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MADRAS RECORD OFFICE

Government of Madras

JUDICIAL DEPARTMENT

G.O. No. 370-71

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Mis.

Dated 28-2-1876 195-

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*Proceedings of the Madras Government, Legislative Department,
18th December 1871.*

Read the following papers :—

No. 5. From the Hon. J. B. NORTON, Advocate-General, Madras, to the Chief Secretary to Government, Fort St. George, dated Madras, 19th February 1871.

I have the honour of laying before His Excellency the Governor in Council the following observations on the Pleadors' Bill.

2. This measure appears to me to be very unsuited to the Madras Presidency. What the condition of things may be in Bengal and the North-West Provinces I do not profess to know; but, as far as my knowledge and experience extend, there exists no necessity for such a measure as this in Madras. This Bill appears to me to be an instance of hasty generalization which infers from the existence of particular evils in one part of the empire their existence in another, and thence proceeds to apply a remedy common to all parts—a measure which, though it may be remedial there, may be mischievous here.

3. For instance, the class of Mookhtars is practically unknown in this Presidency. The class is a pestilent one, and has here been as much as possible discouraged and discountenanced. The present Bill proposes to legalize and foster them. Nothing, in my opinion, could be more objectionable.

4. I am not aware of the existence of extortionate or corrupt bargains among the Pleadors. There may exist an instance here or there, but not in sufficient number to call for legislation. The tendency rather is for our Vakeels to underbid one another, from the competition which is gradually on the increase, as the ranks of the Native Bar become more numerous.

5. If this measure is to apply to Pleadors, I see no reason why Advocates or Barristers should not be included. The doctrine of the "*quiddam honorarium*" has come to be a mere sham, and the sooner a legal contract which can be enforced on either side is introduced, the better in my opinion.

6. In Madras, the High Court Pleadors practice on the Original Side of the Court. I believe it is different in the High Courts of Bengal and Bombay. But I see no just reason why this practice, as it obtains in Madras, should not be allowed to continue.

7. I am not certain whether the legal effect of the proviso of Section 49 will be to exclude them for the future; but I think this ought to be made perfectly clear. Even if it be the intention of the Legislature to exclude Pleadors in Madras from practising on the Original Side, the section ought not to have a retrospective effect so as to affect Vakeels or Pleadors at present practising on the Original Side of the High Court.

8. Considering it desirable that the parties to be affected by this Bill should have an opportunity of placing their views of it before the Legislature, I have asked some of the leading Native Pleadors of the High Court to favour me with their opinions upon it. These I do myself the honour to subjoin.

Remarks on the Pleadors' Bill, made by certain of the leading Native Pleadors of the Madras, High Court.

The Bill, while professing merely to consolidate and amend the law relating to Pleadors, does, in reality, sweep off almost the whole of the existing law and substitute in its place many novel objectionable provisions.

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2. The necessity for the new measure has, it is hinted, arisen from the prevalence of "extortionate bargains" between Pleaders and their clients, although the Honourable gentleman introducing the Bill does not condescend to allude to more than one single isolated instance of "the evil arising out of the existing law." What the facts of the case alluded to were is not known. But in this Presidency, at least, no such undue advantage has ever been taken by Pleaders of their position; for, if such an evil does exist, it must have attracted the attention of the authorities. On the contrary, owing to the hot competition that has of late sprung up, the Pleaders have been, as a rule, unable to secure even the fees which the law gives them, but have been obliged to be satisfied with considerably less remuneration. This being so, there appears to be no necessity whatever for the Bill in question.

3. Before noticing in detail the objections to the Bill, we may say that two of its features strike one at the very outset as being unjust and inexpedient, one of them in particular being pre-eminently so. The one is its retrospective character, and the other is the exclusion of Vakeels from the Original Side of the High Court.

4. It is unquestionably unjust that the Act should be intended to operate retrospectively by the existing class of practitioners being brought within its scope. These entered upon their profession, believing in the continuance of the state of things under which they commenced their career. That the Bill now before the Council would, if it becomes law, alter their condition to the worse, does not admit of any doubt. If, therefore, there is any necessity at all for the new measure, it is but fair that the existing class of practitioners should not be brought under its operation.

5. As regards the exclusion of Vakeels from the Original Side of the High Court, the matter does not admit of any two opinions. A more unfair or unjust piece of legislation it is impossible to conceive. The author of the Bill has vouchsafed no reason for this extraordinary provision. But there is undoubtedly nothing either in reason or justice in favour of such a measure. The only ground on which, if it were a fact, such exclusion can be justified, is the incompetency of Vakeels. But the Honourable Member himself does not put the measure on this ground. It may, therefore, be safely inferred that incompetency has nothing to do with the matter. But, supposing that the present class of Vakeels are incompetent to practice on the Original Side, is that a reason to insert in the Statute Book of the land a general provision for the exclusion of all Vakeels, both those now existing and those to come? Assuredly not, for it is always in the power of the Courts to secure competent men by fixing the standard of qualifications as high as may be deemed necessary.

6. Now, to go into the other provisions of the Bill.

The Bill, as far as it can be understood, seems to contemplate six classes of practitioners, viz., Pleaders, Mookhtars, Revenue Agents, Vakeels, Attorneys, and Advocates.

"Pleaders," according to Section 7, may appear, plead, and act in any Criminal Court or any Revenue Office.

"Mookhtars," by Section 7, are to appear and act in any Civil Court, and appear, plead, and act in any Criminal Court. Those that are enrolled under the Bengal Act XX. of 1865 as Revenue Agents may also practice before Revenue Offices. By Section 13 they may also practice on the Appellate Side of the High Court.

"Revenue Agents" are to practice before Revenue Offices, including the Board of Revenue.

"Vakeels, Attorneys, and Advocates."—"Vakeels" and "Advocates" enrolled in the High Court under the Letters Patent may practice in any Court subordinate to the High Court, as well as in the High Court in which they are enrolled, except that Vakeels cannot practice on the Original Side of the High Court.

"Attorneys" can practice in any Court other than the High Court.

From the above classification it will appear that there is no class of practitioners entitled to appear, act, and plead in the Civil Courts in the Mofussil, except the High Court Vakeels, Attorneys, and Advocates, for "Pleaders" can appear, plead, and act only in Criminal Court, and Revenue Offices; Mookhtars can only appear and act (and not plead) in Civil Courts; and Revenue Agents can only appear and practice before Revenue Offices. This being so, the words "or any Civil Court" seem to have been unintentionally omitted in the first part of Section 7, which treats of the powers of "Pleaders." That the omission is only unintentional may also be gathered from the fact

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that from Section 27 it is inferrible that "Pleaders" may appear, act, and plead in Civil Courts also, inasmuch as that section expressly provides that they may "practice before Sudder Ameen, Moonsiffs," &c. If the above is right, the words "or any Civil Court" ought to be inserted in the first part of Section 7.

The class of Mookhtars is altogether a new one, at least in this Presidency. Under the proposed Act they would occupy a position in reference to "Pleaders" and "Vakeels" similar to that which the "Attorneys" occupy in reference to Advocates. In the present state of the country there is no necessity whatever for the creation of this class. They will not at all be required in the Mofussil, and much less on the Appellate Side of the High Court, where, there being no examination of witnesses and preparation of pleadings, &c., the business is very simple, and can be efficiently done by the "Vakeels" and the "Advocates." If no "Attorneys" are required on the Appellate Side of the High Court in reference to "Advocates," one cannot see what necessity there is for "Mookhtars" in reference to "Vakeels."

CERTIFICATES.

Sections 26—31 provide for the issue, renewal, and cancelment of certificates. The certificates are to be issued on stamped paper and are to be in force for one year, at the end of which they are to be renewed if desired. The renewal is to be reported every year to the High Court or the Revenue Board, as the case may be.

