

*Tuesday,
21st December, 1897*

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

LAWS AND REGULATIONS

Vol. XXXVI

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

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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 & 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House, Calcutta, on Tuesday, the 21st December, 1897.

PRESENT :

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

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

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

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

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

The Hon'ble C. M. Rivaz, C.S.I.

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

The Hon'ble Rahimtula Muhammad Sayani, M.A., LL.B.

The Hon'ble Pandit Bishambar Nath.

The Hon'ble Joy Gobind Law.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble Sir H. T. Prinsep, KT.

The Hon'ble J. J. D. LaTouche, C.S.I.

The Hon'ble F. A. Nicholson.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Gangadhar Rao Madhav Chitnavis, C.I.E.

NEW MEMBERS.

The Hon'ble MR. LATOUCHE, the Hon'ble MR. NICHOLSON, the Hon'ble RAI BAHADUR PANDIT SURAJ KAUL and the Hon'ble GANGADHAR RAO MADHAV CHITNAVIS took their seats as Additional Members of Council.

MEMON BILL.

The Hon'ble MR. RIVAZ moved that he be substituted for the Hon'ble Sir John Woodburn as a member of the Select Committee on the Bill to render it permissive to the members of the Memon Community to declare themselves subject to Muhammadan Law, and that the Hon'ble Mr. James be

378 *MEMONS; AMENDMENT OF STAGE-CARRIAGES ACT (1861);
AMENDMENT OF INDIAN PENAL CODE; CRIMINAL
PROCEDURE.*

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added to the Committee. He said:—"The Bill was introduced in this Council by the Hon'ble Sir John Woodburn on the 19th March, 1896, and subsequently referred to a Select Committee consisting of the Hon'ble Sir John Woodburn, the Hon'ble Mr. Chalmers, the Hon'ble Mr. Stevens, the Hon'ble the Nawab of Loharu and the Hon'ble Mr. Sayani. The Bill is still under consideration in the Committee, but meanwhile the number of its members has been reduced to three owing to the Nawab of Loharu having vacated his seat in the Council and the Hon'ble Sir John Woodburn's absence. I beg therefore to make the motion standing in my name."

The motion was put and agreed to.

STAGE-CARRIAGES ACT (1861) AMENDMENT BILL.

The Hon'ble MR. RIVAZ moved that the Bill to further amend the Stage-Carriages Act, 1861, be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Pandit Bishambar Nath, the Hon'ble Babu Joy Gobind Law, the Hon'ble Mr. Nicholson and the mover. He said that the Bill was introduced in the Council by the Hon'ble Sir John Woodburn on the 2nd September last and was circulated for opinions. The replies had been received and some of the questions raised in them would require consideration.

The motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL AND CRIMINAL PROCEDURE BILL.

The Hon'ble MR. CHALMERS said:—"Before I make the motions which stand in my name for referring the Indian Penal Code Amendment Bill and the Criminal Procedure Code Bill to Select Committees, I should like, with Your Excellency's permission, to make a few remarks on some amendments which the Government intend to propose for consideration during the Committee stage of those measures.

"As the Council are aware, recent events in India have called prominent attention to the law relating to seditious utterances and writings. We have had anxiously to consider the state of the law regarding these matters, and to decide whether, and in what respects, it required amendment. We determined that we would do nothing hastily, and that the course we adopted should be the result of cool and deliberate consideration.

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[*Mr. Chalmers.*]

"Two different lines of action were open to us. The first was to re-enact a Press Law similar to the Vernacular Press Act of 1878. The second was to amend the general law relating to sedition and cognate offences, so as to make it efficient for its purpose. We have come to the conclusion that the second course is the right one for us to take.

"But, as we have been strongly urged by many whose opinion is of great weight to re-enact a Press Law, perhaps I may be allowed to state briefly our grounds of objection to that course. The essential feature of the Act of 1878 was executive control over the writings of the Vernacular Press. That principle appears to us to be objectionable on two grounds. In the first place, we see no reason for drawing any distinction between the Vernacular Press and any other Press. As regards liberty of speech there should be one and the same law for all subjects of Her Majesty, without reference to the particular language in which they may express their opinions. In the second place, we have no quarrel with the Press, and no desire to control it. We welcome all fair, candid and honest criticism, and, speaking for ourselves, we care very little as to the terms or language in which such criticism may be expressed. The essential principle of English law is this. Every man is free to speak, write and print whatever he pleases, without asking the leave or permission of any authority. But, if he speaks, writes or prints anything which contravenes the law of the land, he is liable to be proceeded against and punished. As long as a man keeps within the law no one can interfere with him. But, if he breaks the law, he is liable to punishment by a Court of Justice in the ordinary course of law. This seems to us a sound and healthy guiding principle, and we have determined to adhere to it. But we are also determined that the law shall not be a dead-letter, and that offenders against the law of the land shall be capable of being promptly brought to book.

