Friday,
6th September, 1907

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVI

April 1907 - March 1908

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

The Council met at the Viceregal Lodge, Simla, on Friday, the 6th September, 1907.

PRESENT:

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

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

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. H. Erle Richards, K.C.

The Hon'ble Mr. E. N. Baker, C.S.I.

The Hon'ble Major-General C. H. Scott, C.B., R.A.

The Hon'ble Sir Harvey Adamson, Kt., C.S.I.

The Hon'ble Mr. J. F. Finlay, C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble Mr. S. Ismay, C.S.I.

The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

The Hon'ble Mr. T. Gordon Walker, C.S.I.

NEW MEMBER.

The Hon'ble MR. GORDON WALKER took his seat as an Additional Member of Council.

QUESTIONS AND ANSWERS.

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH OF NABHA asked the following questions:—

"Have the Government of India noticed the report of an alleged occurrence published by the "Tribune" of Lahore, in its issue of 22nd August, under the heading "Strange if True"?

"Is it true that 'the police have so far done nothing in connection with the burning to ashes by the local Muhammadans of a magnificent Sikh temple in the village of Udharwal in the Jhelum district'?

"Is it also true 'that two more Gurdwaras, those of the villages of Farid and Gandekas, have also been looted by them'?

"If the facts stated above are true, will the Government be pleased to state what action they propose to take in this matter, in view of the fact that these occurrences are bound to deeply wound the feelings of the loyal Sikh community?

"If the publication has not received Government's attention and should the Government have no information of the occurrence, will it be pleased to institute a searching enquiry with a view to the punishment of the offenders, and lay the papers on the Council table?"

The Hon'ble SIR HARVEY ADAMSON replied:—

"It is not true that the police have done nothing in connection with the burning of the Gurdwara at Udharwal. News of a fire having broken out in the Gurdwara reached the police station at Chakwal and incendiarism being suspected a Sub-Inspector visited the spot and arranged for the prosecution of three persons whom he suspected of having taken the opportunity of the village being evacuated for plague to burn and loot the Gurdwara and a neighbouring house which was also burnt. The Hindus of the village insisted that other persons also were guilty and the case was further investigated by a Sikh Sub-Inspector and subsequently by an Inspector. The case has been fully enquired into and the persons believed to be guilty will be brought before the courts for trial.

"The Government of India have received no information regarding the alleged looting of Gurdwaras at the villages of Farid and Gandekas, but inquiries are being made."

[6TH SEPTEMBER, 1907.] [*Mr. Baker; Mr. Richards.*]

LOCAL AUTHORITIES LOAN (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved that the Bill further to amend the Local Authorities Loan Act, 1879, be referred to a Select Committee consisting of the Hon'ble Mr. Erle Richards, the Hon'ble Mr. Ismay, the Hon'ble Dr. Rashbehary Ghose and the mover.

The motion was put and agreed to.

THE CODE OF CIVIL PROCEDURE BILL, 1901.

The Hon'ble MR. RICHARDS moved for leave to withdraw the Bill to consolidate and amend the Law relating to the Procedure of the Courts of Civil Judicature, which was introduced in Council on the 20th December, 1901. He said:—"My Lord, the motion which I have the honour to make is preliminary to that which stands next on the notice paper, and I think it my duty to the Council to offer a few words of explanation for the course which I am inviting them to adopt. It will be within their recollection that six years ago leave was given to introduce a Bill to amend the Code of Civil Procedure. It is not necessary to enlarge upon the reasons which induced the Council to assent to that course: they will be found stated in the report of the speech of Sir Thomas Raleigh: and I do not think that anyone who has observed the improvement in the Civil Courts, which has taken place during the 25 years that have elapsed since the last Code was passed, or whose misfortune it is to have from time to time to deal with the mass of decisions which has accumulated around that Code, can doubt that the decision of Council was wise. The Bill introduced in 1901 was circulated in due course and elicited a great amount of valuable comment from Judges and others qualified to speak on the subject in all parts of India. It was referred to a Select Committee in October, 1902, consisting of the Hon'ble Sir Thomas Raleigh, the Hon'ble Sir Denzil Ibbetson, the Hon'ble Rai Bahadur P. Ananda Charlu, the Hon'ble Mr. Pugh, the Hon'ble Rai Bahadur Bipin Krishna Bose, the Hon'ble Mr. Whitworth, the Hon'ble Mr. Justice Rampini, the Hon'ble Mr. Power and the Hon'ble Rai Sri Ram Bahadur. Their report was presented to this Council in the following March, and the Bill, as amended by them, was then again circulated for opinions I take this opportunity of acknowledging the debt we feel to the Members of that Committee for the work they did in the consideration of the subject.