The provision regarding the renewal of certificates at the end of each year is certainly objectionable. One cannot see the object of such a provision. The object can certainly not be that the renewing authority should have at the end of each year the power of refusing certificates to such of the practitioners as may have proved incompetent or unworthy, for the Bill nowhere makes incompetency a ground for refusal to renew; but, on the contrary, Section 29 lays down that the certificate shall be renewed if desired, and, as regards unworthiness or misbehaviour, &c., the Bill gives ample powers to the authorities to suspend or dismiss the practitioners at any time on that ground. The evil effects of such a provision are obvious. It will subject the practitioners to much inconvenience, not to say expense. It will also cast about the profession an air of uncertainty which is not desirable. The provision appears to be purposeless, unless it be that the Legislature wants to levy from legal practitioners a tax in the shape of stamps on certificates; if so, far better that the practitioners should be required once for all to take their certificates on stamps of even higher value than those specified in the schedule annexed to the Bill than that they should every year be called upon to renew their certificates. By the mode suggested, while the money is secured, an immense deal of annoyance to the practitioners, and trouble to the reporting authorities, will be saved.

REMUNERATION.

Sections 32—39 provide for the remuneration of Pleaders, &c.

By Section 32 the High Court is to fix and regulate the fees payable on its Appellate Side and in the subordinate Courts.

Section 33 professes to make a concession in favour of legal practitioners by not binding them down to the regulated fees alone, but providing that they may enter into special contracts with their clients regarding their remuneration, subject only to the condition of the contract being always reduced to writing and approved of by the Courts before any payments are received under it.

It is not very clear from these sections whether, or not, a practitioner may actually receive from his client fees other than the regulated ones, where the client is willing to make such payment, without previously reducing the contract to writing and getting the same approved of by the Court in which he may happen to be practising. Very likely the Bill means that no fees, other than the regulated fee, shall ever be received by any practitioner from his client, however willing the latter may be to make such payment, unless the contract is reduced to writing and approved of by the Court, for the object of the Bill is said to be to prevent all "extortionate bargains."

Now, assuming the above to be the meaning of the two sections under consideration, we may, in the first place, ask what is there unjust or unfair in a practitioner's receiving from his client what the latter is only willing to pay, or why the Courts should be called upon to judge of the

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fairness of the contract irrespective of the willingness of the payer, there being no pretext whatever for saying that clients do not know what is best for their own interests, or that, owing to want of competition, they cannot but pay what is demanded of them?

Secondly, will the concession which Section 33 professes to make be of any practical use to practitioners? We may say not; for to be of any use the agreement must be made with the party "retaining or employing," who will, therefore, have to be present. But, as is well known, in the vast majority of cases the actual party never goes to the practitioner. In such cases, therefore, there can be no agreement whatever, unless the party is induced to come down to the practitioner to execute an agreement, or he executes one at the place where he may be and sends the same to the practitioner. The former course is not always possible, and certainly not convenient. The latter course may not be satisfactory to the practitioner, for he cannot always be certain that the agreement is really executed by the party by whom it purports to have been executed. In both cases there will be much delay and loss of time. Further, there is the trouble incident to the execution of all written contracts, viz., the buying of the stamp, the engrossing of the documents, and getting the same executed and attested, which would certainly impede the despatch of business. There is, after all, the uncertainty whether, or not, the contract will be approved of by the Court. Add to this that what may appear reasonable and fair to one may not appear to be so to another; that some Judges may think that any contract between practitioner and client, which does not savour of actual imposition, fraud, or extortion, must be "fair," while others may think that the fees fixed by the rules are so liberal that a contract stipulating payment of even one Thoody (— 2 pias) more must be "unfair," we may feel pretty certain that few practitioners will deem it worth their while to avail themselves of the Section under consideration, and that practically the so-called concession which it professes to make will prove the merest sham imaginable.

Section 36, which professes to facilitate the recovery by practitioners of the fees due to them, is another sham, for, although it provides that the application to the Court shall be by *petition*, still it takes care to provide that the "petition" shall be stamped as if it were a "plaint." Then, again, where is the use of saying that the *order* of the Court on the agreement submitted to it shall be executable like a *decree*, when it is evident that, if the execution of the agreement be disputed, the Court can pass no summary order whatever thereupon, but will have to take evidence and follow exactly the same course that would have to be followed in a regular suit. The procedure has all the expense and delay of a suit, but only it is disguised under another name.

No. 6. From the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Acting Chief Secretary to Government, Fort St. George, dated Madras, 4th July 1871, No. 1145.

I am directed to acknowledge the receipt of Mr. Assistant-Secretary Mayne's letter to the Acting Chief Justice, dated 31st January 1871, transmitting a copy of the "Bill to consolidate and amend the Law relating to Pleaders, Mookhtars, and Revenue Agents," introduced into the Legislative Council of the Governor-General, and requesting an expression of opinion on the provisions of the proposed enactment.

2. In reply, I am instructed to forward transcripts of the Minutes recorded by the Chief Justice, Mr. Justice Holloway, Mr. Justice Innes, and Mr. Justice Kindersley. Mr. Justice Kernan has not recorded any Minute.

MINUTE BY MR. JUSTICE KINDERSLEY.

I think the Bill is a good one, but the distinction between Pleaders and Mookhtars is not generally understood here. I am inclined to think that the supervision over the arrangements made by the Mookhtars with their clients will prove very troublesome both to the Courts and to the

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Mookhtars, and I do not understand how the District Courts are to supervise and check the arrangements made by the Mookhtars in the District Moonsiffs' Courts, some of which are far distant from the District Court.

MINUTE BY MR. JUSTICE INNES.

I approve generally of the Bill. I think the principle wrong of requiring persons otherwise qualified to pay for a certificate of qualification. I approve of the provisions as to tables of fees for costs and the taxation and invalidation of unfair agreements between Pleaders and their clients. I think they will introduce a very beneficial change, though it is not improbable that the supervision which these provisions will necessitate will prove troublesome. In the 3rd Clause of Section 11 and in the 2nd Clause of Section 21 the word "or" between "charge" and "by" should, I conceive, be "and." I think the dispensing with Vakalatnamahs and similar documents (Section 50) in the case of Advocates is a very proper provision. The effect of the 2nd Clause of Section 49 would seem to be to disable a Vakeel from practising in a High Court in which he is enrolled. Section 52 certainly says that nothing in this Act applies to Advocates, Vakeels, and Attorneys-at-Law admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, &c.; but this is accompanied by an exception, viz., except as provided in certain sections, of which Section 49 is one, so that Section 49 applies in its integrity. But I presume that the power of the High Court under the Letters Patent to make rules authorizing Vakeels so to practice is independent of Indian legislation.

MINUTE BY MR. JUSTICE HOLLOWAY.

I am of opinion that this Bill is open to the serious objection of seeking to limit the privileges at present possessed by the people, under proper regulations, of practising as Vakeels in one of the Courts of their own country. They owe this privilege to the enlightened views of the Chief Justice and my late colleague, Sir A. Bittleston, with whom I cordially concurred. I dare say that they will be able to bear the obloquy which their views of common justice have brought upon them with as much composure as I am able to bear my share of it.

I see the usual fudge of the honorarium pervading this Bill. On what principle are the people of this country to be forced to the intervention of a middleman in one Court in the country? The system has broken the heart of many a competent man in England who sees the business which he is fit to perform trickling to the incompetent dolt who has married an attorney's daughter or niece. "*Dat veniam corvis, vexat censura columbas.*" If there is to be a scrutiny of bargains, is it quite certain that Vakeels, Attorneys, and Mookhtars are the only people who make them? Unless rumour strangely errs, this is not so. Why should legal business be put upon a different footing to other business? Why especially in the case of a class numerous enough to bring down the remuneration to its market value?

