Friday,
13th March, 1908

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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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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VOLUME XLVI

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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 Government House, Calcutta, on Friday, the 13th March, 1908.

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 Andrew Fraser, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., 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. O. Miller, C.S.I.

The Hon'ble Mr. W. L. Harvey, C.I.E.

The Hon'ble Munshi Madho Lal.

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

The Hon'ble Mr. H. W. W. Reynolds.

The Hon'ble Mr. H. A. Sim, C.I.E.

The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.

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

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. A. A. Apcar, C.S.I.

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

The Hon'ble Maung Bah Too, K.S.M.

The Hon'ble Mr. W. W. Drew.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Mr. W. R. H. Merk, C.S.I.

QUESTION AND ANSWER.

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH of Nabha asked :—

"(*a*) With reference to my question with regard to the Imperial Service Troops, and reply given to it by His Excellency the Commander-in-Chief on the

* NOTE.—The Meeting of Council which was fixed for the 6th March, 1908, was subsequently postponed to the 13th *idem*.

1st February, 1907, will Government be pleased to state what changes have been made in them since last year?

"(*b*) Will Government be pleased to state if any of the States have increased or reduced their Imperial Service Troops during the last year, and, if so, will it mention the name of the State or States, and also by what proportion they have reduced or increased their Imperial Service Troops?"

His Excellency THE COMMANDER-IN-CHIEF replied:—

"(*a*) His Highness the Raja of Tehri has raised a company of Imperial Service Sappers. No other change has taken place.

"(*b*) The Hon'ble Member's question (*b*) is answered by the reply just given."

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH of Nabha asked:—

"With reference to my question asked in the Council on the 1st February, 1907, will Government be pleased to state if, since then, they have received further papers from, or 'final report' of, the 'Plague Research Committee,' and, if so, will Government be pleased to lay all the papers on the Council table?"

The Hon'ble SIR HARVEY ADAMSON replied:—

"Since February, 1907, the Government of India have received the following papers regarding plague investigations in India:—

(i) The Journal of Hygiene, Volume 7, No. 3, July, 1907.

(ii) Major Lamb's Summary of the conclusions of the Plague Commission.

(iii) The Journal of Hygiene, Volume 7, No. 6, December, 1907.

"No final report of the Plague Research Commission has yet been received, and its labours are not yet concluded. The above-mentioned papers are laid on the table."

The Hon'ble MR. CHITNAVIS asked:—

"Has the attention of Government been drawn to the Resolutions of the successive provincial Conferences of the Central Provinces, giving expression to the dissatisfaction of the people of those provinces at the present system of annual assessment of the income-tax? In view of the general desire of the local public, will the Government be pleased to replace the existing system of

assessment by the system of triennial assessments which prevailed in those provinces before?"

The Hon'ble MR. BAKER replied:—

"The Government of India have noticed the Resolutions passed by the 1st and 3rd Provincial Conferences of the Central Provinces. A system of triennial assessments was formerly in force in the Central Provinces owing to the existence of the pandhri-tax, which was levied on petty traders and manufacturers whose incomes amounted to Rs. 250 a year or more. The large number of assessees made it impracticable for the district staff to cope with the work which would have been entailed by annual assessments. On the abolition of that tax in 1902 it was decided, after a full experience of the operation of triennial assessments, to adopt the system of annual assessments contemplated by section 15 of the Income-tax Act of 1886 and prevailing in other areas where that Act is in force. The former practice had the necessary consequence that assessments, owing to the fluctuating nature of many of the incomes assessed, fell unequally on the persons taxed, and the Government of India see no reason to revert to it."

The Hon'ble MR. CHITNAVIS asked:—

"Is it true that an amendment of the Central Provinces Tenancy Act is contemplated by Government? If so, will Government be pleased, in consultation with the Hon'ble the Chief Commissioner of the Central Provinces, to remove the just grievances of the malguzars by amending the provisions relating to *khudkast* lands on the lines suggested in their memorials to the Local Government, as also section 61 of the Act which operates with unusual rigour on tenants in their relations with sub-tenants, as pointed out in the presidential speech delivered at the Jubbulpur Conference, held on 14th April, 1906?"

The Hon'ble MR. MILLER replied:—

"No proposals for the amendment of the Central Provinces Tenancy Act have been received by the Government of India, and it is understood that the Local Administration consider the amendment of the Land-revenue Act a matter of greater urgency. The Government of India have no doubt that when these Acts are amended all suggestions for their improvement will receive the most careful consideration from the Local Administration."

The Hon'ble MR. CHITNAVIS asked:—

"In view of the pronounced desire of the people for a provisional embargo upon exports of food-grains from the country as a remedial measure in times of

distress, will Government be pleased to consider if it would be desirable to temper, if only provisionally, its policy in these days of abnormal prices?"

The Hon'ble MR. MILLER replied:—

"The question raised by the Hon'ble Member is one which has been considered by the Government of India on every occasion on which this country has been threatened with serious famine, with all the care which its importance demands, and with full regard to the fact that interference with trade on such occasions would be in accordance with views which are widely and earnestly held by influential classes of the people. Not only has the policy to be followed been carefully considered at the beginning of periods of distress, when popular opinion, and not infrequently official opinion, was in favour of some measure of interference, but it has been impartially examined in the light of facts and of the experience gained during successive famines by the officers or Commissions appointed to report on the lessons to be learned; and there has been no difference of opinion as to what those lessons teach. The conclusion was arrived at in 1873 that 'nothing could justify recourse' to such a measure as the Hon'ble Member suggests 'unless it were a certainty or a reasonable probability that exports of food will so exhaust the resources of India as to render them incapable of affording the supplies which may be required for affected districts,' and all subsequent investigation has confirmed this view.