It is difficult to over-estimate the care and exactness with which they examined every detail of Civil Procedure; their labours have done much to facilitate the task of their successors. It cannot, however, be denied that the reception with which this second Bill met was not enthusiastic: I do not refer to criticisms of detail; there were some 700 clauses in the Bill and I should think but poorly of my profession if they could not suggest at least 700 defects in an Enactment of that length. But objections of substance were taken which appeared to the Government of India to deserve more consideration. It was alleged that the Bill was too ambitious in its aims, that it sought to provide for every detail of procedure, and to meet every possible contingency: that it attempted to embody the effect of an excessive number of decided cases. The result, it was said, was that the Bill had become complicated and cumbrous and that it would be a source of much litigation. It is not necessary, my Lord, to express any exact opinion upon those criticisms. The Bill has been before the Council and the public and they can judge how far they were well founded. It is probably fair to say that, to a great extent they were exaggerated, but to the Government of India it appears that there was at least sufficient force in them to make it desirable to reconsider the Bill before it was passed into law. The fact that there had been a considerable difference of opinion among the members of the Select Committee presented a further reason for that course. The matter was accordingly taken up in the Department over which I have the honour to preside. We considered the general nature of the objections and we took every opportunity of consulting Indian lawyers upon them. I would particularly desire, in this connection, to express my acknowledgments to Mr. Justice Chatterjee of Lahore, to Sir Gooroo Das Banerjee, to Mr. Lowndes of the Bombay Bar, to the Hon'ble Rai Sri Ram Bahadur, and to Mr. Justice Woodroffe, all of whom have been good enough to assist us in some detail. In the result a fresh draft was prepared; and this has recently been submitted to a Special Committee and has formed the basis of their deliberations. The Bill which I shall ask leave to introduce, if the present motion is carried, is the Bill as amended by that Special Committee. But it is necessary to first clear the ground by withdrawing the Bill which is at present before this Council, because two of the members of the Special Committee are not members of your Lordship's Council, and the new Bill cannot, therefore, be treated as an amendment by a Select Committee. It is, for this reason, my Lord, that I make the present motion."

The motion was put and agreed to.

[6TH SEPTEMBER, 1907.] [*Mr. Richards.*]

THE CODE OF CIVIL PROCEDURE BILL, 1907.

The Hon'ble MR. RICHARDS moved for leave to introduce a new Bill to consolidate and amend the Law relating to the procedure of the Courts of Civil Judicature. He said:—"I now move, my Lord, for leave to introduce the new Bill to which I have already made reference; and, at the outset, I desire to call the attention of Council to one fact which is of itself a sufficient justification for this motion. This Bill, my Lord, has the approval of the Special Committee appointed by the Government of India to consider the amendment of Civil Procedure; and the four gentlemen who were associated with me on that Committee were the Chief Justice of Bengal, the Chief Justice of Bombay, the Hon'ble Mr. Ismay, and the Hon'ble Dr. Rashbehary Ghose. I do not know that there are four other lawyers in India who could command more completely the confidence of the public in a matter such as this, and the fact that they have approved of this Bill, and have approved of it unanimously, is, I venture to think, an argument of an almost conclusive character in its favour. The Report of the Committee with notes on clauses will be found among the papers which I have laid upon the table, but Council will expect that I should make some further explanation to them of the principal alterations proposed in the Bill. It deals with matters which are for the most part familiar only to lawyers; but I propose to call attention only to the more general features; and, in doing so, I will endeavour to avoid technical details as far as may be possible.