I have not seen the virtuous indignation which I doubt not was poured out at Allahabad. If it is as true in fact and history as the judgment in *Kennedy v. Brown* (XIII, C. B. N. S.), I should not be much instructed. Why should a particular class of persons, whose fitness has been in no way proved for the monopoly at which they strive, be put upon another or better footing than men who have given some such proof? Why should the advocate who exhibits gross idleness or gross ignorance of his profession (a not impossible case), be less liable to an action than the other class? I object to all shams. If this class of people wants special regulation, I am satisfied that others do. My own opinion is that the evil arises less from the bargains of Vakeels than from those of the army of touts, broadcast in the country, stirring up father against son and brother against brother, fanning every trifling difference into a law suit, and receiving from their employers the percentage which is the wages of their infamy. Put a section into this Bill that every practitioner who employs a gentleman called a law-broker shall be at once inhibited from practice, and I shall have some belief in the efficacy of the remedy. There is a perfect army of these infamous creatures round the Court. When I see him with his gold chain and other appendages, and on the same day sentence some unfortunate wretch for stealing a few shillings, I feel forcibly that law is a mesh

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which holds small flies only. With respect to the Vakeels of this Court, I am bound to say that I believe them to require a measure of this sort as little as any practitioners in existence. With respect to the Mofussil, there are good and bad, but their conduct is dependent upon the particular Judge before whom they practice. Does any sane man think that the dishonest practitioner will proceed by way of a written contract submitted to an Officer of the Court to carry out his dishonesty? I believe the Bill to be utterly useless wherein it is not mischievous. The simple settlement of a scale of fees and an absolute prohibition to take more is the only way of meeting the object of the Bill. I suggest nothing of the kind. The evil is not struck at; what is struck at is imaginary. Legislate in one short section against touts, and you will do something to preserve property and peace.

MINUTE BY THE CHIEF JUSTICE.

I approve of the provisions in Part II. of the Bill, and am not prepared to say anything as to the provisions in Part III.

PART IV.—The stamped certificate provided for is a condition of the right to practice never before imposed in this country, and, however unobjectionable in principle the condition may be, it seems to me open to objection on the ground of unfairness in its application. It is not likely to have any material good effect as respects the conduct of practitioners, and, while enrolled Attorneys-at-Law are not subject to such a professional tax, I question the propriety of imposing it on enrolled Pleaders. This remark is not meant to refer to Mookhtars, a class of professional Agents which has never been recognized in this Presidency.

PART V.—I am not in favour of the proviso in Section 33. It proceeds on the principle that practitioners are presumptively not trustworthy. This I consider objectionable, and I suggest that the initiative in objecting should be left to the client, and that he should be given the option of applying to have the fees and charges taxed in the same manner as if no agreement had been made, on the ground of unfairness in the agreement within a fixed period of time.

As to the provision in Section 38, I think it would be better to provide for the ascertainment of the remuneration to be paid, in the same manner as if no agreement had been made, when the agreement is for one entire amount of remuneration. And for the allowance of the amount earned and the ascertainment by an Officer of the Court of the proper remuneration for the further services performed, when the agreement is for the payment of the stipulated remuneration by instalments.

I think the proviso in Section 32 highly desirable. The present *ad valorem* scale for the allowance of Pleaders' fees is very unsatisfactory. In suits for property of small value the fee allowed is absurdly disproportionate to the amount of remuneration which is fair and actually paid, and in some suits of large value and in many special appeals the allowance is excessive.

PART VII, SECTION 49.—I do not think this section capable of the construction suggested by my colleague, Mr. Justice Ives. It is not, I apprehend, within the competency of the Legislature to take away any right to practice conferred under the provisions of the Letters Patent constituting the High Courts. But, assuming the competency, I read the proviso as importing merely that permission to practice granted under the section shall not of itself give the right to practice before a Court exercising original jurisdiction. Had I thought otherwise I would have earnestly deprecated the passing of the section. I see no just reason why the right to conduct original suits in the High Court should be absolutely denied to educated natives who possess the requisite special qualification for the grade of "Vakeel" of the High Court, and native suitors thus forced to employ the double professional agency of Advocate and Attorney. There are peculiar advantages in the administration of justice afforded by that mode of representation; but it is both foreign to the country and opposed to the disposition and habits of the people, and has never been imposed on suitors in the Mofussil. It seems to me neither just nor expedient that it should be made obligatory on the portion of the native population within the local limits of the High Court's original jurisdiction. Here these limits include a considerable rural population, and a large proportion of the native suitors and of their original suits are of a class and description similar to the majority of the suitors and suits in the Mofussil.

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No. 7. Proceedings of the Board of Revenue, dated 5th July 1871, No. 2720.

Read again Board's Proceedings, dated 2nd February 1871, No. 506.

Read also the following replies of Collectors to Board's Proceedings, dated 2nd February 1871, No. 506.

From Acting Collector of Ganjam,		dated 24th March 1871, No. 307.	
" Offg. "	of Vizagapatam,	" 3rd "	" 185.
" " "	of Godavery,	" 27th February "	" 67.
" Offg. "	of Kistna,	" 14th March "	" 830.
" " "	of Nellore,	" 27th "	" 567.
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" Acting "	of Chingleput,	" 7th March "	" 75.
" " "	of "	" 31st "	" 135.
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" " "	of South Arcot,	" 15th "	" 70.
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" " "	of Madura,	" 28th "	" 59.
" " "	of Tinnevely,	" 30th March "	" 123.
" " "	of Coimbatore,	" 3rd "	" 70.
" " "	of Salem,	" 1st April "	" 870.
" Acting "	of South Canara,	" 4th March "	" 300.
" " "	of Malabar,	" 28th "	" 89.
" Commissioner of the Nilgherries,		" 2nd "	" 22.

This file of reports on the Pleaders' Bill will be submitted to Government with reference to Government Order, 31st January 1871, No. 14.

The first question for consideration is the preliminary one whether any special law is necessary for Revenue Agents in this Presidency. The Board are of opinion that it is. Revenue Agents are already numerous, and it is very desirable to elevate their calling into a profession and guard it from abuses. Care must, however, be taken that additional burdens are not thrown upon the ryots, who are compelled by the ryotwary system to frequent the Revenue Courts, and who have hitherto been allowed to send their friends, or servants, or relatives as their representatives.

SECTION 3.—It is not clear why Act X. of 1859 is specially mentioned. There are other Acts under which Collectors hold Courts in this Presidency.

The word Mukhtar should be defined. It is not used in Madras.

SECTION 7.—According to this Section any Pleader may appear in any Revenue Court. In the third Schedule Pleaders are divided into four classes. The lowest should not be allowed to act as Revenue Agent in any Court above that of a Tahsildar, and none but the highest should be authorized to appear before the Board of Revenue.

SECTION 14.—The same powers should be given to the Chief Revenue authority as are given to the High Court by Section 4.

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which holds small flies only. With respect to the Vakeels of this Court, I am bound to say that I believe them to require a measure of this sort as little as any practitioners in existence. With respect to the Mofussil, there are good and bad, but their conduct is dependent upon the particular Judge before whom they practice. Does any sane man think that the dishonest practitioner will proceed by way of a written contract submitted to an Officer of the Court to carry out his dishonesty? I believe the Bill to be utterly useless wherein it is not mischievous. The simple settlement of a scale of fees and an absolute prohibition to take more is the only way of meeting the object of the Bill. I suggest nothing of the kind. The evil is not struck at; what is struck at is imaginary. Legislate in one short section against touts, and you will do something to preserve property and peace.

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" " "	of Salem,	" 1st April "	" 870.
" Acting "	of South Canara,	" 4th March "	" 300.
" " "	of Malabar,	" 28th "	" 89.
" Commissioner of the Nilgherries,	"	" 2nd "	" 22.

This file of reports on the Pleaders' Bill will be submitted to Government with reference to Government Order, 31st January 1871, No. 14.

The first question for consideration is the preliminary one whether any special law is necessary for Revenue Agents in this Presidency. The Board are of opinion that it is. Revenue Agents are already numerous, and it is very desirable to elevate their calling into a profession and guard it from abuses. Care must, however, be taken that additional burdens are not thrown upon the ryots, who are compelled by the ryotwary system to frequent the Revenue Courts, and who have hitherto been allowed to send their friends, or servants, or relatives as their representatives.

SECTION 3.—It is not clear why Act X. of 1859 is specially mentioned. There are other Acts under which Collectors hold Courts in this Presidency.

The word Mukhtar should be defined. It is not used in Madras.

SECTION 7.—According to this Section any Pleader may appear in any Revenue Court. In the third Schedule Pleaders are divided into four classes. The lowest should not be allowed to act as Revenue Agent in any Court above that of a Tahsildar, and none but the highest should be authorized to appear before the Board of Revenue.

SECTION 14.—The same powers should be given to the Chief Revenue authority as are given to the High Court by Section 4.

*Proceedings of the Madras Government, Legislative Department,
18th December 1871.*

SECTION 17.—The word "may" should be substituted for "shall," so as to give a Collector power to refuse to admit a Revenue Agent if he sees good reason to do so.