"During the thirty years which have passed since that time there has been a remarkable development of communications and of trade, and the experience of each successive famine has shown how greatly relief measures have been assisted and suffering has been mitigated by the freedom from restraint which has encouraged private enterprise to take advantage of the facilities offered to it. Interference would involve disorganisation of trade and discouragement of the agriculturist at the very time when it is essential to the welfare of the country that the producing and the distributing agencies alike should have every stimulus given to their activity. To mention only one result, a policy of placing an embargo on the export of food-grains would encourage that tendency to substitute non-food crops for food crops of which frequent complaint has been made in the vernacular Press, as a contributory cause of the present high prices. Interference with exports might produce at the beginning of a famine an artificial cheapness, but it is by no means certain that even this result would be attained to any material extent, and it is certain that the cheapness would not be permanent. The exports from India amount

to but a small proportion of its production, and experience gives no warrant whatever for the supposition that the trade is unable to regulate them to the best advantage of the country. For example, the exports of wheat, which in a good year may be as much as fifteen or twenty million hundredweight, shrank in 1896-97 and 1897-98 to about two millions, while in 1900-01 the export trade practically ceased to exist, only 50,000 hundredweight leaving the country. In the case of rice the fluctuations are not so extraordinary, but they are very great; in a good year exports from the whole of India have been as high as forty-nine million hundredweight, in bad seasons they have fallen to less than thirty millions. The export trade encourages production and creates a reserve which can be drawn upon in time of scarcity—a reserve which, but for that encouragement, would not exist. The failure of the monsoon in India creates a demand for Burma rice at prices with which foreign countries cannot compete. In 1903-04 and 1904-05, when crops were generally good, Burma exported to foreign countries 33 and 38 million hundredweight of rice respectively, while India took only four and six millions. In 1906-07, when there was a demand from India, the exports to foreign countries fell below thirty millions, and the exports from Burma to India rose to sixteen millions; in the present year, judging from ten months' statistics, this feature of the trade will probably be still more marked. The course of the wheat trade in the present year may be referred to as a further illustration. During the early part of the year the trade was brisk, and continued to be so up to October, by which time it was evident that there would be severe scarcity in India. In November the exports were less than half of the average for that month in the three preceding years. In December the proportion was much lower, while in January only sixty thousand hundredweight were exported compared with a three years' average for that month of close on a million and a half.

"The policy which the Hon'ble Member apparently supports does not, it is understood, stop short at interference with exports from India. It extends to placing restrictions on exports from one State or Province or even from one district to another, and recommendations to that effect have been made not only by the public but by officers of Government impressed by the seriousness of the outlook, as for example in 1873, when the Lieutenant-Governor of Bengal suggested the prohibition of the export of rice from that province. In a year like the present, when the deficiency of food supplies in the United Provinces is being met by imports from the surplus stock of Burma on the one side and the Punjab on the other,—the two provinces which contribute by far the largest share to the foreign export trade in rice and wheat respectively,—it

seems scarcely conceivable that there should be any advocates of a policy that would obstruct the trade to which these beneficial results are due. But experience shows that the demand for the regulation of exports does in fact extend to a demand for the enforcement of local restrictions, and to transferring from the trade to some official agency the responsibility of determining whether the circumstances of the country require the transport of grain from one local area to another. This is a responsibility which no Government would except in the last resort undertake.

"The Hon'ble Member correctly refers to prices as being now abnormally high. Prices are excessively high, and the Government of India are fully conscious of the distress caused by dearness of food and sympathise with the sufferers. But they have no doubt that the effect of interference with trade would only be to aggravate difficulties that must be faced, and they adhere now to the policy which they have consistently adopted in the past in the presence of more serious calamities and at a time when they could not expect from the operations of trade the same measure of assistance in coping with scarcity that they now obtain."

The Hon'ble MR. CHITNAVIS asked:—

"In view of the abnormal and general rise in prices during the past few years, will the Government be pleased to appoint a joint committee of officials and non-officials to inquire into the causes to which such rise is due with a view to the removal of such of them as may be capable of administrative treatment?"

The Hon'ble MR. MILLER replied:—

"The Government of India are well aware of the importance of the subject and have already had under their consideration the question of making enquiry into the causes of the present high range of prices, but have not yet come to any final decision in the matter. Should they decide that enquiry is advisable, they will gladly consider the Hon'ble Member's suggestions as to the appointment of a committee."

The Hon'ble MR. CHITNAVIS asked:—

"In order to relieve the distress of the middle classes, more or less encumbered with a large number of dependants, due to increased cost of living, will the Government be pleased to consider the desirability of further raising the assessable minimum under the Indian Income-tax Act to Rs. 2,000 a year?"

The Hon'ble MR. BAKER replied:—

"The Government of India are not prepared to entertain the suggestion embodied in the Hon'ble Member's question."

WHIPPING (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved for leave to introduce a Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898. He said :—

"In the progress of public opinion the infliction of whipping as a judicial punishment comes to be regarded with ever-increasing disfavour. The object of this Bill is to mitigate the severity of the Whipping Act and to bring it into line with public opinion of the present day. In India the time has not arrived when whipping as a judicial punishment can be altogether dispensed with. Indeed, that stage has not yet been reached in Western countries. In England whipping is still retained as a punishment in the case of adults for certain forms of robbery with violence such as garrotting, and in the case of juveniles for all indictable offences other than homicide. I am far from suggesting that what is suitable for England must necessarily be suitable for India. There could be no greater mistake than to adopt such a principle indiscriminately as a basis for legislation. But human nature is pretty much the same throughout the world, and the efficacy of whipping as a punishment is essentially a question of human nature. What has been done in England may therefore in this case be a useful guide as to what ought to be done in India. In England a hundred years ago whipping was inflicted for many offences. Its use has gradually dwindled down to the proportions which I have stated, without in any way prejudicing the safety of the community. Experience has shown that for most offences which were formerly punished with whipping a less revolting penalty is more efficacious. The history of Indian jails tends to the same conclusion. I can well remember that when I first arrived in India thirty years ago, whipping of a very severe nature was freely resorted to in jails as a punishment for very trivial offences. It is now inflicted as a jail punishment on rare occasions and only for serious offences. Yet the discipline of Indian jails is much better now than it was thirty years ago. I must not be misunderstood as implying that, as regards the frequency and barbarity of corporal punishment, there is any similitude between India of the present day and England of a hundred years ago. On the contrary, the Whipping Act of 1864, as it now stands, is on the whole a very humane Act. But as years advance public opinion advances, and humane on the whole though the Act may be, we think that the time has now arrived when it should be laid on the legislative anvil with a view to being moulded into what, in the light of Eastern and Western experience, is a closer conformity to the trend of public opinion and the requirements of the present day.