"My Hon'ble Colleagues, or the majority of them at any rate, must have had occasion at some time or other to look at the Code of Civil Procedure; and, if they will take in their hands the Draft Bill which is on this table, they will see that in form it presents a different appearance to that of the existing Code. The Bill itself consists of some 150 clauses only as against the 650 of which the present Code consists. But the change is one more of form than of reality: we recommend but few alterations of a radical character in the law; the difference arises from a re-arrangement of the provisions. And, if my colleagues will glance at the clauses of the Bill, they will see that, speaking generally, they contain general propositions only: they lay down the general powers and jurisdictions of the Courts; they state the broad limits within which the Courts may act; but they make no attempt to provide for details: or to set up machinery to deal with minor matters. All these less important provisions will be found in the First Schedule; and I will explain to Council the reason why this plan has been adopted and the advantages which, as is thought, will follow from it.

" The present Code, my Lord, has been in force for 25 years ; and the experience of those years, although it has shown that on the main lines the Bill was rightly framed, has also shown that in many respects there are defects. It would have been impossible that this should not have been so in the case of a measure so complicated as a Code of Civil Procedure. But the fact, my Lord, that these defects have remained so long uncured is an undoubted evil, and it is an evil which must necessarily ensue if every detail of procedure is to be confined within the iron walls of a statute. Change can then be made only by the legislature, and that necessarily involves delay. We cannot bring in Bills year by year to remedy defects as they occur. If we were to do so, our Statute Book would be full to confusion with small Enactments. But in the case of amending Acts of wider scope the process of legislation must be slow. This very Bill has been under the consideration of the Government of India for 14 years, and the present Code was for a similar time on the anvil. The result follows that improvements can only be made at long intervals and that imperfections in procedure may remain for years unremedied. In this way the action of our Courts is hampered and injustice is perpetuated. There is, my Lord, a further disadvantage in the absence of any elasticity in a law such as this. The Code of Civil Procedure extends practically to the whole of British India : indeed, I might go further, for it has been adopted or is followed in many of the Native States. When one considers how vast the area is to which it applies ; how diverse are the conditions and the wants of the inhabitants of that area ; one realizes how impossible it is to frame a fixed Code suitable alike to every part of this country. In a fixed Code the law-giver can only aim at setting up some one standard of procedure : and since it is not possible to postpone reforms in the interests of backward areas, it follows that the standard must necessarily be fixed by the needs of the more advanced communities. The result is that some of the machinery of the Code is more elaborate than is necessary for certain areas. Sir John Strachey has pointed this out in his book, and it is a fact that is hardly susceptible of dispute. My Lord, if some power were given to alter minor provisions without resort to the legislature ; if there were means to enact that the more elaborate details of procedure should not apply in special circumstances or in special areas : these two objections could be avoided. The Committee are strongly of opinion that this should be done ; they believe that in every respect it is expedient to introduce more elasticity into our procedure. They do not desire to do away with uniformity in main principles ; they do not desire that there should be radical differences of procedure between the different Provinces. But they think that, with due regard to those considerations, it is possible to confer a power to change the less import-

ant provisions of the Code in order that defects in them can be remedied at once as they are discovered and in order that in special circumstances the Courts may have power to simplify our legal machinery and to make it more adapted to the wants of less advanced communities.