SECTION 24.—This Section is sufficient to meet the only cases in which the proposed law might otherwise work harshly in this Presidency. Government will be able under it to authorize all Revenue Courts to accept special powers of attorney, and to instruct them not to do so except when the power of attorney is held by a friend, a servant, or a relative of the party granting it.

SECTION 29.—Some of the Collectors urge that the annual renewal of the certificate is unnecessary; others, that power to refuse the renewal should be given to Revenue Officers. The Board do not concur. Both these provisions are necessary if the work of a Revenue Agent is to be a profession and furnish a livelihood.

(A true Extract.)

(Signed) J. GROSE,
Acting Secretary.

No. 8. To the Officiating Secretary to the Council of the Governor-General for Making Laws and Regulations, dated Fort St. George, 18th December 1871, No. 175.

With reference to Mr. Secretary Whitley Stokes' letter of the 9th January last, No. 42, I am directed to forward the papers noted in the margin, on the subject of the "Bill to consolidate and amend the law relating to Pleaders, Mukhtars, and Revenue Agents," together with a precis of the opinions recorded in these papers; and to submit the following observations on the Bill.

*Letter from the Advocate-General,
19th February 1871.
Letter from Acting Registrar of the
High Court, 4th July 1871.
Proceedings of the Board of Revenue,
5th July 1871, No. 2720.*

2. The Madras Government are decidedly of opinion that the provisions of the Bill relating to Revenue Agents are altogether unsuited to the circumstances of this Presidency, where, from the earliest Regulation (XII. of 1816) constituting a Collector's Court down to the last Act (Madras Act VIII. of 1865, Section 52) on the subject, suitors may appear by a relative, servant, or other authorized agent; and that it is, therefore, objectionable as calculated to impede that free intercourse between ryots and Revenue Officers which it has hitherto been the constant endeavour of the Government to facilitate and encourage. The reports of the Officers consulted also show that the balance of opinion is strongly against several of the provisions of the Bill.

3. Under these circumstances, the Government earnestly deprecate the extension of the proposed Act to this Presidency.

(Signed) R. S. ELLIS,
Chief Secretary.

*Proceedings of the Madras Government, Legislative Department,
18th December 1871.*

Precis of letters from the Advocate-General of Madras and from the Acting Registrar of the Madras High Court, and of the Proceedings of the Board of Revenue, dated respectively the 19th February 1871, 4th July 1871 No. 1145, and 5th July 1871 No. 2720.

These papers contain, respectively, the opinions of the Advocate-General, the Chief Justice and Judges of the High Court, and the Board of Revenue on the Bill "To consolidate and amend the Law relating to Pleaders, Mukhtars, and Revenue Agents." The Advocate-General has appended to his letter the remarks of certain of the leading Native Pleaders of the High Court on the Bill, and the Board of Revenue have submitted with their Proceedings a file of reports received on the subject from the several Collectors of districts.

2. The Advocate-General, Mr. Justice Holloway, and some* of the Collectors of districts who have submitted observations on the Bill strongly deprecate the enactment of this measure. The Native Pleaders above referred to are also opposed to the Bill.

* Mr. Cadell.
" VansAgnew.
" Boswell.
" Gardin.

3. Mr. Norton is of opinion that there exists no necessity for such a measure as this in Madras, and that it is very unsuited to this Presidency. He states that the Bill appears to him to be "an instance of hasty generalization which infers from the existence of particular evils in one part of the empire their existence in another, and thence proceeds to apply a remedy common to all parts—a measure which, though it may be remedial there, may be mischievous here."

4. Mr. Justice Holloway condemns the Bill in toto. His opinion is that the evil in regard to "extortionate bargains" between Pleaders and their clients, which it is one of the main objects of the Bill to remedy, "arises less from the bargains of Vakeels than from those of the army of touts, broadcast in the country, stirring up father against son and brother against brother, fanning every trifling difference into a law-suit, and receiving from their employers the percentage which is the wages of their infamy." He believes "the Bill to be utterly useless wherein it is not mischievous."

5. The Collectors who object to the Bill concur in opinion that that part of the measure which refers to the Revenue Courts is altogether unadapted to the circumstances of this Presidency. Mr. VansAgnew remarks "that the provisions of Section 24, which are the mildest in the whole Bill, are in their severity calculated to be productive of great hardship if imposed upon the revenue system of this Presidency, and the millions of poor ignorant ryots thereto subject."

6. The Native Pleaders of the High Court remark that "two of the features of the Bill strike one at the very outset as being unjust and inexpedient, one of them in particular being pre-eminently so." The one is its retrospective character in reference to the existing class of practitioners, and the other is the exclusion of Vakeels from practising on the Original Side of the High Court.

7. The Chief Justice, Mr. Justice Innes, and Mr. Justice Kindersley approve generally of the Bill.

8. The Board of Revenue, observing that the first question for consideration is the preliminary one whether any special law is necessary for Revenue Agents in this Presidency, are of opinion that it is. "Revenue Agents," they state, "are

already numerous, and it is very desirable to elevate their calling into a profession and guard it from abuses." They add, however, that "care must be taken that additional burdens are not thrown upon the ryots who are compelled by the Ryot-warry system to frequent the Revenue Courts, and who have hitherto been allowed to send their friends, or servants, or relatives as their representatives."

9. The majority (eleven) of the Collectors have not offered any remarks on the Bill.

10. Subjoined is a summary of the observations made by the Advocate-General, the Chief Justice and Judges of the High Court, the Board of Revenue, the Collectors, and the Native Pleaders of the High Court, in reference to particular parts or sections of the Bill:—

PART I., Section 3.—The Board of Revenue remark that it is not clear why Act X. of 1859 is specially mentioned in this section. There are other Acts under which Collectors hold Courts in this Presidency, viz., Madras Regulations VI. of 1831 and IX. of 1822, Madras Act VIII. of 1865.

PART II.—The Chief Justice approves of the provisions of this part of the Bill. — The Advocate-General, the Chief Justice, Mr. Justice Kindersley, and the Native Pleaders of the High Court state that the class of Mukhtars is unknown in this Presidency. Mr. Norton adds that "the class is a pestilent one, and has here been as much as possible discouraged and discountenanced. The present Bill proposes to legalize and foster them." "Nothing," in his opinion, "could be more objectionable."

— The Pleaders of the High Court remark that in the present state of the country there is no necessity whatever for the creation of this class. "They will not at all be required in the Mofussil, and much less on the Appellate Side of the High Court, where, there being no examination of witnesses and preparation of pleadings, &c., the business is very simple, and can be done efficiently by the Vakeels and the Advocates. If no Attorneys are required on the Appellate Side of the High Court in reference to Advocates, there is no necessity for Mukhtars in reference to Vakeels."

— Mr. Justice Kindersley is inclined to think that the provision regarding the supervision over the arrangements made by the Mukhtars with their clients will prove very troublesome both to the Courts and to the Mukhtars, and he does not understand how the District Courts are to supervise and check the arrangements made by the Mukhtars in the District Moonsiffs' Courts, some of which, he remarks, are far distant from the District Court.

Section 7.—The Native Pleaders point out what appears to them to be an unintentional omission in the first clause of this section. The words "Civil Court or" should be inserted before "Criminal Court," otherwise Pleaders would be excluded from practising in a Civil Court.

— The Board of Revenue suggest, with reference to the four classes into which Pleaders are divided in the third schedule annexed to the Bill, that the lowest should not be allowed to act as Revenue Agents in any Revenue Court above that of Tahsildar, and that none but the highest should be authorized to appear before the Board of Revenue.

Section 11.—Mr. Sharp (Acting Sub-Collector, South Arcot) thinks the period of ten days allowed to Pleaders before charges against them of fraud or improper conduct are inquired into is unnecessary and liable to lead to frequent failures of justice. Prompt inquiries are, in his opinion, most necessary in such charges as are now ordinarily brought against the members of the class.

— Mr. Justice Innes remarks that in the third clause of this Section and in the second clause of Section 21 the word "or" between "charge" and "by" should be "and."

PART III., Section 14.—The Board of Revenue consider that the same powers should be given to the Chief Revenue authority as are given to the High Court by Section 4, viz., the power to make rules for the suspension and dismissal of Pleaders, &c.