"There is one point, however, in respect of which there is a complete difference between England and India. I refer to the system of imprisonment in jails. In England all short-term sentences are of the nature of solitary confinement. The prisoner is isolated and has no opportunity of associating with his fellow-prisoners. In India, on the contrary, the system is one of association. The prisoner works in a gang and associates day and night with other prisoners. The prisoner in India is thus liable to evil contamination from which in England he is free. That this is a defect in the Indian system of prison administration is generally admitted. But it is a defect that cannot be immediately cured. Much has been done in recent years to provide cellular accommodation in jails, so as to save prisoners from the deteriorating influence of their more hardened fellow-convicts. But this is a work which requires a long time to complete, and the expenditure of an immense amount of money, and the position at present is that in Indian jails the complete segregation of prisoners is impossible. This condition renders it undesirable to proceed to the abolition of whipping as a judicial punishment to the same extent as has been done in England. It is better to whip a casual thief than to submit him to prison associations from which he will probably emerge as a hardened thief.

"It would of course be possible to carry this line of argument too far. It might be contended that for similar reasons it is better to whip all unhardened offenders than to imprison them. Such a course is clearly inadmissible. It would shock the public conscience and for obvious reasons is undesirable. We are convinced that whipping should be restricted to offences of a degrading nature, and that it never should be administered where it is likely to outrage self-respect. We also think that it is an unsuitable punishment for any offence that is not of an active and daring character. For instance, we regard whipping as an appropriate punishment for casual and ordinary theft, but as an inappropriate punishment for receiving stolen property or for the special class of theft which is defined in the Penal Code as theft by a clerk or servant. For these reasons the Bill amends section 2 of the Whipping Act by excluding from whipping the offences of theft by a clerk or servant, extortion by threat, extortion by putting a person in fear of accusation, dishonestly receiving stolen property and dishonestly receiving property acquired in the commission of dacoity.

"We propose to repeal section 3 of the Act which permits whipping as an additional punishment in the case of second convictions of offences which are punishable under section 2 with whipping as a sole alternative penalty. We

think that when in cases of this kind the Magistrate has come to the conclusion that the offence calls for a punishment of imprisonment nothing is gained by adding whipping to the sentence. I may observe that the repeal of this section will not prohibit the Magistrate from awarding whipping in lieu of imprisonment on second convictions of offences specified in section 2 as amended. I must admit that the proposed repeal of this section has not been cordially accepted by some Local Governments. It is urged that its repeal will weaken to an undesirable extent the hands of the authorities in the suppression of crimes against property. But it appears to us that this argument could be used against any mitigation of the Whipping Act, and that the history of whipping as a punishment and its influence on crime does not support the contention.

"The next point that I am to mention is one in respect of which I do not anticipate that there will be much difference of opinion. Whipping is a punishment that is peculiarly suited to brutal, cruel and sordid offences involving personal violence. The circumstances of each country must of course determine what crimes of this nature are of such prevalence as to call for this form of punishment. Naturally they will vary in different countries. In England, as I have stated, robbery with violence is the type of crime against which the public require a special protection, and the punishment awardable for crimes of this nature is whipping combined with imprisonment for either first or subsequent offences. In India the most prevalent crimes of a brutal, cruel and sordid nature, against which special protection appears to be desirable, are rape, robbery with hurt, and dacoity. These and these alone we have included in this category. The Bill follows the analogy of English law and permits a combination of whipping with imprisonment whether on first or on subsequent conviction. The provision will be found in clause 3 of the Bill. The substitution of this clause for section 4 of the Act, while giving to society the protection of an enhanced penalty in the case of those brutal and daring crimes, abolishes whipping on second conviction for a large number of offences, of which the chief are false evidence, false charges of offences, assault with intent to outrage modesty, unnatural offences, habitual dealing in stolen property, and forgery.

"In respect of juvenile offenders the Bill alters the present law by mitigating the severity of whipping. It limits the punishment to fifteen stripes instead of thirty, and it enables the Governor General in Council to exclude juveniles from whipping by notification for such offences falling under the Indian Penal Code as he may think fit.

"Finally the Bill restricts the power of whipping to first class Magistrates instead of as at present to first class Magistrates and specially empowered second class Magistrates.

"I need scarcely say that in no case under the Bill is whipping a compulsory punishment. Wherever it may be inflicted, it is optional, at the discretion of the Magistrate.

"I think that public opinion in India regards whipping as a necessary and proper punishment for certain classes of offences, but as an unsuitable punishment for members of the respectable and educated classes. I am not disposed to quarrel with this view. It is but an expression of what I have already said, that whipping should never be inflicted where it is likely to outrage self-respect. But it is impossible to define by law the classes of people who may be whipped. This must be left to the good sense of the Magistracy, supplemented it may be by such general instructions as High Courts may deem fit to issue.

"The net result of the amendments contained in the Bill is that the power of whipping is confined to first class Magistrates, and that in respect of adults whipping is retained as a sole punishment for ordinary thefts and kindred offences of an active and daring character, and as a sole or combined punishment for a very limited number of offences of violence of a brutal and sordid nature, while in respect of juveniles it is retained in a less severe form. I trust that the Bill will be found to conform with public opinion in India, and that its lenity will not render the law less capable of suppressing crime."

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON introduced the Bill.

The Hon'ble SIR HARVEY ADAMSON 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 in such other languages as the Local Governments think fit.

The motion was put and agreed to.

CODE OF CIVIL PROCEDURE BILL.

The Hon'ble Mr. ERLE RICHARDS said: "My Lord, on the occasion, six months ago, when I had the honour of introducing this Bill in Council, I explained at some length the general scheme of arrangement and the nature of the more important of the changes which it seeks to effect in the existing law. I do not propose to repeat those observations today, they will be found reported in the chronicles of this Council, and it is the less necessary to recall them because the Bill has been generally accepted by the public and the legal profession and is not opposed in this Council. It will be recollected that

this Bill departs from the arrangement of former Codes in that it makes a division between clauses and rules, the former consisting of the general principles of procedure and of those provisions which must necessarily be uniform throughout India ; the latter containing provisions of minor importance which may properly be varied to suit local conditions ; and that as a corollary to that division, there is a power given to High Courts, subject to the advice of Rule Committees, to alter the rules and to make new rules to cure defects or to meet cases which are now unprovided for. This proposal has met with the almost unanimous approval of Local Governments and of High Courts and there appears to be a general consensus of opinion that it is a change of procedure which is likely to have beneficial results. The amendments on other points have also been commonly accepted. It is impossible that in regard to the details of procedure there should be complete agreement, but the great majority of our critics are in favour of the main changes that are proposed.

