in the latter case got his facts from that attorney. That attorney would certainly not come under any of the classes named in the section, if literally interpreted.

" The explanation I have suggested will safeguard cases such as these, as against cantankerous officers taking into their heads to do mischief. With these remarks I leave the amendment in the hands of the Hon'ble Members."

The Hon'ble SIR ALEXANDER MILLER said :—" To the principle of this amendment I have no objection whatever. The only doubt I have in the matter is as to its necessity. ' Instructions ' is a well-known legal expression, and means the first instructions given in that respect authorising the counsel to take up the case and directing him what the case he is to take up may be. ' Instruction ' as introduced into the Act of 1879 I have no doubt whatever—although I was not a party to the Act—was intended to have that meaning, and that restricted meaning only. If it has been so misinterpreted as to apply to evidence or information or anything else which, after the advocate has undertaken the case, he would only require merely for the purpose of enabling him better to conduct the cause, I may say that I think the word has been misconstrued and misapplied, and anything which would tend to prevent such misconstruction would, I think, be an improvement. But I have a little doubt as to whether the attempt to define a well-known technical word in popular language is not likely to produce cases of misunderstanding which will probably be as bad as those to which the Hon'ble Member has referred. And, although I am not to be understood as opposing this explanation, it having been stated by the Hon'ble Member that the word ' instructions' has actually, as a matter of fact, been misinterpreted in the way he describes in at least one Court in the country, still I should myself be more inclined to rely on the knowledge of the Judges generally as to the technical meaning of the word than on any definition which could be given in popular language for the purpose of preventing them from going astray. I do not wish to be understood as opposing, but, if I myself were to give my individual opinion on the matter, I should prefer to rely on the technical meaning of the word, and I should hope that the Judges generally would understand, when a case came before them, that the technical meaning of the word, and that alone, was intended in the Act. I find that the words in question are copied directly from the Act, which has been in existence now for some sixteen years,

1896.] [*Sir Alexander Miller; Rao Sahib Balwant Rao Bhuskute; Sir Griffith Evans; Rai Ananda Charlu Bahádur; Babu Mohiny Mohun Roy.*]

and with the exception of the Munsif mentioned by the Hon'ble Member, I have not heard that any Judge has misinterpreted them, or that any difficulty has arisen in connection with them."

The Hon'ble RAO SAHIB BALWANT RAO BHUSKUTE: "I thoroughly approve of the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"I agree with what has been said by the Hon'ble Legal Member. The expression 'technical instructions' has a special significance, as is well-known, and I apprehend that although I entirely accept the statement of the Hon'ble Mr. Charlu that once a Munsif had reported a man to the High Court for listening to information in Court for the purpose of cross-examining a witness, still I think that the High Court would inform him that he did not know what the technical meaning of the word was, and there would be an end of the matter, and I therefore think that it might be left to the High Courts to understand and construe properly the words 'technical instructions.' There is always some danger in making a definition and in introducing any matters of this sort, but, apart from that, the explanation, although I should doubt its necessity, is not likely to do any harm, unless it leads to the Courts taking a different view of the meaning of the word 'instructions' from what would have been taken if this explanation had not been inserted."

"The Hon'ble P. ANANDA CHARLU, RAI BAHADUR, replied:—"I should indeed be perfectly satisfied with the expression of opinion that I have been able to elicit from the Hon'ble Legal Member and other eminent Hon'ble Members who have spoken, if their speeches could only be taken into consideration in the interpretation of the wording of the Act. But it has been over and over again ruled that they are inadmissible for the purpose. So much so, that even the Statement of Objects and Reasons was held to be irrelevant if I remember right. In this view alone would I ask the Hon'ble Members to reconsider the question."

The Hon'ble BABU MOHINY MOHUN ROY said:—"I wish it to be distinctly understood that I don't oppose this amendment. At the same time I have no doubt that the 'information' described in the amendment does not come within the meaning of the term 'instructions' as used in the Bill. The same term was in the Act of 1879. But, as my hon'ble friend says that a Munsif in the Province of Madras had construed the term differently and

made a reference to the High Court, I cannot say that the proposed amendment is uncalled for. At the same time I should venture to think the High Court of Madras must have set the Munsif right, and that he would not make any more references of the kind."

The Hon'ble MR. WOODBURN said that he thought there was much danger in a plan by which a pleader could take instructions from people of whom his client had no knowledge.

The Hon'ble P. ANANDA CHARLU, RAI BAHADUR, said:—"I do not wish to press the proposition any further. One of my objects in bringing forward this motion was that there should be a clear expression of opinion on the part of those who were entitled to give an opinion in the matter. Now that we have had that expression of opinion, I do not propose to trouble Your Lordship to put the amendment to the vote."