— Messrs. Garstin, Webster, and Sharp (Collectors of South Arcot and South Canara, and Acting Sub-Collector of Cuddalore, respectively,) suggest that the term "Chief Revenue authority" should be defined.

Section 15.—Mr. Sharp proposes that the word "act" or "appear" may be substituted for "practice" in this section and in Sections 40, 41, and in similar connexions, as otherwise a person appearing for the first time or at infrequent intervals before a Court as an Agent or Pleader might satisfactorily allege that he did not practice before that Court.

Section 17.—The Board propose that the word "may" should be substituted for "shall," so as to give a Collector power to refuse to admit a Revenue Agent if he sees good reason to do so.

Section 18.—Mr. Webster states that as the number of persons practising before Collectors, Assistant Collectors, Deputy Collectors, Tahsildars, and Deputy Tahsildars is considerable, the course laid down for the appointment and dismissal of Revenue Agents will necessitate frequent reference to the Board, and will in practice occasion much inconvenience. He proposes, therefore, that the Collector should exercise the power of appointing and dismissing Revenue Agents, subject to rules to be prescribed by the Board.

Section 19.—Mr. Master (Collector of Cuddapah) thinks it would be advisable for the protection of the lower Revenue Courts that some definition should be given of what "unprofessional conduct" is.

Section 21.—Mr. Master inquires—with reference to this section, which provides that the officer conducting the inquiry shall receive all evidence properly tendered by, or on behalf of, the person bringing the charge—whether, if an officer at the head of an office where the delinquent, ordinarily practises is himself the complainant on account of, say, some misconduct committed in his presence, he is to bring the charge before his superior officer, or hold the inquiry himself.

— Mr. Garstin observes that, supposing a Pleader or Revenue Agent is tried and reported by a Revenue Officer, but is acquitted by the Chief Revenue authority or the High Court, and he brings a suit against the officer reporting him for damages, the Bill does not protect the latter. He would, therefore, insert an indemnity clause.

Section 22.—Mr. Brooks (Commissioner of the Neilgherries) points out two misprints in this section. The last word should be section "twenty" and not section "nineteen."

Section 24.—The Board of Revenue are of opinion that this section is sufficient to meet the only cases in which the proposed law might otherwise work harshly in this Presidency. Government, they remark, will be able under it to authorize all Revenue Courts to accept special Powers of Attorney and to instruct them not to do so except when the Power of Attorney is held by a friend, a servant, or a relative of the party granting it.

PART IV.—The Chief Justice questions the propriety of imposing the stamp duty on certificates provided by the third schedule. This provision seems to him to be open to objection on the ground of unfairness in its application, and is not, in his opinion, likely to have any material good effect as respects the conduct of the practitioners.

—The Native Pleaders of the High Court remark that this provision appears to be purposeless, unless it be that the Legislature wants to levy from legal practitioners a tax. If so, it is, in their opinion, far better that the practitioners should be required once for all to take their certificates on stamps of higher values than those fixed by the Bill than that they should every year be called upon to renew their certificates.

—In the second clause, Section "nine" should be Section "twenty-nine."

Section 29.—Some of the Collectors urge that the annual renewal of the certificate is unnecessary; others, that power to refuse the renewal should be given to Revenue Officers. The Board of Revenue do not concur. In the opinion of the Board, both these provisions are necessary if the work of a Revenue Agent is to be a profession and furnish a livelihood.

PART V., Section 32.—The Chief Justice thinks the provision in this section highly desirable. "The present *ad valorem* scale for the allowance of Pleaders' fees is very unsatisfactory. In suits for property of small value the fee allowed is absurdly disproportionate to the amount of remuneration which is fair and actually paid, and in some suits of large value and in many special appeals the allowance is excessive."

—The Advocate-General remarks that if this measure is to apply to Pleaders he sees no reason why Advocates or Barristers should not be included, and Mr. Justice Holloway is of the same opinion.

The Native Pleaders of the High Court state that the concession which this section professes to make in favour of practitioners, by not binding them down to the prescribed fees alone but providing that they may enter into special contracts with their clients subject to the approval of the Court, will practically prove to be the merest sham imaginable, in consequence of the uncertainty as to whether or not the contract will be approved. They observe that what may appear to be reasonable to one Judge may not appear to be so to another.

—Mr. Garstin makes the following remarks on this section, "This section does not prevent Revenue Agents from taking ready money from clients previous to taking up their cases. The written agreement is only optional, and one object of the Bill, viz., to prevent inordinate demands, is defeated. Pleaders and Agents will never take up a case until after their fees are paid in advance, nor will they execute agreements. The execution of these agreements should be compulsory."

—The Chief Justice objects to the provision in this section, on the ground of its proceeding on the principle that the practitioners are presumptively not

trustworthy. He suggests that the initiative in objecting should be left to the client, and that the latter should be given the option, within a fixed period of time, of applying to have the fees and charges taxed in the same manner as if no agreement had been made, on the ground of unfairness in the agreement.

—Mr. Webster remarks that it is not clear whether the powers conferred by this part of the Bill on District Courts, as to adjudication of fees, are to be exercised by Revenue Courts or Officers, in whom, he states, it is equally desirable to vest them. Mr. Breeks also makes a similar observation.

Section 38.—The Chief Justice thinks that, as to the provision in this section, it would be better to provide for the ascertainment of the remuneration to be paid, when the agreement is for one entire amount of remuneration; and for the allowance of the amount earned and the ascertainment by an Officer of the Court of the proper remuneration for the further services performed, when the agreement is for the payment of the stipulated remuneration by instalments.

Section 39.—The reference made in the second clause of this section to Section "thirty-nine" should be Section "thirty-eight."

Section 49.—The Advocate-General and Mr. Justice Innes are not certain whether the legal effect of the proviso in this section will be to exclude the Vakeels of the Madras High Court from practising on the Original Side of the Court, as they are now authorized to do by the Rules made by the Court under the power conferred on the Court by the Letters Patent. The Chief Justice, however, is of opinion that it is not within the competency of the Legislature to take away any right to practice conferred under the provisions of the Letters Patent. Sir Colley Scotland sees no reason why the right to practice on the Original Side of the High Court should be denied to Vakeels, and native suitors thus forced to employ the double professional agency of Advocate and Attorney. Mr. Justice Holloway is also of the same opinion.

3rd Schedule.—Mr. C. G. Master suggests that this schedule be revised by substituting in Clause (b.) for "Commissioner" the words "Collector or Officer exercising the powers of a Collector" and in Clause (c.) for "Collector," the word "Tahsildar."

No.

From *Bouch.*

Dated *5th July 171* 187 *no 2720-*

FOR ORDERS.

Pleaders, Mucktais & Revenue Agents' Bill

It is obvious that the Bill would not approve his Bill except that they hope it will practically be escaped by the Regts. From the earliest Regⁿ, (XII of 1816) constituted a Collector's Court down to the last (act VIII of '65 Sect 53 - being the Madras Rent Recovery Act) - suit may appear by a relative, servant, or other authorized agent.

The Bill says that his privilege may still hold good, if he got avail themselves of Sect 24 of his Bill & pass a general Order to that effect.

But I submit that nothing of the kind can be done, twist & turn be proviso referred to, as they may -

I have the opinion of those officers who say the Bill is inapplicable to Madras - & the Bill will say so too, if they had not made some of taking the sting out of it, perambulations.

I am disposed to agree in this above. In this must see the papers upon they are disposed of.

Thank'd. N.

A. A. Jol.

£2-11/4/71

July 1871

LEGISLATIVE.

26

THE CHIEF CLERK

TO THE CHIEF CLERK

OF THE LEGISLATIVE

ASSEMBLY

AT THE CHIEF CLERK

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OF THE LEGISLATIVE

ASSEMBLY

Wm. L. H. H. H. H.
I have noted to you letter
of the 12th inst. 1842
I am directed to forward
with the papers noted
in the margin on the
subject of the Bill to
consolidate & amend the
law relating to Pleaders
Writs & Revenue
Agents, ~~and to~~
-ther with a piece of
the opinions expressed
therein, and to

Memorandum
FOR ORDERS.