"This, my Lord, is the reason of the changes in arrangement to which I have called attention. The Bill itself enacts the general principles of procedure; provisions which in the opinion of the Committee are not fundamental and can be varied without creating any divergence of principle are placed in the Schedule. A power to vary these provisions or to make new provisions is then given to the High Courts, but it is given subject to certain checks. In the first place the High Court can only act with the sanction of the Local Government or, in the case of the High Court of Calcutta, of the Government of India. That, my Lord, will ensure that every change shall be fully considered before it is made; and it will ensure that such uniformity is maintained among the various Provinces as may be thought desirable. The Committee have strengthened this by their recommendation that no proposal for change should be accepted before it has been communicated to the Government and to the other High Courts; though this is not a matter which requires to be provided for in the Act. Further than that it is proposed that High Courts shall only act after they have consulted Rule Committees,—standing bodies to be created by each High Court, on which the various branches of the legal profession are to have representatives. The Government of India attach importance to these Committees; they think that it will be most valuable to have the opinion of practitioners before changes are made. In England, my Lord, a Rule Committee constituted in the same way has been invested with similar powers to make rules of procedure and has exercised them with success for many years past: indeed, the main part of the practice in England depends, not upon Statute, but upon Rules. In India we have not hitherto followed this example. In 1859 when our first Code of Civil Procedure was passed, the Courts—if one compares them with their present condition—were in their infancy; and it may well be that it was wise to tie down their action within narrow limits. But there can be no reason now-a-days for denying to High Courts a power which is exercised with such beneficial results in England and which will, as I anticipate, be equally beneficial in India. The High Courts are more competent to deal with these matters than the legislature, and I submit to this Council that it is proper to give them powers to do so.

"It has sometimes been objected by those with whom I have discussed this proposal that High Courts will be inert and will not care to exercise the power to amend the Rules. My first answer is that, even if that be

so, no harm will be done, for the position will be exactly as it is now. The Act and the Schedules will contain the whole of the existing Code; and if any High Court does not desire to alter those provisions, they can maintain the *status quo* and, in that case, they will stand exactly as they do at this moment. And here I may observe that, in placing the Rules in a Schedule and giving power to the Courts to alter them, we are following exactly the precedent of the earlier Judicature Acts. My second answer is that I decline to accept the anticipation that High Courts will be inert. My experience is that the High Courts of India (and I include in this expression the Chief Courts) and the Judges who compose those Courts are foremost in their desire to improve the administration of justice. If this Bill be passed into law, they will have the opportunity of taking an active part in the improvement of procedure: and I, at least, am confident that they will take advantage of that opportunity in the best interests of the public.

"The Committee have referred in their Report to one objection that will be urged against their proposal. They anticipate that it will be pointed out that the change in the arrangement of the Code and the alteration in the familiar numbering of the sections will be a cause of inconvenience to practitioners. It is hardly necessary, however, to observe that this inconvenience will be of the most temporary character and that it will diminish day by day as the Code becomes familiar to those who have to deal with it. I do not for one moment believe that the members of my profession will allow such an objection to influence their judgment, if in other respects they approve of the change we propose. I sympathize with them in the inconvenience they will suffer at the first; but I appeal to them to suffer it, in order to gain those great advantages which, in the opinion of the Special Committee, will result from the change.

"I have every confidence, my Lord, that this reform will commend itself to the Courts and to the members of the various branches of my profession. And I have reason to hope that it will meet with the approval of Local Governments; at least it has the high authority of the Government of the United Provinces, for I find that in their letter commenting on the former Bill, they put forward a proposal on this point which is substantially the same as that which is adopted in this Bill.

"So much, my Lord, for the change in arrangement, and, for the reasons which, as we believe, justify that change. Before dealing with specific amendments I desire to say a word or two as to the general principles on which we have proceeded. There was a good deal of adverse comment on the last Bill

[6TH SEPTEMBER, 1907.] [*Mr. Richards.*]