"Having come to this conclusion we had to decide what amendments in the general law were necessary. I am glad to say they are but few.

"The first question for consideration was whether we should amend section 124A of the Indian Penal Code, which deals with the offence of exciting disaffection against the Government, or, as it is called in England, sedition. I cannot say that that section strikes me as a model of clear drafting. The section was introduced into the Penal Code by Sir Fitzjames Stephen in

[*Mr. Chalmers.*]

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1870. In introducing the Bill I believe he stated that his intention was to assimilate the law of India to the law of England as regards the offence of sedition. The interpretation of the section has recently been discussed before the Calcutta, Bombay and Allahabad High Courts, and it has been interpreted in accordance with English law. The result of the cases is to establish that it is a criminal offence to stir up feelings of contempt or hatred for the Government, and that such conduct is none the less an offence because resort to actual violence is not advocated. But no one can read the able arguments addressed to the Courts by counsel for the accused in the Bangobasi and Tilak cases without coming to the conclusion that the law might be expressed in clearer and less equivocal terms. When law is codified, the codes should be as explicit as possible. Moreover, though the Calcutta, Bombay and Allahabad Judges have substantially agreed in the interpretation of section 124A, their decisions are not technically binding on other High Courts. Having regard to these considerations we think it is desirable to amend and redraft section 124A so as to bring it clearly into accord with English law. In England, words spoken or written with seditious intent constitute a criminal offence, and the intent is presumed from the natural meaning of the words themselves, without reference to the actual feelings of the person who used them. In other words, the law applies a purely objective test. A seditious intention is thus defined in Stephen's *Digest of the Criminal Law* (Ed. 5, Art. 98, pages 70-71). It is 'an intention to bring into hatred or contempt, or to excite disaffection against the person of, Her Majesty, Her heirs or successors, or the Government of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of hostility or ill-will between different classes of such subjects.' Now, adapting that definition to the language of the Indian Penal Code and the circumstances of India, we propose that section 124A shall be repealed and that the following section shall be substituted therefor:—

'124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government, or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty's subjects, shall be punished with transportation for life or any shorter term,

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to which fine may be added, or with imprisonment, which may extend to ten years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity or ill-will.

Explanation 2.—Comments on the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence.

“Let me say a word or two as to the scope of the new section. There is nothing in it which in any way interferes with the fair and free discussion of public matters. People are at liberty to criticise the action and conduct of the Government in all its departments. And more than that; they are at liberty to bestir themselves to procure reforms and to obtain such alterations of the law as they may think desirable, provided they do so by lawful and constitutional means. There is nothing in the section to prohibit this, but we have added *explanation 2* to the section in order to affirm this principle expressly.

“I wish further to point this out. Subject to one possible exception, our proposed new section in no wise alters the law at present in force in India. It merely affirms, in, I hope, unmistakeable terms, the consentient opinions of the various High Courts which have been called upon to interpret the existing section 124A. The possible exception consists in the provision that it amounts to sedition to promote or attempt to promote feelings of enmity or ill-will between different classes of Her Majesty’s subjects. The question has not been raised or decided whether such conduct amounts to an offence under the present section 124A. But the proposed addition is law in England, and if such a rule be required in England, with its practically homogeneous population, it is still more requisite in India, where different races and religions are in continual contact. For the most part under British rule our Muhammadan and Hindu fellow-subjects live together in peace and amity, but recent agitations in various parts of India have shown how dangerous to the public tranquillity is any agitation which seeks to fan into flame those feelings of racial and religious antagonism which still smoulder beneath the surface.

“I now come to our second proposal. Section 505 of the Penal Code deals with a cognate class of offences. It punishes the dissemination of certain false

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statements and rumours which are conducive to public mischief. The section runs as follows :—

‘ 505. Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier or sailor in the army or navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’

“ In its present form this provision is unworkable. It is impossible for the prosecution to shew that the person who circulated the false statement knew it to be false. We propose therefore to repeal and re-enact this section in more precise terms, making the publication of these obnoxious statements punishable, but allowing the accused to show that the mischievous statement or rumour was true in fact, and was not published or circulated with a criminal intent. The proposed new section runs as follows :—

Statements conducing to public mischief. ‘ 505. Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby they may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment of either description which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence within the meaning of this section to make, publish or circulate any such statement, rumour or report, as aforesaid, when such statement, rumour or report is true, and is made, published or circulated without such intent as aforesaid.