The motion was consequently withdrawn.

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

The motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble BABU MOHINY MOHUN ROY moved that the Bill to amend the Code of Civil Procedure be circulated for the purpose of eliciting opinions thereon. He said:—"I introduced this Bill on the 9th January and obtained an order for its publication in the official Gazettes on the 16th January. It seems that under section 18 (*c*) of the Rules another motion for its circulation for opinion is necessary. I accordingly make this motion."

The motion was put and agreed to.

INDIAN REGISTRATION ACT, 1877, AND INDIAN EVIDENCE ACT, 1872, AMENDMENT BILL.

The Hon'ble BABU MOHINY MOHUN ROY moved that the Bill to amend the Indian Registration Act, 1877, and the Indian Evidence Act, 1872,

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be circulated for the purpose of eliciting opinions thereon. He said :—"This Bill was also introduced on the 9th January and ordered to be published in the official Gazettes on the 16th January. It now requires to be circulated for opinion."

The motion was put and agreed to.

EXCISE ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to amend the Excise Act, 1881. He said :—" I do not propose to go in detail through the recommendations which the Committee have made for the emendation of the Bill as it passed into their hands. They are fully stated in the Report of the Committee and they have been confined to the usual work of a Select Committee in making more precise and more careful the wording of the Sections as they were first drawn. The object and operation of the Bill have not been in any way modified by the amendments introduced. One or two very useful additions to the Bill have been made, inasmuch as in establishing warehouses it had omitted to provide for certain necessary duties which would fall upon the Collector once a warehouse is established. For the carrying out of these duties two or three sections have been added to the Bill. If the Committee had left the Bill in this stage, they would have added one to the nine amending Acts which have already been passed by this Council, and which are all in the direction of declaring that certain words or certain sections have to be omitted or that certain words or certain sections have to be added to the original Excise Act of 1881. The result is that this Excise Act of 1881 as it now stands with these ten amending Acts is something like one of those map puzzles which children have to work out, and it has become impossible to make out the various sections without piecing together the words and sections brought together from ten different sources in the various Acts of the Statute-book. There is obviously great inconvenience in this to the numerous Excise-officers who have to work the Act and to the still more numerous license-holders and farmers who come within its operation. When I introduced the Bill I stated that I intended to make the proposal to the Select Committee that in revising the Bill laid before them they should report to the Council not only the Bill thus revised but the original Excise Act of 1881 as amended by the Bill they themselves passed and all the intermediate Acts now upon the Statute-book. This pro-

posal, I am glad to say, the Select Committee have adopted; and it will be seen therefore that the Select Committee have sent two annexures to their Report. The first is the revision of the Bill committed to their charge. This Bill they do not recommend the Council to pass. The second annexure is the Excise Act of 1881 brought up to date by leaving out from it all the passages which the intermediate amending Acts have directed to be left out and inserting in it all the passages which these amending Acts have ordered to be inserted. With respect to this, which is a pure consolidation Bill, I am going to ask the Council to intermit their undoubted right of proposing any amendments or of making any criticisms. My hon'ble friend Sir Alexander Miller will point out that in doing this I am only adhering to the practice of a higher Legislature than our own in dealing with purely consolidating Acts. I am, on the part of the Select Committee, proposing this consolidated Excise Bill, because it is a matter of great convenience to the officers who have to work it and to the persons who come within its operation to have the law before them in a single Act rather than to be obliged to piece it together in the manner I have stated. That obviously is an improvement in itself. I do not pretend to say that the Excise Act is a perfect Act in every respect. Indeed, it is extremely probable that we shall have to revise it in a short time. But even for purposes of revision it is desirable that we should have the whole of the Act brought up to date rather than that we should have to operate upon a large number of Acts scattered through fifteen years of the Statute-book.

"In making this proposal that the Legislative Council should not exercise its right in the matter of the criticism of the Bill as we propose it, otherwise than in respect of the particular amendments which the Bill as laid before the Select Committee introduced, I think it is necessary that I should satisfy them that in consolidating it we have made nothing but the most formal and literal changes in the Bill. I shall mention the whole of the changes which have been made, apart of course from the amendments which have been introduced in respect of intoxicating drugs. These are matters I am not talking of, because they are matters which belong to the essence of the business now before the Council. I will enumerate therefore the alterations which in the consolidation the Select Committee have made.