" Since the Bill was introduced in this Council it has been subjected to a careful re-examination and many minor amendments have been introduced. To the more important of these, attention is called in the Report of the Select Committee, and I do not think that I can with advantage refer to them further on the present occasion. The forms in the Schedule were not in a complete state when the Bill was first before Council, but they have since been amended and brought up to date and they are now a valuable addition to the Bill. The Government are much indebted to our Hon'ble Colleague Mr. Ismay for the trouble he has taken over this matter, and they desire also to express their thanks to Mr. Bakewell of Madras who has been good enough to allow them to make use of some of the forms in his book on Mortgages.

" If the motion which I shall presently make is carried, I desire to move the amendments which stand in my name on the notice-paper; they are more or less of a formal character and do not affect the substance of the Bill.

" A good many of our critics have drawn attention to the question of the service of process—a question to which I referred in introducing this Bill. Beyond doubt the abuses which are inherent in our present system demand prompt remedy, but reform in this matter can hardly be effected by legislation ; it is for Local Governments rather than the Legislature to effect an improvement. The Bill gives power to authorise service by the post, and that is an experiment which may be thought worth trial in selected areas. The whole subject is obviously one of difficulty, but I cannot think that improvement is impossible.

" Another matter to which attention was called by the Report of the Simla Committee, but which finds no place in the Bill, is the amendment in regard to

charities proposed in that Committee by our Hon'ble Colleague Dr. Rashbehary Ghose. He desired to add to clause 92 a provision empowering persons interested in any charity to apply summarily for an account of the receipts and expenditure of the funds of the charity. Under the clause as it stands, as under the existing law, any interested person, with the sanction of the Advocate General, can institute a suit against the trustees of a charity and in that suit can obtain an order for accounts; but our Hon'ble Colleague points out that there are difficulties in the way of instituting suits and that it is not easy to know whether there has been such a breach of trust as will found a suit, unless some accounts are available for inquiry. He argues that trustees under the present law are bound to keep and to render accounts, and that his amendment merely provides a means of obtaining expeditiously that which the law already gives by the cumbrous process of a suit. The Simla Committee expressed some sympathy with the general object of this proposal, but they pointed out that the matter was one for the communities interested and that until it had been fully discussed by the leaders of those communities and until their views were before this Council, it was not advisable to legislate. Since that time Dr. Rashbehary Ghose's amendment has been circulated as part of the Report and it cannot be denied that it has elicited a considerable amount of support; on the other hand, it equally cannot be denied that the amendment would introduce a considerable change in the law of trusts and in the practice at present prevailing in regard to those trusts, and that it has not yet received adequate publicity. The Government of India have carefully considered the proposal and they agree with the Simla Committee that it is one of which the communities interested must have the fullest opportunity for discussion and on which their views must be obtained before it is sanctioned: they agree therefore with the Committee in thinking that the amendment should not find a place in the Bill. But in view of the public interest which has been taken in the matter they suggest that the amendment should be introduced as a separate Bill. If that meets with the views of our Hon'ble Colleague, Dr. Rashbehary Ghose, and he will introduce the Bill, the Government are willing to accept a motion for leave to introduce it and to have it published and circulated for opinions. It must of course be understood that the Government give this assent, as lawyers say, 'without prejudice,' in other words, that they do not commit themselves to approval or disapproval of the proposal; they reserve their opinion until they have before them the views of the communities concerned.

"My Lord, I move that the Report be taken into consideration."

The Hon'ble MR. ISMAY said:—"My Lord, the Bill now before the Council has met with a favourable reception both from lawyers and from the

general public. There are no doubt a few matters involving questions of principle in regard to which there must necessarily be a difference of opinion, but I think I am correct in saying that even in regard to such matters the balance of popular opinion is in favour of the action which has been decided on. Under these circumstances I only desire to say a word or two regarding the scheme of arrangement. It has been said that the scheme involves an unnecessary innovation and that there has never been any material difficulty in applying the provisions of the present Code to the diversified areas over which the Code is in operation. And a fear has been expressed that the drawback of having increasingly divergent procedures in the areas subject to the jurisdiction of different High Courts will outweigh all the advantages which are claimed for the new arrangement. My Lord, I am perfectly willing to concede that there is very little either in the present Code or in the Bill which is now before this Council which has been or which will be found unsuitable even in the backward provinces. It may no doubt be necessary to exclude a few tracts of country from the operation of certain rules of pleading with which the people are as yet unfamiliar, but broadly speaking I anticipate that every suit will be tried on the same lines irrespective of locality. I do not however in any way share the apprehension that the new arrangement will make for diversity of procedure; on the contrary, the main reason why I have always warmly advocated the division into Code and rules is that such an arrangement should, and I hope will, tend to promote uniformity. At present there is scarcely a section of the Code which has not at some time or other been the subject of conflicting rulings for the reconciling of which no remedy, short of a legislative enactment, is available. One has only to open the pages of any annotated edition of the Code in order to realize the extent of confusion which has been developed by case law during the last quarter of a century, and it is unreasonable to expect the Legislature to intervene wherever the interpretation of any particular phrase gives rise to a conflict of opinion. I have every confidence that under the new Code such a state of confusion will no longer be possible. It is only reasonable to suppose that it will be the primary duty of every Secretary of a Rule Committee to bring to notice all cases in which opinions may differ regarding the scope or meaning of a rule and that the various High Courts in concert one with another will take such action in the way of supplying omissions or remedying defects as may be necessary.