Advocate, Solicitor &
Revenue Agents Bill.

C. J.

Shewn in the
Legislative Dept.

10/ Legislative Dept
B

Memorandum for orders

Letter from the Advo-
-cate General of Madras

Date 19th July 1871

Letter from the
Registrar of the High Court
Proceedings of the
Board of Revenue

Date 4th July 1871 No 1145

Date 5th July 1871 No 2720

I am disposed to agree in the
opinion expressed by the
Collector at the end of his
Memo. and I consider the
balance of opinion so strongly
against several of the provisions of
the Bill that I think we shall
simply deprecate
its enactment.
in decided terms & this
Precedence. Modifications
which might be made would
not detract from the Bill
its factory & all would
certainly be produced.
I enclose J. G. B.

The foregoing papers
contain, respectively, the
opinions of the Advocate
General, the Chief Justice
and Judges of the High
Court & the Board of
Revenue on the Bill to
consolidate & amend the
law relating to Pleaders
Mukhtars & Revenue
Agents. The Advocate
General has appended
to his letter, the remarks
of certain of the leading
Native Pleaders of the
High Court on the Bill;
and the Board of Revenue
have submitted with
their Proceedings a file
of

of reports received on the subject from the several Collectors of Districts.

2. It will be seen that this Bill, while professing to consolidate and amend the law relating to Pleaders, does in reality sweep off all the enactments on the subject in force in this Presidency (viz. Madras Regulation XIV of 1816 and Acts I of 1846 and XX of 1853), and, in lieu thereof, consolidates and extends to the whole of British India the provisions of Act XX of 1865 ^{of the Amending Act} and XXX of 1865.

3. In 1865, when the Bill which became Act XX of 1865 was under the consideration of the Governor-General's Council, this Govt. having requested the

+ See Prot of Govt. Inst.
Sept. 12 April 1865
N^o 575

opinion of the High Court on that Bill, it was stated, in reply, that two of the three Judges best acquainted with Mussul practice were of opinion that, whenever necessary there might have been for legislation on this subject in Bengal, its extension to this Presidency was neither necessary nor desirable. It was unnecessary, ~~the Judge remarked,~~ because the High Court already possessed the power of prescribing rules for the admission of Pleaders in the Lower Courts, and the duties and liabilities of persons admitted to practice were already sufficiently defined; and it was inexpedient, because it was not advisable to fetter the discretion allowed to the High Court.

Court under existing regulations, because the rules for the examination of Candidates for the legal profession had been found already to operate beneficially, and because any measure which might tend to increase the prevalent disability in their permanency was much to be deprecated.

4. The Advocate General, Mr Justice Holloway, and some of the Collectors of Districts who have submitted observations on the Bill, strongly deprecate the enactment of this measure. The native Pleaders also referred to are also opposed to the Bill.

5. Mr. Parker is of opinion

Mr. Cadell
Mr. Vansittart
Mr. Roswell
Mr. Gurney.

12/3
opinion that there exists no necessity for such a measure as this in India, and that it is very unsuited to this Presidency. He states that the Bill appears to him to be "an instance of hasty generalization which infers from the existence of particular evils in one part of the Empire, their existence in another, and thence proceeds to apply a remedy common to all parts - a measure which, though it may be remedial there, may be mischievous here."

6. Mr Justice Holloway condemns the Bill in toto. His opinion is that the evil in regard to "extortions" between Pleaders and their clients, which it is one of the main objects of the Bill to remedy,

remedy, "arises less from
the bargains of Sakeels
than from those of the
Army of Turks, broad-
-cast in the country,
stirring up father against
son and brother against
brother, fanning every
trifling difference into
a law-suit, & receiving
from their employers
the percentage which is
the wages of their infa-
-my! He believes "the
Bill to be utterly useless
wherein it is not mis-
-chievous."

¶ The Collectors who
object to the Bill, concur
in opinion, ^{that} that part of
the measure which refers
to the Revenue Courts
is altogether unadapted
to the circumstances
of this Presidency.
Mr. Vansagren remarks
that the provisions of

13/ Section 24, which are
the mildest in the whole
Bill, are in their severity
calculated to be produ-
-tive of great hardships
if imposed upon the
Revenue system of
this Presidency, & the
millions of poor ignorant
ryots thereto subject.
§ 5. The Petitioner Pleaders
of the High Court remark
that "two of the features
of the Bill strike vivid
the very outset as being
unjust & inexpedient,
one of them in particular
being preeminently so."
The one is its retrospective
character, in reference
to the existing class of
practitioners; and the
other is the exclusion
of Sakeels from prac-
-tising on the original
side of the High
Court. The

9. The Chief Justice,
Mr Justice James,
& Mr Justice Linders
-by approve generally
of the Bill.

10. The Board of Revenue, observing that
the first question
for consideration is the
preliminary one whether
any special law is necessary for Revenue
Agents in this Presidency,
are of opinion that it
is. "Revenue Agents,"
they state, "are already
numerous, and it is very
desirable to elevate their
calling into a profession
and guard it from
abuses." They add, however,
that care must
be taken that additional
burdens are not thrown
upon the agents who are
compelled by the Post-
-office system to frequent the Revenue
Courts

11. Courts and who have
hitherto been allowed
to their friends or servants
or relatives as their representatives."

12. The majority (seven)
of the Collectors have
not offered any remarks
on the Bill.

13. Subjoined is a summary
of many of the observations
made by the Advocate
General, the Chief Justice
& Judges of the High
Court, the Board of
Revenue, the Collectors
& the Native Pleaders
of the High Court, in
reference to particular
Parts or Sections of
the Bill.

Part I. - Section 1. The
Board of Revenue remark
that it is not clear
why Act 8 of 1859 is
specially mentioned in
this section. There are
other Acts under which
Collectors hold Courts

in the Presidency, viz-
Madras Regulation VI
of 1831 & IX of 1822,
Madras Act VII of 1865.

Part II. The Chief Justice
approves of the provisions
of this Part of the Bill.

The Advocate
General, ^{the Chief Justice,} Mr. Justice
Hindersley & the Native
Leaders of the High
Court state that the
class of Mukhtars
is unknown in the Pre-
sidency. Mr. Justice
adds that the class
is a peevish one and
has here been as much
as possible discouraged
& discontinued. The
present Bill proposes
to legalize & foster them.
Nothing in this opinion
could be more objec-
tionable.

The Pleaders of
the High Court ^{think}
that in the present
state

15/ state of the Country there
is no necessity whatever
for the creation of this
class. They will not at
all be required in the
Mussil, & much less
on the Appellate side
of the High Court, where,
there being no examination
of witnesses & preparation
of pleadings ~~vs.~~ the busi-
ness is very simple, &
can be done efficiently
by the Vakils & other
Advocates. If no attor-
neys are required on
the Appellate side of
the High Court in
reference to Advocates
there is no necessity
for Mukhtars in refer-
ence to Vakils.

Mr. Justice
Hindersley is inclined
to think ^{the proposition regarding} that the super-
vision over the arrange-
ments made by the
Mukhtars with their
clients will prove very
troublesome.

troublesome both to the
Courts & to the Mukhtars,
and he does not under-
stand how the District
Courts are to supervise
and check the arrange-
ments made by the
Mukhtars in the District
Mousiff's Courts,
some of which ^{he remarks,} are far
distant from the Dis-
trict Court.

Section 7. The native
Pleaders point out
what appears to them
to be an unintentional
omission in the first
clause of this section.

He adds "Civil Court."
or "should be inserted
before "Criminal Court,"
otherwise Pleaders will
be excluded from pre-
siding in a Civil Court.

The Board of
Revenue suggest, with
reference to the four
classes into which
Pleaders are divided
in

16
in the third schedule an-
nexed to the Bill, that
the lowest should not
be allowed to act as
Revenue agent in any
Revenue Court above
that of Sasildar, and that
now but the highest
should be authorized
to appear before the B.
of Revenue.

Section 11. Mr. Sharp
(the Sub Collector, South
Prods.) thinks the period
of 10 days allowed to
Pleaders before charges
against them of fraud
or improper conduct are
inquired into, is unnecessary,
and liable to lead to
frequent failures of
justice. Prompt in-
quiries are, in his opinion,
most necessary in such
charges as are now ordinarily
brought against the
members of the class.