“ It may be said, and indeed it has been urged upon us, that this is not going far enough. If a man chooses to publish statements which are likely to incite

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our soldiers to mutiny or to cause people to commit offences against the law, he ought to be punished, whether his statements are true or false, and without regard to his private intentions. There is much force in this argument, but we should be unwilling to punish a man under this section for making a statement which is true when he publishes or circulates that statement without any criminal intent. The universal presumption of law is that a man is deemed to intend a result which is the ordinary and natural consequence of his act. When, then, a man chooses to publish a statement, or circulate a rumour, which on the face of it is directly conducive to grave public mischief, he cannot complain if he is called upon to shew that his intentions were not criminal.

"For the present, at any rate, we have no further amendments to suggest in the substantive law, and I now wish to refer to two amendments which the Government propose to move in the Select Committee on the Code of Criminal Procedure Bill. Section 109 of that Code provides that in certain cases people who misbehave themselves may be bound over and required to find sureties to be of good behaviour for a term not exceeding twelve months. We propose to apply a similar procedure to the case of people who either orally or in writing disseminate, or attempt to disseminate, obscene, seditious or defamatory matter. A man who disseminates, that is to say, who sows broadcast or scatters abroad, such matter is obviously a dangerous public nuisance. It is immaterial whether he chooses, as his means of dissemination, an oral address, or a book or a pamphlet, or a newspaper. We are bound to check such obnoxious conduct. But as a rule the persons who are guilty of it are small and insignificant individuals. They may do enormous mischief among uneducated, foolish and ignorant people, but in themselves they are deserving of very little notice. It is absurd to deal with them by an elaborate State prosecution. We think that in most cases no prosecution at all will be required. It will be sufficient to give them an effective warning to discontinue their evil practices, and we think that the machinery we have devised will operate as an effective warning. The general power of revision possessed by the High Courts will secure that that machinery will not be used in any way oppressively; and we further propose that this new power should only be exercised by Presidency or District Magistrates, or specially empowered Magistrates of the first class.

"The last amendment that I have to refer to is an amendment of the second schedule to the Code of Criminal Procedure. The eighth column of that

schedule declares by what Court or Courts the offences contained in the Indian Penal Code shall be triable. At present sedition under section 124A is triable only by a Court of Session or a High Court. We intend to propose that offences under section 124A shall be triable also by Presidency Magistrates and Magistrates of the first class. This amendment will, in the matter of jurisdiction, bring section 124A into line with sections 326, 372, 392 and many other provisions of the Penal Code where one and the same offence is of varying degrees of gravity. It is obvious that a malicious and seditious utterance which in one place and set of circumstances is of small importance, and would be adequately punished by a very light sentence, might in another place and under other circumstances be a direct incitement to rebellion and bloodshed, and merit the severest penalties. As I have said, there are many cases where an elaborate State trial is out of place, and where the merits of the case will be adequately met by a small punishment, within the competence of a Magistrate of the first class. Of course, there may be cases of graver importance. In such cases the Magistrate will, as heretofore, commit to the higher Court which is competent to inflict a severer sentence. In either event there will be this safeguard. No prosecution under section 124A can be commenced without the previous sanction of the Local Government or the Governor General in Council. Proceedings can only be initiated under the sanction of the authorities who are responsible for the peace and good government of the country. This was the law under the Code of 1882 and we have no intention of changing it. Of course too any sentence passed by a Magistrate will be subject to revision or appeal, as the case may be, in accordance with the general law.

"I have now detailed the amendments* we propose to make in the existing law. They are few and simple, but I trust they will effect our purpose. We have no desire to interfere with the full and free discussion of all public matters. We have no desire that the Press, whether Vernacular or English, should be subject to our license and control. But the Press, like everybody else, must be subject to the law of the land. No man is bound to preach or teach or write sedition. If he chooses to do so, he must do so at his own peril and take the consequences."