"It has been alleged that under this Bill the Code of Civil Procedure passes out of the category of enactments which will be considered by lawyers to be worthy of a scholarly commentary. If by this it is intended that it will be no

longer possible to string together a number of conflicting decisions under each and every rule, then, my Lord, this fact alone will go far to demonstrate the success of the experiment which is now being made."

The Hon'ble DR. RASHBEHARY GHOSE said :—"My Lord, the leading provisions of the Code of Civil Procedure Bill and the changes introduced by it have been very fully explained in Council by the Hon'ble Member in charge of the measure, and I do not think that I can usefully add anything on the present occasion. I would, however, call attention to two recommendations made by the Simla Committee. The first recommendation to which reference has already been made by the Hon'ble Law Member relates to the gradual introduction of the service of processes by post. The Simla Committee has observed, and, if I may say so without impropriety, has rightly observed, that in this reform may be found a solution of one of the principal defects—I might call it the principal defect—in the administration of our legal system. The second recommendation made by the Simla Committee, to which I would also invite your attention, is the publication annually by the Government in every province of some manual corresponding to the English *Annual Practice*, containing the Act and the rules of procedure made under it or under other Acts in the province and short notes of all important decisions under the Act and rules.

"I would only add that I gladly accept the suggestion made to me by the Hon'ble Law Member, and propose at the next meeting of the Council to move for leave to introduce a Bill to carry out the object which I have in view."

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH OF NABHA said :—"My Lord, I fully agree with what the Hon'ble Mr. Richards said when introducing the Indian Limitation Bill in this Council in January last, that our Statute-book has become full of amending Acts. Out of 350 Acts there are about 120 which have been passed merely to amend the existing Acts.

"The Hon'ble Member truly remarked that the result is that our collection of Statutes has become confused and complicated, and it is becoming increasingly difficult for those who have to refer to it to find the law with accuracy. Therefore I welcome the Civil Procedure Bill which, when passed, will simplify the law to a great extent and do away with some fourteen amending Acts, which now complicate the law. Our laws should always be simple, clear and easily understood.

"The peculiar feature of the present Bill is its new form, which is for the first time introduced in India, by which the principles of the law of procedure only

are codified and all details are relegated to schedules which can from time to time be added to, corrected or amended in different parts of India by Rule Committees working under the supervision of the different High Courts. The proposal seems to possess some advantages :—

(1) that it is more elastic and rules can be amended by Rule Committees as occasion arises without causing any trouble to the highly complicated legislative machinery. But it seems open to question why we should not have the whole law-making machinery recast in such a way that there be no difficulty in quickly and easily passing through it desirable laws, rules and regulations ;

(2) that suitable rules can be framed to suit different local conditions. It is perhaps the only advantage that can be urged in the present case. But when different parts of India had very slow and bad means of communication with each other they got on well enough with uniform laws throughout all its parts, and now that means of communication have so far improved that its most distant parts can so easily and quickly communicate with each other, as was hardly the case in early sixties of the last century, can this reason be said to have gained so great a weight as to be considered of sufficient importance now for making the change ?

"Against the above two advantages may be urged the undue hardship which is bound to be caused to the general public by this new feature in the Civil Procedure which is now sought to be introduced in India, for the following reasons :—

(1) the greater incomprehensibility of the law that would ensue. It is a very good rule of law to assume every one to be acquainted with the laws of the country and its ignorance to be recognised as no excuse whilst as a matter of fact the best legal talent of the country spend their lives in disputing over its details. The rules will soon be so amended by different Rule Committees in different parts under different High Courts that it may soon become next to impossible for even an educated person to be able to know what the rules in different parts of India were ;

(2) the greater diversity in the rules of procedure that will follow. At present when there is one law in one form in civil matters for all people, in all parts of British India, the different High Courts

have so construed some of its provisions as to give it authoritatively different meanings. But when the law really becomes to a great extent different in different parts, there is no limit to what extent the learned gentlemen might carry its meanings.

"Diversity of rules will become the source of real hardship when one individual living in one province is sued in another. It would certainly be hard on the parties, but it would provide an ample harvest for the pleaders. This perhaps explains why the measure, important as it is, has excited very little comment. Who would do this? The vakils, perhaps. But why should they, when it is for their advantage to have diversity and incomprehensibility in laws to ensure business? The Press perhaps. But they cannot spare time or attention because these are fully taken up by topics of a more exciting nature.

"As to the portion of the procedure which has been retained in the Code, there are a few provisions which call for remark.

(1) Amongst the definitions given in section 2, clause (13), that of 'moveable property' can hardly be called as such. The phrase has nowhere been defined in the Code, and it is doubtful which definition is sought here to be added to by saying that it shall include 'growing crops.'

"(2) Section 25, clause (2), enacts a very curious provision under which in certain cases Courts will have to enforce laws not prevailing within their own jurisdiction, but in force in other parts of the country. In theory it is simple enough and perfectly the correct thing to do, but in practice a most difficult thing, for the presiding Judges in such case would have no experience and practical knowledge of such laws as they would be called upon to administer.

"(3) Section 34, clause (1), gives unlimited power of passing decrees bearing interest. Considering the poverty of India and the agricultural classes being in the hands of moneylenders who charge large rates of interest, there should be some limit beyond which interest should not be awarded. The proposed law gives too wide a discretion to Courts and the Courts as usual are sure to exercise it freely. The moneylending classes actually oppress the cultivating classes, as they generally have the sympathy of the presiding officers of Civil Courts, as these officers mostly belong to the moneylending class.

"(4) Section 55 gives too much power to the officers authorised to make arrests in the way of entries in private houses. The section lays down no

safeguard against abuse of such power. The process-servers of Civil Courts to whom such duties will of necessity have to be entrusted are worse paid than the lowest grades of the police against whom we hear so much all over India. Perhaps the best thing would be to authorise the Courts to impose heavy fines in every case in which abuse of such powers is proved on the officers in question and the parties in whose interest such abuse takes place.

"(5) Section 60, clause (1), exempts from attachment such personal ornaments of women as in accordance with religious usage cannot be parted with. Amongst some classes the religion says nothing, but usage, customary rather than religious, requires that certain articles must not be parted with by women. Amongst Hindus it might be religious usage not to part with their nose rings in some provinces, their bangles in others, their ear-rings in some districts, but amongst some classes, though religion says nothing, yet custom is as rigid as in the case of Hindus. As the section now stands, all women except Hindus would be liable to suffer injustice, and there is no reason why they all should not receive equal protection.