in regard to the changes of language. It is no doubt a temptation to any draftsman to bring the language of an old enactment into conformity with modern fashions in drafting. But there are objections to doing so which, in my judgment, should prevail in a case such as this. The wording of the existing Code is familiar to practitioners and is well understood by them: it has been interpreted, almost every sentence of it, by the Courts. To change that wording merely for the sake of verbal improvement would not therefore make the meaning clearer, while on the other hand, any change, even of a formal character, must involve some risk of opening a door to litigation. In the main, therefore, we have endeavoured to preserve the existing language, except where it appeared to us that there was some advantage of substance to be gained by alteration. Another comment on the former Bill was that it went into unnecessary detail: it was said that the clauses were long and complicated. We have endeavoured to avoid this criticism by framing clauses on less ambitious lines. It is impossible to provide for every contingency; and we have thought it better to aim at laying down general rules rather than to elaborate details in the hopes of meeting every possible case that could arise. Since the Code of 1882 was passed, there has been a manifest improvement in the Courts which have to administer it; and from the information at my command I am confident that the Courts are improving year by year. There is the less need therefore now for an elaboration of detail. The Courts can safely be trusted to give effect to principles; and it is in the interests of justice that they should apply principles rather than limit their judgments to the question whether any particular case before them is within the four corners of a section. One further point remains, and that is in regard to case-law. There has been, as I have said, an immense number of decisions on the Code; and to incorporate them, or even a small portion of them, would be to turn the Code into a mere Digest of rulings. The amendments in the Bill dealing with case-law have therefore been confined to points on which there is a conflict of authority between the various High Courts. When a doubt has been raised as to the meaning of a section and that doubt has been set at rest by a decision accepted and followed by all High Courts, no amendment has been made.

"I turn now, my Lord, to particular amendments of substance and the first I would call attention to is the new definition of "decrees", which will be found on the first page. This is a technical matter and I would only say of it, for the information of my legal friends, that the chief point in the amendment is the recognition of a distinction between preliminary and final decrees. It is hoped that this will have a sensible effect in rendering execution more expeditious. In other respects the preliminary part of the Bill does not call for observation.

[*Mr. Richards.*] [6TH SEPTEMBER, 1907.]

"Provisions relating to the jurisdiction of Courts and *res judicata* have not been materially altered. The section of the present Code which deals with *res judicata* is reproduced in the Bill with but little change. It is an impossibility to embody a treatise on a subject so complicated as *res judicata* within the limits of a clause or even of a series of clauses; and it seems better to abandon the attempt and to leave the law as it stands, subject to the small amendments which are shown in italicised type. On the whole the section does not work badly. The clause as to foreign judgments has been remodelled but has not been substantially altered.

"Clauses 15 to 25, relating to the place of suing, are re-arranged in what is hoped is a more convenient form; they are, speaking generally, a reproduction of the existing Code.

"The next ten clauses stand in the place of 16 chapters and 200 sections of the existing Code; these clauses are an illustration of the scheme on which the Bill has been re-arranged. They state the general principles only; and the whole of the detailed provisions on which practitioners will have to work will be found in the First Schedule. It is provided in clause 26 that every suit shall be instituted by the presentation of a plaint. This is a fundamental part of our Civil Procedure. The provisions as to the form of plaint, and the presentation, rejection, and so on of pleadings are minor matters and they have been placed in the Rules. Clause 27 gives a general power to issue summonses to defendants; and clauses 28 and 29 provide for service of summons outside the province in which the Court of issue is situated. Clause 30 sums up the general powers of the Court in regard to discovery and the summoning of witnesses. These again are carried out in detail in the Rules. Clauses 31 and 32 are merely ancillary to 30. Clause 33 lays down that after a case has been heard there must be judgment and a decree on that judgment. This again is fundamental and no change should be allowed. Clause 34 deals with interest, a matter which can hardly be relegated to Rules. Clause 35 lays down the general power of Courts in regard to costs.

"We have, therefore, in these ten clauses a skeleton of a suit—institution, summons, discovery, judgment, decree, interest and costs,—and the whole of the rest of the provisions are in Schedule I. I do not think that I can, with advantage, refer to the changes of detail in this Schedule. But I do desire to call the attention of Council to the new rules which have been inserted in regard to pleadings and admission. The Special Committee attach much importance to accurate pleadings; they think that a clear definition of the real points in