"The first of them is that in the beginning of the Act the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh is specified as if they were two distinct individuals. As a matter of fact the same high officer exercises both powers, and therefore, instead of enumerating the Lieutenant-Governor of the North-Western Provinces

among the Lieutenant-Governors and the Chief Commissioner of Oudh among the Chief Commissioners, we have called the single officer the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

"The next alteration made in the consolidation is the omission in one place of the indefinite article 'a.' It arises from the fact that in two sections which are adjacent to each other, one is taken from the original Act and mentions *a duty*, and the second is taken from an amending Act and only talks of *duty*. We have amended the first, so that the two sections may run in the same grammatical form.

"In section 9 we have left out the two simple words 'as to.' That is merely a grammatical correction.

"Another correction we have made is that, instead of using the words 'Collector's order in writing,' the ordinary form adopted in similar cases is employed, namely, 'the order in writing of the Collector.'

"We have brought together Chapters IV and V of the original Act, the reason of that being that in Chapter IV, which originally consisted of two sections, one section has been intermediately repealed; so that we have one Chapter which contains one section only. We have combined that Chapter with the Chapter which follows it and which deals with a cognate subject.

"In two or three cases we have followed the method of drafting now largely adopted, and have split up a section into two sub-sections; and in doing this there are two cases in which grammar requires a verbal alteration. In sections 35 and 36 of the original Act we have had to alter the initial words of the second sub-section from, in the first case, 'and all spirit,' by leaving out the word 'and,' and, in the second case, by altering the words 'and the spirit' into the words 'all such spirit.'

"These are all the alterations made in the process of consolidation, and I trust Hon'ble Members will be satisfied that in asking them not to propose further amendments in the Excise Act, and to accept the consolidated Act as it stands without making any amendments in it, I am not adopting any unusual course of procedure."

The Hon'ble SIR ALEXANDER MILLER said:—"I more or less suggested the course now taken. I need hardly say that I hope the Council will accept it. At the same time I am not desirous of its being accepted under false pretences, and I do not think I should be doing my duty towards my learned

friends Lord Hobhouse and Mr. Whitley Stokes, who introduced the present system of amendment, if I did not point out that it is not necessary really, as the Act now stands, to wade through the eight or nine Acts and piece them together for yourself, because that is the duty of the Legislative Department, which from time to time issues editions of the Acts as consolidated, and that this particular Act has been issued by the Legislative Department as modified up to the year 1893, and no amendment has been made in it since 1892."

The Hon'ble SIR JAMES WESTLAND: "But it has not been published in the local Gazettes and in the Vernacular in the amended form. There the difficulty arises."

The Hon'ble SIR ALEXANDER MILLER continued:—"At any rate, even if that were not so, there is a very great advantage and convenience in from time to time re-enacting the Act in its finally amended form. It has two advantages over publication by the Legislative Department: first, it is authoritative—there can be no question raised by anybody as to whether the amendments have been rightly printed or properly incorporated; it bears upon it the stamp of the Legislature, and it is itself the last appeal upon any question of form; and, secondly, there is much greater convenience. It finds its way into the current volumes of Acts instead of a supplement to another volume which cannot be very conveniently incorporated into that other volume, and the number of these scattered Acts now brought together in supplements makes that not a very convenient form for reference. So I entirely agree that there is a great advantage that when an Act has been amended frequently it should be re-enacted *ab initio*, the old Act repealed and the new one put in its place. The ordinary way in which this is done now would be the manner which was adopted lately with reference to the Merchant Shipping Acts, where a Bill of, I think, 700 and odd clauses was introduced bringing together all the various Merchant Shipping Acts. It has been gone very carefully through clause by clause in Select Committee at I forget how many various sittings, with the result that the law, which it is hoped will some day or other pass, has been got into a definite shape.

"But another way which on a former occasion was found very convenient—I am speaking now of the Land Acquisition Act, in which the Hon'ble Home Member took so active a part, and in the case of which, after we had made in Select Committee the various alterations and improvements in the Act of 1870 which were thought desirable, the Select Committee proceeded to withdraw the amending Bill altogether and to introduce a new Bill containing

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the Act of 1870, as it would stand when amended and altered by the Bill then before the Council. That was accepted by the Council and the present Land Acquisition Act (I of 1894) is the result, and I hope I may say that it is a very useful and beneficial result.