"Besides, women require further protection of their personal property against attachment in execution of decrees against their husbands or other male relatives. A married woman can hold her separate property. Even amongst Hindus she can have her 'stridhan.' Is it right to disregard all such claims and draw no distinction between a woman's separate and personal property and that of her husband or common family property? Therefore it is necessary that no property held by any female member of the family separately from the husband as her exclusive property shall be liable to attachment in execution of decrees against the latter.

"(6) Section 61 provides partial exemption of agricultural produce from attachment. The duty of fixing the amount of the share of such produce is left in the hands of the Local Governments. It would have been better to fix a minimum, because the principal details should be settled by the Supreme Legislature rather than be left to the local authorities.

"(7) Section 94, clause (*a*), gives extraordinary power to Civil Courts to interfere with the freedom of defendants, and it is feared such powers would be used sometimes without proper discretion. It would not be safe to give these powers indiscriminately to all Courts. If such powers are thought necessary, they should only be vested in the hands of superior Courts, to be carefully exercised in special cases only.

"As to the provisions laid down in the schedule, it is hardly worth while to consider them in detail or to offer criticism on them, for they will soon be taken up and altered by different Rule Committees to conform to their own views, and any criticism now would simply be wasted labour.

"Before concluding I must confess my great disappointment at the Hon'ble Dr. Ghose's suggestion relating to charitable trusts not being accepted. I was under the impression that the Select Committee would accept and recommend the clause suggested to the Council, but their Report is quite silent on this point, which is still more surprising and shows that they have not even touched the subject. The Hon'ble Mr. Ananda Charlu introduced a Bill in this Council in March, 1897, to remedy this evil, but after four years it was eventually withdrawn in 1901, because the Government opposed it and wished that it should not be proceeded with any further. My Lord, I made a few remarks on this subject in my budget speech last year, and I need not repeat the same on the present occasion, although I feel bound to say that Government ought to move, and move before long, in this direction, because it is under a moral obligation to see to the proper administration of vast trust funds, which ought to be devoted to such religious and charitable purposes for which they were endowed. The present suggestion of Dr. Ghose was a very modest attempt in this direction, and I wish that Government could have seen its way to accepting it."

The Hon'ble MUNSHI MADHO LAL said:—"My Lord, although my Hon'ble Colleagues who have preceded me have said all that could have been said on the motion before the Council, with Your Excellency's permission, I should like to make a few remarks.

"The principal feature of this Bill, as the Council is aware, is the re-arrangement of the clauses and the relegation of minor provisions to schedules which can be amended or added to by High Courts subject to the advice of Rule Committees. It has been represented that the novelty will cause much inconvenience in practice. It is said that the same subject is split over in the body of the Code and the schedules; that great difficulty will be felt by the Bench and the Bar alike in referring to the old sections; that the delegation of the legislative authority to the High Courts in the matter of broader details hitherto dealt with by the Legislature is undesirable; that High Court Judges have little time to spare from their judicial work; that the rules of the Court of the various provinces are far from perfect; that the subordinate judiciary do not view with favour what has been called, by a correspondent, the proposed amputation of the Code; that the Code has

hitherto done well, and all that was required was to revise it in the light of case law. My honoured and learned colleague, the Law Member, anticipated all these objections at a very early stage, and tried to meet them fully and efficiently in his speech with which he introduced the Bill at Simla in September last. He has shown conclusively the necessity of the above-mentioned changes, and the plan adopted, after full and careful consideration, will, it is hoped, prove simple, safe and sound. Similar objections were taken by a section of the Press too. But a perusal of the opinions received by the Legislative Department makes it clear that the objections form a 'microscopic minority'; that there is a consensus of opinion in favour of the new arrangement. Personally I consider that, with the safeguards provided by the law, the Rule Committees and the High Courts will be quite capable of amending or altering the rules contained in the schedules. I admit that the High Court Judges have not much time to spare from their judicial duties ; but I do not think that they will be required to devote much of their time to their rule-making duties, as the rules contained in the schedules have been made with great care and consideration, and I do not think that their alteration will be required often. Moreover, the responsibility that will rest with Rule Committees and the High Courts will make them more vigilant and keen in discharging their duty in this respect, and they will be in a better position to *interpret* the rules. In this way there will be an elasticity in the rules of pure procedure which it is hoped will be beneficial to the public and the legal practitioners. The main principles of the law have been embodied in the Code which the Legislature alone have the power to change. I should have been glad were it possible to have all the rules made from time to time by different High Courts submitted to the Government of India in the Legislative Department, which could serve as a central revising authority. I think the Bill now before the Council has many advantages over the old Code. The provision that every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed by the rules, the provision for effecting execution by precepts, the partial exemption of agricultural produce, the important additions to the existing law relating to the public charities, as embodied in clause 92, the provision for execution of decrees by appointment of receivers, are some of the improvements which will, I am sure, be appreciated by experience. I wish greater facilities had been given to the public for a more prompt, easy and effective control of all public, religious and charitable trusts, on the lines suggested by my learned friend, the Hon'ble Dr. Rashbehary Ghose. I have little doubt that Hindus and Muhammadans would welcome any measure that would confer on the public more power to control and protect all public, charitable and religious endowments. In the mass of opinions on the Bill received in the Legislative Department there is an overwhelming majority