Mr. Justice has
remarks

remarks that in the
third clause of this sec-
tion & in the 2^d clause
of section 21 the word
"or," between "charge"
and "by," should be "and."

Part III Section 11. The
Board of Revenue consi-
der that the same
powers should be given
to the Chief Revenue
Authority as are given
to the High Court by
section 4, viz the power
to make rules for the
suspension and dis-
missal of pleaders &c.

Section 12. Mr. Gareski,
Webster & Sharp sug-
gest that the term
"Chief Revenue Autho-
rity" should be defined.

Section 15. Mr. Sharp
proposes that the word
"act" or appear ^{may} be
substituted for "practice"

*Section 11 of Part III
should be amended by
deleting the word "or" between
"charge" and "by" and inserting
"and" instead.*

in this section & in section
10, 11, & in similar
connections, as otherwise
a person appearing for
the first time or at
infrequent intervals before
a Court as an agent or
pleader might satisfactorily
allege that he
did not practice before
that Court.

Section 17. The Board pro-
pose that the word "may"
should be substituted
for "shall," so as to
give a Collector power
to refuse to admit a
Revenue Agent if he
saw good reason to do
so.

Section 18. Mr. Webster
states that as the number
of persons practicing
before Collectors,
Assistant Collectors,
Deputy Collectors, Bail-
iffs & Deputy Bailiffs
is considerable, the
Correspondence

Course laid down for the
Appointment & dis-
missal of Revenue
Agents will necessitate
frequent reference
to the Board & will in
practice occasion
much inconvenience.
He proposes therefore
that the Collector should
exercise the power of
appointing & dismissing
Revenue Agents, subject
to rules to be prescribed
by the Board.

Section 19. Mr. Master
thinks it would be ad-
visable for the protec-
tion of the lower
Revenue Courts that
some definition should
be given of what "un-
professional conduct"
is.

Section 21. Mr. Master
inquires, with reference
to this section, which
provides

8/ provides that the officer
conducting the inquiry
shall receive all evidence
properly tendered by or
on behalf of the person
bringing the charge -
whether, if an officer
at the head of an office
where the delinquent
ordinarily practices, is
himself the Complai-
-nant on account of,
say, some misconduct
committed in his presence,
he is to bring the charge
before his superior
officer, or hold the
inquiry himself.

Mr. Garsden
observes that, supposing
a Pleader or Revenue
Agent is tried & reported
by a Revenue officer,
but is acquitted by the
Chief Revenue Authority
or the High Court & he
brings a suit against

the officer reporting him, for damages, the Bill does not protect the latter. He would therefore insert an indemnity clause.

Section 22. Mr Butler points out two misprints in this section. The last word should be section "twenty" & not section "nineteen".

Section 24 The Board of Revenue is of opinion that this section is sufficient to meet the only cases in which the proposed law might otherwise work harshly in this Presidency. For, they remark, will be able under it to authorize all Revenue Courts to accept special promissory of attorney & to instruct them not to do so except

Consent to the Bill

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when the power of attorney is held by a friend, a servant or a relative of the party granting it.
Part IV - The Chief Justice questions the propriety of imposing the stamp duty on certificates provided by the third Schedule. ^{This provision} Mr. Erskine to him to be open to objection on the ground of unfairness in its application, & is not, in his opinion, likely to have any material good effect as respects the conduct of the practitioners.
The Native Phases of the High Court remark that this provision appears to be purposeless, unless it be that the legislature wants to levy from legal practitioners a tax. If so, it is, in their opinion

opinion, far better that
the practitioners should
be required now for all
to take their Certificates
on stamps of higher
value than those fixed
by the Bill than that they
should every year
be called upon to renew
their Certificates.

In the 2^d clause,
Section "nine" should
be Section "Twenty-
-nine".

Section 29. Some of the
Collectors urge that
the annual renewal
of the Certificate is
unnecessary; others, that
power to refuse the
renewal should be
given to Revenue
officers. The Board
of Revenue do not
concur. In the opinion
of the Board, both
these provisions are
necessary if the work

of a Revenue Agent
is to be a profession
and furnish a living
-bread.

Part V. Section 32. The
Chief Justice thinks the
provision in this Section
highly desirable. The present
allowance paid for the
attendant of a Pleader's fees
is very unsatisfactory. In
suit for property of great
value the fee allowed is
absolutely disproportionate
to the amount of remunera-
tion which is fair &
actually paid, & in some
cases of large value &
in many special appeals
the allowance is excessive.

The Associate
General remarks that
if this measure is to
apply to Pleaders, he
sees no reason why Advo-
cates or Barristers should
not be included, and Mr
Justice Holloway is of
the same opinion. The

The Public Readers of the
High Court state that the
Concession which ^{this} section
purposes to make in
favor of practitioners, by
not binding them down
to the prescribed fees alone,
but providing that they
may enter into special
contracts with their
clients subject to the
approval of the Court,
will practically prove
to be the worst remedy
imaginable, in consequence
of the uncertainty as to
whether or not the contract
will be approved. ^{They suppose that} That
may appear to be reason-
able to one Judge
may not appear to be
so to another.

Mr. Garrison
makes the following
remarks in this section.
This section does not
prevent Revenue

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to deprive from taking
ready money from clients
previous to taking up
their cases. The written
agreement is only optional,
-al, & one object of the
Bill, viz to prevent
inordinate demands,
is defeated. Pleaders
and Agents will never
take up a case until
after their fees are
paid in advance, nor
will they execute agree-
-ments. The execution
of these agreements
should be compulsory.
— The Chief Jus-
-tice objects to the pro-
-vision in this section,
on the ground of its in-
-ferring on the principle
that the practitioners
are presumptively not
trustworthy. He
suggests that the
initiative in objecting
should be left to the
Client, & that the
Court

later should be given
the option, within a fixed
period of time, of apply-
ing to have the fees &
charges taxed in the
same manner as if no
agreement had been made,
on the ground of un-
fairness in the agree-
ment.

Mr. Webster
remarks that it is not
clear whether the powers
conferred by this part of
the Bill on District
Courts, as to the adju-
dication of fees, are to be
exercised by Revenue
Courts or officers, in
whom it is equally
desirable to vest them.

Mr. Knickerbocker
makes a similar observation.

Section 98. The Chief
Justice thinks that,
as to the provision in
this section, it would
be better to provide
for the ascertainment

22/13
of the remuneration to
be paid, when the agree-
ment is for one entire
amount of remuneration,
and for the allowance
of the amount earned
& the ascertainment
by an officer of the
Court of the proper
remuneration for the
further services perform-
ed, when the agreement
is for the payment of
the stipulated remun-
eration by instalments.
Section 99. The reference
made in the second
clause of this section
to section "thirty nine",
should be section
"thirty eight".
Section 100. The Attorney
General & Mr. Justice
James are not certain
whether the language
of the proviso in this
section will be to

exclude the Vakils of
the Madras High Court
from practicing on the
Original side of the
Court, as they are now
authorized to do by the
Rules made by the
Court under the power
conferred on the Court
by the Letters Patent.
The Chief Justice,
however, is of opinion
that it is not within
the competency of the
Legislation to take away
any right to practice
conferred under the
provisions of the Letters
Patent. Sir Colley
Adams, J. is of opi-
-on why the right to
practice on the Original
side of the High
Court should be denied
to Vakils, & make
suits thus forced
to employ the double

Professional agency
of Advocates, & the
Attorney. Mr. Justice Hall
is also of the same opinion.
The Clerk, Mr. C. J.
Master, suggests that
this Schedule be revised
by substituting in
Clause (b) for "Com-
-missioner" the words
"Collector or officer
exercising the powers
of a Collector" and
in clause (c) for
"Collector" the word
"Tasildar." -

I am decidedly of
opinion that the
provisions regarding
Adv. Agents are
unwarranted & the
circumstances of this
Province & in
many respects very
objectionable. as
calculated to impede

re. 18/12/1880



C-17 July 1971
R from dog house

Legislative Department.