The Hon'ble MR. CHALMERS then moved that the Bill to amend the Indian Penal Code in relation to Extra-territorial offences be referred to a Select

* *Vide Appendix.*

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[*Mr. Chalmers ; Joy Gobind Law.*]

Committee consisting of the Hon'ble Mr. Rivaz, the Hon'ble Mr. Stevens, the Hon'ble Mr. James, the Hon'ble Rai Bahadur Ananda Charlu, the Hon'ble Sir Griffith Evans, the Hon'ble Maharaja Bahadur of Durbhanga and the mover.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS also moved that the Bill to amend the law relating to Criminal Procedure be referred to a Select Committee consisting of the Hon'ble Mr. Rivaz, the Hon'ble Mr. Sayani, the Hon'ble Pandit Bishambar Nath, the Hon'ble Mr. Stevens, the Hon'ble Sir Henry Prinsep, the Hon'ble Mr. LaTouche and the mover.

The Hon'ble JOY GOBIND LAW said :—" My Lord, I should like to make one or two observations.

" There is a general feeling that sufficient opportunity has not been given for obtaining the opinion of the non-official community on the present Bill. It is true the Bill was introduced at Simla in October, but it has hitherto been the invariable practice to refer all Bills of any importance for the opinions of representative bodies and associations. In the present case, however, no such reference has been made ; at all events I know that the Chamber of Commerce and the British Indian Association have not been favoured with any such reference. I understand some three years ago Local Governments were asked for suggestions and recommendations with a view to the amendment of the existing law, but that is quite a different matter to obtaining the opinions of the non-official community on the amendments as formulated in the present Bill, which of course had no existence three years ago. The Select Committee will no doubt have the benefit of the opinion of the Hon'ble Sir Henry Prinsep, who from his long and varied experience in the administration of the law would be fully competent to represent the views of a Judge and dispenser of the law ; but it is equally necessary that the Select Committee should make its recommendations in view of the opinion of those who will be affected by the proposed amendments in the law. On these grounds I venture to ask Your Excellency and the Hon'ble Council to allow some time in order that the opinions of the community might be obtained. I have no desire, even if I had the power, to unnecessarily delay the proceedings of the Council, and it is only because I consider it extremely desirable that the Council should legislate after a full

[*Joy Gobind Law; Pandit Bishambar Nath; the President.*] [21ST DECEMBER,

consideration of the views and opinions of the public that I have ventured to address these remarks to Your Excellency and the Council. There is certainly no reason for a departure from the established practice."

The Hon'ble PANDIT BISHAMBAR NATH said:—"I would crave permission to say a word or two. Certainly I do not mean to demur to the motion. What I beg to suggest is that the Bill in question may not be taken up for consideration by the Select Committee before all the expected opinions are duly received. Only a few communications, including those from the Governments of the Punjab and Burma respectively, have been circulated yet.

"The awaited minutes by the several Chartered and other High Courts of Judicature, Heads of Administrations and Authorities, when received, would, I think, equally prove highly useful in materially assisting the Select Committee in dealing with the various crucial provisions of the Bill.

"I must confess I have not been able yet to study the draft Bill with that care and attention which the importance of the measure demands; but I believe I am bound to bring to the notice of the Council that, rightly or wrongly, a rather vague impression is gaining ground upon the minds of the people in some parts of the Empire that certain provisions of the proposed legislation are not calculated to afford comparatively such facilities for conducting the defence of accused persons as would be eminently desirable in the interests of justice.

"Amongst other matters, the distinction as regards the exercise and application of the powers of the jury system is certainly a matter of grave importance that will, I hope, receive the attention of both the Select Committee and the Council, besides many other provisions which it would be quite unnecessary and out of place to mention here."

His Excellency THE PRESIDENT said:—"It is unnecessary for me to remind Hon'ble Members, who have been nominated for the Select Committee on this and on the preceding Bill, of the great importance of the work which they are undertaking. One of the Bills is of great length and detail, so great that it would have been difficult indeed for the Government to present it to this Council had they not been able to call in the assistance of the unrivalled experience of Sir H. Prinsep, who has, as is

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[*The President.*]

well known, made the subject his study for many years. The revision of a Code can never be a light piece of work, but as my Hon'ble Colleague explained when he introduced this Bill, it must from time to time be undertaken, not from any intention of radically altering the law, but to remedy defects which have been proved to exist, and to incorporate the results of accumulated experience, and thereby to make the law of the land clear, easily understood, and easily applied. No one will deny that this is an object of supreme importance, not only to those whose duty it is to administer the law, but to the people at large whose lives are regulated by its provisions.