in favour of adopting the Hon'ble Doctor's suggestions. If I am rightly informed, the Sri Bharat Dharm Mahamandal and the Zamindars' Association of Muzaffarnagar have addressed the Government of India asking for more facilities to be given by the law for control and protection of public charities and endowments. Other public bodies have also supported this view. The Provincial Social Conference that met at Lucknow the other day adopted a resolution approving of Dr. Ghose's draft (clause 93A). I, for one, cannot see what possible objection there can be to fulfil the desire of the public thus expressed. I suppose they do not ask anything more than the Government seems prepared to give; they only want that, instead of instituting a suit, power should be given to the public, under the same conditions and restrictions as embodied in the present Bill, to move the Court by an application. If necessary, some more safeguards may be provided so that persons in charge of charitable and religious endowments may not be harassed. However, I shall not enlarge on this subject as I still entertain hopes that something will be done by the Government and the Hon'ble Council in this respect, the more so, after the announcement that has just been made by the Hon'ble the Law Member regarding the introduction of a separate Bill on the subject by the Hon'ble Dr. Ghose. I trust that the Courts will in future take full advantage of the power given to them of appointing receivers in execution proceedings. This power has till now been very sparingly used, with the result that judgment-debtors and decree-holders and immoveable property itself have not unoften been ruined. If a return were called for showing the time taken in executing decrees and realising the decretal amounts by decree-holders, and the costs of the execution proceedings, it would, I fear, unfold a sickening tale of small landed properties sold out and large zamindaris ruined. It is, I take it, the object of the Government to help, as far as possible, the landed proprietors, in preserving their holdings and maintaining, in their integrity, large zamindari estates. This object, I am confident, can be achieved by the Civil Courts if they exercise the powers now vested in them for appointment of receivers, whenever immoveable property of any value forms the subject-matter of the litigation, at the earliest possible stage of the legal proceedings, or certainly on the passing of the decree in the suit. There is no dearth now in the Mufassal of properly qualified legal practitioners to be appointed receivers. The Courts may also within certain limitations and with the consent of the Collectors appoint them receivers, in the same way as they are appointed managers of Courts of Wards. The power now conferred on the Civil Courts, if properly exercised, will, in my humble opinion, be a real boon to decree-holders and judgment-debtors alike, and save many a landed proprietor from ruin. That between the passing of a decree and its final execution a long time passes, to the great detriment of

the landed property under litigation and the certain loss of the decree-holder and the judgment-debtor, is a fact which I need hardly enlarge upon. I shall content myself with one illustration which is typical of its class. A mortgage-decree was obtained in the Court of the Subordinate Judge of Patna in 1900, and the decretal amount has not yet been realised, although the property is said to yield an income of a lakh and a half of rupees per annum. Execution proceedings are still pending; and the estate has just been taken over by the Court of Wards.

"My Lord, I cannot conclude without discharging the pleasant duty of expressing the feeling of gratitude and thankfulness, on behalf of the public, to your Excellency's Government for the manner in which it has managed this most important, useful and complicated piece of legislation. It brought together the best men of intellect and legal acumen, available in the whole of India, to form the Special Committee which sat at Simla and to which our hearty thanks are due, which did real and substantial work, in making the frame-work of the Bill now before the Council, as on its basis the Select Committee did their duty and found their work made comparatively easy. I quite agree with the remark of our learned Law Member to the effect '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 approved of it unanimously, is, I venture to think, an argument of an almost conclusive character in its favour.' I may be allowed to add that it would have been hard to find a better law maker than our Law Member, the Hon'ble Mr. Erle Richards, who controlled and directed the Special Committee and presided over the Select Committee with such ability and tact, brought to bear on all matters an intrinsic merit of high order, whose patience and sympathy cannot be too much admired. He heard and considered with attention and courtesy all the suggestions that were made, whether by the officials or by the public, and those that were put forward by the members of the Select Committee. Our most hearty thanks are due to him. I am almost confident that the present Bill, if passed, will prove most useful to the public, the judiciary and the legal profession, and that the difficulty, if any, in working the Code will very soon be a thing of the past."

The motion was put and agreed to.

The Hon'ble MR. CHITNAVIS moved that in clause 2 (*18*) of the Bill as amended by the Select Committee, for the definition of "rules" the following be substituted, namely :—

"'rules' means rules and forms contained in the First Schedule or made under section 122 or section 125."

He said :—" My Lord, it is of great importance that the rule-making power under this Bill should be absolutely clear, and the object of this amendment is to remove a doubt which arises in regard to the definition of rules. It might be argued that rules as at present defined included rules made under clauses 129 and 130, that is, rules not relating to procedure. I suggest for the consideration of Council that this definition should be made clear by the addition of the words proposed."

The Hon'ble MR. ERLE RICHARDS said:—" I am much obliged to my Hon'ble Colleague for calling attention to this point, which is a small one but not an unimportant one, and I think that the form he suggests is an improvement on that contained in the Bill. I beg to recommend to the Council that it be accepted."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS said:—" I desire to move an amendment in clause 123, sub-clause (*z*) (*d*), of the Bill as amended by the Select Committee, that for the words 'a Subordinate Judge' the words 'a Judge of a Civil Court Subordinate to the High Court' be substituted. Clause 123 deals with the constitution of the Rule Committee, and the particular sub-clause to which I refer was inserted by the Select Committee in order to provide for the presence on the Rule Committee of a Subordinate Judge. It was not, however, present to the minds of the Select Committee that in Burma, at least, there are no Judges who can properly be called Subordinate Judges. It is possible that the term might be construed sufficiently widely for the purposes of Burma, but it seems better to have the point clear on the face of the Bill and to use some expression which will be beyond doubt applicable to every province. The words proposed will allow of the presence of a District Judge or of a Subordinate Judge on the Rule Committees and will, I think, cover the requirements of every Province."

The motion was put and agreed to.

The Hon'ble MR. CHITNAVIS moved that in clause 125, *proviso*, of the Bill as amended by the Select Committee, the words " under the provisions of this Part " be omitted. He said :—" This amendment, my Lord, is connected with the amendment which I have already moved in this Council. It is intended to clear up all possible doubt as to the meaning of rules in clause 125."

The Hon'ble MR. ERLE RICHARDS said :—" I have considered this matter and I think that the words to which my Hon'ble Colleague takes exception are

unnecessary and might conceivably lead to some doubt as to the meaning of the proviso. I therefore ask the Council to accept the amendment."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that in the First Schedule of the Bill as amended by the Select Committee, Order III, "Recognised Agents and Pleaders," rule 4, sub-rule (3), after the figures "1861" the words "or of any Chief Court" be inserted. He said:—"Sub-rule (3) deals with the class of pleaders who are entitled to act without presenting a document authorising them to do so, and as settled by the Select Committee it applies only to Advocates of the High Courts under the Indian High Courts Act, 1861, and to Advocates who are Barristers. It has been brought to our notice, however, that there are some gentlemen—I think four in all—who have the right to act in this way at present as Advocates in the Chief Court of the Punjab, but who are not Barristers; and although this is a provision which can be altered by the Rule Committee, still it would be hard on these gentlemen that their vested rights should be taken away by an alteration of the form of the clause. I therefore propose to the Council that the clause should be restored to the form in which section 39 of the present Code of Civil Procedure Bill stands, and that after the figure '1861' in sub-rule (3) the words 'or of any Chief Court' should be added. That will cover the case of these gentlemen."