dispute in a suit is a matter of substance, because it makes for economy both of time and of expense. They also attach importance to the existence of provisions for enabling facts and documents to be admitted, thus doing away with the necessity for formal proof. The Rules on this heading have therefore been remodelled; and it is hoped that High Courts will see that they are followed by subordinate Courts. It may be that some of these provisions will be found too elaborate for some mofussil Courts; but, if that be so, it will be within the power of High Courts to withdraw them either generally or in regard to particular areas. The forms of pleadings have been brought up to date; but in regard to these forms and to the other forms in the Schedule it is fair to the Committee to observe that the time at their disposal has not permitted of their completing these forms; some of them have been inserted in the Schedule in blank. They will be printed in full before the Bill is again before the Council. I need only add in regard to the procedure in suits that special provisions have been made in regard to suits by firms and that there is power given to the High Courts to provide for summary procedure in suits for liquidated demands, such as rent or other definite sums payable under contracts.

"I pass now, my Lord, to the subject of execution: a subject around which controversy on any amendment of Civil Procedure seems to rage most fiercely. The debate in this Council on the passing of the 1877 Code was mainly confined to this subject; and a large portion of the volumes of comments on the Bill which has just been withdrawn from this Council are filled with observations and suggestions as to execution. There is such a variety of opinions on every point that I confess I have felt a difficulty in coming to any definite conclusion. But after hearing the matter discussed at length in the Committee I feel able to suggest that the true view is that, speaking generally, the machinery of execution is good enough but that the evils, which undoubtedly exist, arise from the mode in which that machinery is worked. This seems to be established by the fact that in the Presidency-towns there is little or no difficulty in regard to execution; the Courts are not often troubled with disputes about execution within those areas. One reason for the difference may be found in the fact that service within the limited areas of the Presidency-towns is easy to effect and easy to prove: service in the large and scattered areas of the mofussil is attended with difficulties in both these respects. Indeed, my Lord, the service of process generally in the mofussil is one of the great defects of our procedure. The Committee have made a recommendation in respect of it; but it is obviously not a matter which can be cured by legislation: the remedy is with the Executive. It may be that in some districts service by post can be

substituted, and power has been given for this purpose in the Bill but that can hardly be done in all districts in the mofussil. The view taken by the Committee in regard to execution is that no radical alterations are necessary; they have introduced a certain number of small changes, all tending to expedition and simplicity, but beyond that they have confined themselves to amendments of the existing provisions. The Select Committee of this Council introduced a system of execution by precepts issued to other Courts; but to that system great exception was taken and the fact that two members of the Select Committee, Mr. Justice Rampini and the Hon'ble Mr. Whitworth, dissented on this point, lent force to those objections. The Committee, my Lord, have advised the Government of India that it would not be safe or wise to accept this procedure. A power has been given in the Bill to issue precepts for the purpose of interim attachment only, pending execution of the decree, a proposal which has the authority of the Calcutta High Court, but beyond that they have not felt it safe to go.

"Two other points deserve mention. Hitherto, some confusion has been occasioned by the fact that the Transfer of Property Act and the Code of Civil Procedure both deal with execution in mortgage-suits. In the Bill it is proposed that these proceedings should be dealt with only in the Code. Provisions have been introduced in the Rules for this purpose and the sections of the Transfer of Property Act have been repealed in consequence.

"In the present Code there are a number of sections relating to the execution of decrees by Collectors, sections which were much discussed in the debates in the Council in 1877. These sections do not apply of their own force and they have been applied only in four Provinces and in three out of those four Provinces only in certain districts. It does not seem proper therefore to cumber the general provisions of the Code with these special powers; there have been retained in the Bill some 5 clauses authorising such a transfer; the detailed provisions have been set out in a separate Schedule. They have not been included in the General Schedule of Rules because it is thought that the Executive and not the High Courts should have the superintendence of the proceedings of Collectors.

"Turning again to the Bill, my Lord, the next subject to which I wish to call attention is that of arbitration. It will be within the knowledge of Council that at the present time there are two systems of arbitration in force in India: one under the Code of Civil Procedure and the other under the Indian Arbitration Act. The difference in substance between these two

enactments is not great; the difference in form is considerable. The Committee think it is desirable that the whole subject should be dealt with in one enactment; and they further think that arbitration is a separate subject which does not properly form part of the Code of Civil Procedure; for these reasons they have placed the provisions in regard to arbitration in a Schedule in order that their repeal can be more easily effected. In regard to the arbitration provisions the only amendment is that relating to appeals, an explanation of which will be found in the Report.