"Hon'ble Members will find that the amendments now laid upon the table are governed by the same principle. Their necessity has been brought to light by recent events and by controversy on a special subject, but they themselves, as my Hon'ble Colleague has explained, are not directed against any special class or section of the community. They are designed to make the general law, which all must obey, efficient. I feel that I can add nothing to the admirably clear and precise explanation by my Hon'ble friend of the scope and intention of these amendments. But I desire in a word to express my entire and cordial concurrence in what he has said of the reasons for rejecting the enactment of a Vernacular Press Act. Personally, I am most strongly of opinion that an Act of that nature is obnoxious in principle, uncertain in operation, and not necessary under present circumstances. It seems to me that it would be the natural impulse of any honourable mind, when men 'disclaim all sympathy with writings which are calculated to create disaffection towards British rule,' to believe, if possible, in their sincerity; and, though I could wish that the general tone of the criticism we read in papers in India was not so often unduly coloured by prejudice, I for one am not disposed on that account to acquiesce in any general imputation of disloyalty. At all events, I associate myself absolutely with the reply lately given to an appeal in the words I have just quoted by the Hon'ble Member, Mr. Stevens, who for the last six months has administered the Government of Bengal in a manner that has elicited the applause of the entire community, European and Native. Mr. Stevens welcomed the co-operation of the Press in securing fair and honest criticism, of which, as my Hon'ble Colleague has said, we deny the right to no one, but at the same time pointed out that the Government cannot divest itself of its responsibility in this matter any more than in any other of which the law takes cognisance. I, too, welcome co-operation, while

[The President.]

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recognising my responsibility. It must never be forgotten that in interposing to prevent sedition we act not for the protection of our personal interests—with my Hon'ble friend I think that if that was all we might willingly stand the buffets—but on behalf of the public whose interests suffer if the passions of the ignorant are excited, and the peace of the country is imperilled; a danger none the less present, though the action to be guarded against be the action of a comparatively small number of individuals out of touch with the sentiments which animate their fellows.

"I have more than once on behalf of the Government of India declared that its aim was an administration of the law, sympathetic and impartial, but at the same time prompt and firm. It is because in my judgment these amendments will enable us to perform our duty more satisfactorily in both of these directions that I commend them to the Council.

"With regard to the observations which have been made by the two Hon'ble Members who have just spoken, I should like, in the first place, to point out to the Hon'ble Joy Gobind Law that he is not correct in saying that the ordinary procedure in this matter has not been observed. The Bill for the amendment of the Criminal Procedure Code was introduced on the 14th October. It was then at once sent in the ordinary course to Local Governments for opinion and for publication, and it is from the Local Governments, as has always been the practice, that such public bodies as it is necessary to consult should receive copies of the measures introduced by the Government. As regards the general public, the Bill was, immediately after its introduction, published in the Gazette of India, and was therefore open to every individual who could read. At the same time we have called this early meeting of Council in order that we might, as soon as possible, appoint the Committees, and bring before the notice of the Council the fact that these Bills were to be proceeded with. The intention is that the Committees should not meet till after the 1st January, on which date all the opinions are due from the Local Governments and others. The proceedings of the Committees will no doubt consume a considerable time, and the Government will give every facility to any public body or individual who has suggestions to make to lay those suggestions before the Committees and the Council for their consideration. But I have to say very distinctly on behalf of the Government of India that this measure, which has been under consideration for many years, to which, as I have said, my Hon'ble friend Sir Henry Prinsep has specially devoted a large portion of his time, and which is now

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brought forward in the ordinary course for the consideration of the Council—I say that it is the deliberate intention of the Government of India to ask this Council, before the termination of this session, for their judgment on this measure.”

The motion was put and agreed to.

DAY FOR MEETING OF COUNCIL.

HIS EXCELLENCY THE PRESIDENT said:—“Before the Council adjourns I should like to say that, in consequence of the alteration in the arrangements for the English mail, the day, Thursday, on which we have been accustomed to meet, will no longer prove convenient. We have considered, therefore, what day it would be better to substitute. I believe that Thursday was adopted in order to meet the views of the Legislative Department, in substitution for Friday, and, on the whole, considering, as far as I can, the opinions I have been able to collect, I believe it would be better to revert to Friday in future. An earlier day in the week might cause some inconvenience to Hon'ble Members in the submission of amendments, owing to the interposition of Sunday.

“We propose, therefore, unless we receive any representation to the contrary, to fix Friday as the ordinary meeting day of the Council, and the Council will now adjourn until the first Friday in January.”

CALCUTTA ;
The 22nd December, 1897. }

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.