"What you are now asked to do is to go one step further, which is, I think, a perfectly harmless one. Supposing the proposition that is now about to be made not to be accepted and annexure 1 merely to be passed: the result would be that you would have a new edition of the Excise Act published by the Legislative Department which would take the form of the old Act with the various alterations proposed in annexure 1 and which would have precisely the same effect as the Act which is embodied in annexure 2 which you are about to be asked to pass. No greater opportunity would be given for investigating the parts of the old Act not touched by the existing Bill than you will have got if the proposal that the parts which are not proposed to be touched and which are irrelevant to the Bill be now passed uninvestigated. You will be in exactly the same position as if the Bill which has been investigated were passed and then a new edition of the Act brought out by the Legislative Department, but you will have the advantage already pointed out, and the extra advantage pointed out by the Honourable Sir James Westland, that you will get an Act in the best form published in the local Gazettes and translated where necessary, and you will not really be giving up any power of control or supervision or amendment inherent in this Council, because you are only asked to take on trust from those who have investigated it that which in the ordinary form you would take on trust from the officials of the Legislative Department. Under these circumstances I do not think it too much to ask the Council to do that without which it would be extremely difficult to get this Act re-published in its best and most convenient form and which, as I pointed out, does not involve any derogation of the powers of this Council."

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872. He said:—

"I confess I present this Report with a certain feeling of disappointment.

"In so far as the merits of the Bill are concerned, the Select Committee have, I think, improved the draft Bill very decidedly. They have put it into a form which I think is absolutely free from any possibility of criticism and

which I hope will at no very distant period be accepted as law, but they have come to the conclusion—and I am not in a position to contravene the wisdom of their conclusion—that the public, as apart from the official bodies already consulted on the Bill, ought to have an opportunity of expressing their opinion as to the effect of the Bill before it is passed into law. And, therefore, instead of advising that the Bill as amended be passed, they have thought it their duty to recommend the re-publication of the Bill in order that the mercantile public and others not consulted should have an opportunity of expressing their opinions, the Bill never having been submitted to the public at large for the purpose of criticism from them. The practical effect of this course will be that I shall be obliged to hand over the future conduct of this Bill to the favourable consideration of my successor in office. I have the satisfaction of knowing that it is a subject with which he is extremely familiar, and therefore I have still a strong hope that the passing of the Bill into law will not be greatly delayed by the present proposal."

UNITED KINGDOM PROBATES BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to provide for the recognition in British India of Probates and Letters of Administration granted by Courts in the United Kingdom. He said:—

"The object of this Bill is a very simple one and will commend itself to everybody on their hearing what it is. Where a man dies having property in the United Kingdom and also in any British possession, it was until a late period necessary that his will should be proved or letters of administration taken out in every British possession in which he had any property which his administrator or executor desired to get possession of. An Act was passed —55 and 56 Vict., c. 6—some years ago in Parliament, by which it was provided that letters of administration granted in any British possession might be sealed in a Court of probate in the United Kingdom and should thereupon have the same effect as if granted by that Court. Similarly, Her Majesty was empowered to direct by order in Council that Probates and letters of administration granted in the United Kingdom might be sealed without further probate in any British possession when the Legislature of the British possession had passed the necessary legislative enactment for the purpose of making 'adequate provision for the recognition in that possession' of such probates and letters of administration. On that being done, an Order in Council can be issued which will have the effect of enabling the probates and letters of administration granted in one part of the empire simply to be

sealed by the Courts in the other part, and thereupon to have full effect as if they had been, as has hitherto been necessary, granted separately in each. I may say that for some five and thirty years this practice has been in full operation as between the Courts in England and Ireland, and that no practical inconvenience has arisen from the practice, but that a very great saving of expense and trouble to executors and administrators has been the result, and I have no reason to doubt that the result of the adoption of the process as between the United Kingdom and India will be as beneficial as it has been found in the different parts of the United Kingdom itself.

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.

The motion was put and agreed to.

MERCHANT SHIPPING BILL.

His Excellency THE PRESIDENT: "There is one other matter which is not on the list of business for to-day. The Hon'ble Mr. Cadell desires to make a statement on the subject of the Merchant Shipping Bill."

The Hon'ble MR. CADELL said:—"My Lord, I am anxious to make a short statement in explanation of the fact that no mention of the Merchant Shipping Bill is made in to-day's list of business.

"When the 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 was submitted nearly a month ago, I expressed the hope that it might be possible to take the Bill into consideration at the present sitting of this Council.

"But since then we have been informed that questions have been raised by the Board of Trade with reference to the working of the proposed law in relation to the existing English law on the subject; and as there is not time during the present session to receive and discuss the papers which may be expected, and which are evidently of an important nature, it has been decided to postpone the consideration of the Bill for the present.

"But, much as this delay is to be regretted, I trust and believe that the protracted labours of the Select Committee have not been in vain, and that it will be possible to pass the Bill with such amendments as may be found to be necessary at an early meeting of the Council next session."

The Council adjourned to Thursday, the 19th March, 1896.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 13th March, 1896.

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