"Clause 91 of the Bill is new: it confers a power to bring actions in respect of public nuisances with the consent of the Advocate General, irrespective of the question whether the plaintiff has suffered special damage. At the present time it is necessary for anyone who institutes a suit in respect of the stoppage of a public way or injury to other public rights, to prove that he has himself suffered damage beyond that which he has suffered as a member of the public, otherwise the suit will not lie. The form of action by the Attorney General on the relation of parties has not been adopted in India. It has been represented to us that some right of action should be given in these cases irrespective of the question of damage, and for that reason we have inserted this clause.

"There is a note in the Report on the clauses relating to Public Charities to which I desire to invite the attention of Council. There is a considerable feeling that some greater control should be exercised over charitable funds. In the case of temples particularly it is said that there are large funds which are at present spent on no useful object; they are more than are necessary for the upkeep of the temples or for the conduct of worship there; and the suggestion is commonly made that these funds might be put to some purpose of greater benefit to the community. The present Code gives powers to bring suits for the removal of trustees, for accounts, for schemes and so on; but it is urged that there are difficulties in the way of discovering the true position of such funds, and that some power is required for that purpose. The Committee have felt, my Lord, that this is a matter which should be in the main determined by the communities interested; and they have contented themselves with calling attention to the point.

"The next subject dealt with in the Bill is the important one of Appeals, and in regard to that I have little to say, because in fact the provisions remain much as they are in the present Code. No one can doubt that the multiplicity of appeals in India is an evil. On the other hand, there is a strong feeling among the public that it would be an injustice to deprive them of the

right of obtaining the decision of the highest tribunals. I hope, my Lord, that the time will come, and I believe confidently that it is coming, when by the improvement of the lower Courts this feeling will subside. But for the present it is a factor which must be taken into account, and I think that it is wise to leave matters alone for the present.

"I have already explained the nature of the rule-making power which is dealt with in Part X of the Bill; and in regard to Part XI (Miscellaneous), I would only call attention to clauses 145 and 148 to 150, which widen the discretion of Courts. They confer powers to enlarge time and to amend written proceeding; and they recognize the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In these ways greater elasticity will, it is hoped, be of benefit.

"These, my Lord, are the chief amendments. They will be found discussed in detail in the papers which will be circulated with this Bill; and they will, no doubt, receive that careful criticism from the profession and the public which is of such value to the Government of India. I would only remind our critics that two former Bills have already been circulated on this subject, and that every single provision of the Code of Civil Procedure has been subjected to comment on those occasions: I would, therefore, ask them to confine their criticisms, so far as may be, to the more important matters which are dealt with in the first part of the Report.

"It is impossible, my Lord, to frame any Bill on so contested a subject which would defy every criticism. The Code of Civil Procedure is the longest Act on our Statute Book and it can hardly be hoped that in framing an amending Act of that length there should be no errors or no omissions. But the Government of India believe that this Bill is framed on the right principles; they believe that it is a considerable step in advance, and that it should effect a real improvement in the procedure of our Civil Courts.

"My Lord, I will not formally make this motion until I have expressed the sincere thanks of the Government of India to those gentlemen who were associated with me on the Special Committee, for the invaluable help they have given in the revision of this Bill. They have brought to the consideration of it great learning and wide experience, and they have devoted their time and their abilities without stint to the public service. If there be good in the Bill it is due, my Lord, mainly to them."