The motion was put and agreed to.

The Hon'ble MR. CHITNAVIS moved that in the First Schedule of the Bill as amended by the Select Committee, Order XXXIV, "Suits relating to Mortgages of Immoveable Property," after rule 13 the following rule be inserted, namely :—

"14. Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage and he may institute such suit notwithstanding anything contained in Order II, rule 2;"

Suit for sale necessary for bringing mortgaged property to sale.

and that the present rule 14 be re-numbered as 15. He said :—

"My Lord, the amendment I now move has relation to section 99 of the Transfer of Property Act, 1882, which it is proposed to repeal by this Bill.

The effect of repealing this section would be to allow a mortgagee who has obtained a decree for money against a mortgagor to sell the mortgaged property in proceedings in execution of that decree. But there is one case in which this would work hardship, and that is if the mortgagee were to effect such sale in execution of a decree for money due under the mortgage. In that case he would be getting a right of sale against the mortgagor free from the protection which the law gives a mortgagor in suits for sale. I suggest to this Council that this should not be so and that an amendment should be inserted such as that I now move in order to protect the mortgagor in proceedings by way of execution of a decree for property due under the mortgagee."

The Hon'ble MR. ERLE RICHARDS said:—"My Lord, I have had the advantage of discussing this point with some of my Hon'ble Colleagues on the Select Committee, and we are agreed that the amendment proposed by the Hon'ble Member is desirable subject to one condition, and that is, that some words be inserted to prevent its applying to territories to which the Transfer of Property Act does not at present apply. The amendment of my Hon'ble Colleague is taken from section 99 of the Transfer of Property Act, and if his amendment were carried in its present form, it would apply to territories to which that Act does not at present apply. I understand that the Hon'ble Member is willing to accept this addition to his amendment. The addition would be to number the new clause he proposes clause 14, sub-rule (1), and then to add at the end the following new sub-rule:—

"(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended."

"I understand that my Hon'ble Colleague will accept this addition to his amendment and I recommend the Council to accept his amendment as altered in this way."

The Hon'ble MR. CHITNAVIS said:—"I beg to accept the amendment of the Hon'ble Law Member."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that in the First Schedule of the Bill as amended by the Select Committee, Appendix A, "(4) Written Statements," the Form No. 8, entitled "Defence in Suits for infringement of a Patent," be omitted, and that the subsequent Forms, Nos. 9 to 17, be re-numbered as Nos. 8 to 16, respectively. He said:—"That form is not techni-

cally accurate as the law stands at present. It has been drawn in anticipation of the law as proposed to be amended and it is in advance of the law as it at present stands."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS moved that the Bill, as now amended, be passed. He said :—"My Lord, I suspect that the Members of this Council must be experiencing no little sense of relief in hearing that this measure has now reached its final stage. For the past seven years it has stood on the List of Business of this Council, it has been considered by four Committees, it has been published and circulated three times, it has been the subject of copious criticism by the public and by the profession. But in defence of this I would point out that the Legislature has not been often troubled with a general amendment of Civil Procedure. The first Code was passed in 1859; it was amended and re-enacted in 1877; and though it came again before the Legislature five years later, the Act of 1882 was in substance no more than the Act of 1877. It is therefore more than thirty years since the last Code was discussed in this Council, and much has happened in those years to warrant a fresh enactment. A mass of decisions has grown up round the present Code which should be removed, and many points of conflict have arisen between the various High Courts which should be set at rest. Moreover, the English practice on which the Act of 1877 was based has itself been remodelled since that year as the result of experience and we should take advantage of that experience. It is full time therefore that a new Act should be passed, and if excuse were wanted for the deliberation with which we have proceeded in enacting it, I would remind the Council that these two Codes of Procedure of ours, the Civil and the Criminal, are big things. They stand alone in the records of comparative legislation both in regard to the extent of the population which they affect and to the number of Courts to which they apply. They govern the litigation of the people of British India, some 300 millions in all, and they regulate the procedure of over 2,000 Courts. It is wise therefore to proceed cautiously in effecting a change in them.

"If this motion be carried, my Lord, we shall no longer have a law of procedure which in every detail must be the same for all India. The enactment of one uniform Code applicable to all the territories within the jurisdiction of the Legislature which enacts it is a tempting ideal, and we shall abandon it with some regret; but it is an ideal which must yield to practical considerations. It is expedient that there should be uniformity in main prin-

ciples, but in the less important matters of procedure there should be some elasticity in order to enable the Code to meet the varying wants of different localities and different communities. The Bill gives effect to this view, and if the rule-making power given by it be used with moderation, it will, as I venture to hope, be a means of effecting a considerable improvement in the machinery of our procedure. The power is given to the High Courts and I have every confidence that they will use it to the best advantage. It is in that belief that I commend this motion to the Council.

"I cannot, my Lord, conclude these observations without once more expressing the thanks of the Government of India, and I think I may fairly add of the public of India, to those who have assisted me in this complicated matter. I have been at best but the coxswain of the boat; it has been rowed into harbour by others. The burden has fallen mainly on those gentlemen who were associated with me in the Committee which sat at Simla, but we owe our thanks also to the Judges and lawyers of India who have generously placed their experience and their learning at our disposal and to the Select Committee of this Council. Nor can we forget our obligations to my predecessor, Sir Thomas Raleigh, and the Committees who worked with him. They cleared the course for us and made our progress possible.

"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

The Council adjourned to Friday, the 20th March, 1908.

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

CALCUTTA;
The 13th March, 1908.

E. I. C. P. C. No.—780 L. D.—18-3-1908—385—N. N. E.