[6TH SEPTEMBER, 1907.] [*Dr. Rashbehary Ghose.*]

The Hon'ble DR. RASHBEHARY GHOSE said:—"My Lord, the learned Law Member has so fully explained the leading provisions of the Bill that I need not detain the Council more than a few minutes. As the Special Committee observe in their report, experience has shown that the present Code of Civil Procedure calls for amendment for the most part in matters of detail which cannot be stereotyped in a code without serious risk of paralysing the action of the Court in the administration of justice. In England, there is no Code of Civil Procedure properly so called but the provisions in the Judicature Acts supplemented by the rules of the Supreme Court, which may be varied without the intervention of the legislature, very efficiently supply its place. Principles are thus isolated from details, which are regulated by statutory rules made by competent authority; and this is the tendency of all modern legislation which incorporates in an Act only broad general rules, leaving the details to be worked out on these rules. For devolution is now in the air and is about us everywhere; the Council Chamber, where we are assembled, not excepted. In the Bill now before us, this principle has been followed; and I have every reason to think that this new departure, which marks an important advance in codification and avoids the fatal mistake of crystallising what ought to be fluent, will be welcomed by every lawyer; except possibly some inglorious Eldon to whom all reform is hateful. I do not, however, deny that there may be room for argument whether a particular provision should be contained in the body of the Code or relegated to rules, for it is not always easy to draw the line correctly.

"I should add that the Special Committee carefully avoided any departure from the Code of 1882 except where experience has suggested improvements or a change has been called for by competent authority. A brief account of these alterations will be found in the notes in the second part of their report, while the more important alterations are discussed in the first part. It is unnecessary to go through them in detail and I will content myself with saying that, though no drastic alterations have been made in the existing Code, many obscurities would now be removed, doubts resolved, and some inconsistencies harmonised,—inconsistencies, if not in the Code, at least, in the case-law, in which the true meaning of some of its provisions has been obscured rather than elucidated. I may also be permitted to add that the subject of the execution of decrees received the special attention of the Committee and though they did not see their way to any very drastic changes in the present system, I trust that the new provisions relating to execution would enable any diligent creditor to reap the fruits of his judgment without unnecessary delay. He would, for example, be entitled to apply for immediate execution in every

case where the decree is for the payment of money ; while the judgment-debtor's house would no longer be a castle from which he can hurl defiance at his creditor. The Bill also makes provision for an interim attachment of the debtor's property outside the jurisdiction of the Court and affords facilities for the levy of execution on salaries as well as on partnership property, which are not now enjoyed by an execution-creditor. Again, the judgment-debtor may not, where a decree for an injunction has been obtained against him, defeat or delay execution by wilful disobedience. The right to proceed summarily against ancestral property in the hands of the legal representative of a deceased debtor has also been now placed on a secure footing. Other changes have been made in the law relating to execution, but I do not wish to occupy the Council with them and would only draw attention to Order XXXIV, which deals with suits relating to mortgages. The incorporation of this Order in the Code will, I am sure, be welcomed by every one who is familiar with the almost endless controversies which have gathered round the applicability of the provisions of the Code of Civil Procedure to the enforcement of decrees for sale under the Transfer of Property Act.

"One word more. It has been said of the English law that it is a 'codeless myriad of precedents'—a 'wilderness of single instances'; but Indian experience shows that even a code may soon be buried in an intractable tropical jungle of case-law unless the axe is vigorously applied by the legislature from time to time."

His Excellency THE PRESIDENT said:—"I am sure that my Hon'ble Colleagues will agree with me that we all owe our thanks to the Hon'ble Mr. Erle Richards, and to the Committee over which he has so ably presided, for the time and trouble which they have devoted to their work and for the Report which they have placed before us. I also feel sure that my Hon'ble Colleagues are very grateful to the Hon'ble Mr. Erle Richards for the able manner in which he has explained the Bill to the Council."

The motion was put and agreed to.

The Hon'ble MR. RICHARDS introduced the Bill.

The Hon'ble MR. RICHARDS moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and such other languages

[6TH SEPTEMBER, 1907.] [*Mr. Richards.*]

as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 27th September, 1907.

T. W. RICHARDSON,
Offg. Secretary to the Government of India,
Legislative Department.

SIMLA;
The 6th September, 1907.

G. C. B. P., Simla.—No. 266 L. D.—11-9-07.—350.—J.W.G.