Car,

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* Letter from the Advocate Gen^l, 19th
February 1871.
do from the Registrar of the High
Court, 4th July 1871.
Proceedings of the Board of Revenue
5th July 1871, No 272a

2. The Madras Government are decidedly of opinion that the provisions of the Bill relating to Revenue Agents are altogether unsuited to the circumstances of this Presidency, where, from the earliest Regulation (XII of 1816) constituting a Collector's Court down to the last Act (Madras Act VIII of 1865, Section 52) on the subject, suitors may appear by a relative, servant, or other authorized Agent; and that it is therefore objectionable, as calculated to impede that free intercourse between ryots and Revenue officers which it has hitherto been the constant

endeavour

endeavour of the Government to facilitate and encourage. The reports of the officers consulted also shew that the balance of opinion is strongly against several of the provisions of the Bill.

3. Under these circumstances the Government would earnestly deprecate the extension of the proposed Act to this Presidency.

WJ

F. H. George }
18th Decr 1871 }

Recd 20/12/71
with 6 spare copies and 6 spare
copies of precis. also 2 files
of reports from Collectors alluded
in the Memo.

Copy to the Honble Mr Robinson C.S.
with annexure - 20/12/71

Nov 5th 1915
Submitting the plan
of the Adjutant General, of the
Bridges of the High Court
of the House of Revenue on
the Clearing, Washburn
and Deane Agents Bill
to the Senate with a view of it
passing, and the Senate
of the Washburn Commission
on the proposed measures

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The above is the
 content of the
 preliminary and
 explanatory

Separation 1891 Sept

but with standing the opinion of
 the House of Commons which on
 such a point I dissent from
 with diffidence, it appears
 to me & to my doubt that should
 but part of this bill should
 relate to Revenue Agents,
 is suited to the circumstances
 of this Presidency.
 We have suggested that the bill
 if it is passed should include
 Garrison and in this suggestion
 I am sure I am generally
 in the right. The House's mind
 which appears to me upon
 this point, though I wish that
 for his own credit & for that
 of the American People I wish
 to see him with the bill and
 support his views in somewhat
 different language & tone.
 I think it must be very wrong
 to deprive the Schools of the
 High Court of the privilege of
 appearing on the original side
 of the Court. R. D.

27/30

A
BILL

Remarks on the
Repealing Bill

Schedule Part I

Act VIII of 1856. The words
"Madras and" in the 2^d column
of the Schedule, should be struck
out, as this Act was repealed
as regards the Madras Presidency
by Madras Act V of 1869, s. 1.

Act III of 1859. Sections 3 of
this Act, so far as it affects
this Presidency, and Section
5, should be repealed. They
are now obsolete, Regulation
VII of 1832, which contains
the Rules for the trial of
small suits in Military
Bazars and for the trial
by Panchayat of suits
against

against Military persons,
having been repealed by
The Repealing Act XVI of
1874.

Act XI of 1865. In section
12 (in addition to the words
proposed for repeal.) the
words "or District," and
the words "or by a single
Officer duly authorized and
appointed to the end of
the section," should be
repealed.

The reference to District
Punchayats in this Act
is no longer necessary,
as Regulation VII of 1816,
which provided for that
class of tribunals, was
repealed by the Madras

A
BILL

29/
Civil Courts Act III of 1873;
and the latter portion of section
12, which saves the jurisdiction
of officers appointed to try
small suits in Military
Bazars & Quarters,
and of Military Punchayats,
is now obsolete; Regulation
VII of 1832, which provides for
the appt. of such officers
& for convening such Punch-
ayats, having been repealed
by the Repealing Act XVI
of 1874.

Act XXI of 1864 - Section
5 may now be repealed,
as it is now spent. -

C. F.

14/12/73

*Notes on the
Repealing Bill*

A
BILL

FOR

The repeal of certain obsolete enactments.

WHEREAS it is expedient that the enactments

Preamble. mentioned in the schedule to this Act, which have ceased to be in force otherwise than by express and specific repeal, or have by lapse of time and change of circumstances become unnecessary, or which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:—

1. The enactments described in the schedule annexed to this Act are hereby repealed to the extent mentioned in the third column of the same schedule:

Provided that the repeal by this Act of any enactment shall not affect any Statute, Act or Regulation in which such enactment has been applied, incorporated, or referred to:

And this Act shall not affect the validity or invalidity of anything already done or suffered, or any indemnity already granted, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, or the proof of any past act or thing:

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived, by, in, or from any enactment hereby repealed:

Nor shall this Act provide or restore any jurisdiction, office, custom, privilege, restriction, exemption, usage or practice not now existing or in force.

2. This Act may be cited as "The Repealing Act, 1875": it extends to the whole of British India; and it shall come into force at once.

SCHEDULE.

A description or citation of a portion of an Act or Regulation is inclusive of the words, section or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

PART I.

Acts of the Governor General in Council.

Number and year.	Subject.	Extent of repeal.
IX of 1835 ...	Salt, Bengal ...	The whole.
XIX of 1838 ...	Coasting Vessels, Bombay	Section nine. In section twelve, the word "Indian." In section thirteen, the words "Justice of the Peace or person exercising the powers of a Magistrate."
XXIX of 1838 ...	Salt, Bengal ...	So much as has not been repealed.
VI of 1840 ...	Bills of Exchange ...	In section five, the words "after the passing of this Act."
XVIII of 1841 ...	Arms and Ammunition ...	Section two.
XIX of 1841 ...	Wrongful possession in case of succession.	In sections nine and eighteen, the word "that" where it occurs before the word "all", and the word "for."
I of 1846 ...	Pleaders ...	In sections seven and nine, the word "that" where it occurs before the word "it", and the word "persons."
VIII of 1846 ...	Settlement, N. W. Provinces	So much as has not been repealed.
XX of 1847 ...	Copyright ...	In section seven, the words "after the passing of this Act" and "in such part of the said territories"; and from "if he shall have so offended" down to "charter"; and from "to a special" to "no Zillah Court." In section thirteen, the word "that" where it occurs before the words "if the case."
XV of 1848 ...	Supreme Court Officers ...	In section four, the words "or the East India Company."
IX of 1850 ...	Presidency Small Cause Courts.	Sections three, forty-seven and ninety. In section one, the last thirty-seven words. In section eight, the words "not exceeding three." In section one hundred and one, the words "after the passing of this Act."
XXVI of 1850 ...	Improvements in Towns ...	So much as has not been repealed.
XXXVII of 1850 ...	Public Servants ...	Section seventeen.
VIII of 1851 ...	Tolls on Roads and Bridges	In section six, the words "of the zillah."
XVII of 1852 ...	Special Cases, Supreme Court.	Section twenty-six, from "which according" to "referred, but." Section thirty. In section thirty-two, the words "and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca." Section thirty-three.

Acts of the Governor General in Council,—continued.

Number and year.	Subject.	Extent of repeal.
XXI of 1852 ...	Deputy Collectors, Bombay	In section one, the words "zillah or."
XXX of 1852 ...	Naturalization ...	The last sixteen words of the schedule.
XVIII of 1854 ...	Railways ...	In section thirty-four, the words "or by any Assistant to a Magistrate or Deputy Magistrate". In section thirty-five, the words "and district or Joint Police officers in the Presidency of Bombay." In section forty, the words "within the said territories".
XXXI of 1854 ...	Real Actions, Conveyances	In section thirteen, the words "in the possession and".
VI of 1855 ...	Execution, Supreme Courts	Section fourteen, from "and the term" to the end.
XXIV of 1855 ...	Penal Servitude ...	In section one, the words "in the possession and".
XVIII of 1856 ...	Gaols, <u>Madras and</u> Bombay	In section two, the first eight words.
II of 1857 ...	Calcutta University ...	In the preamble, the last four words. Section four, from "and the first" to the end. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and "the Vice-Chancellor hereinbefore nominated or".
IV of 1857 ...	Tobacco, Bombay Town ...	In section five, the words "after the passing of this Act," and from "and the provisions" to the end of that section.
XI of 1857 ...	Offences against the State..	In section three, clause 1, the words "within the said territories", "of the crimes mentioned in the preceding sections, or any other". In section four, the words "without the attendance or futwa of a Law Officer,". Sections seven, eight, nine and ten. In section eleven, the words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate".
XXII of 1857 ...	Bombay University ...	In the preamble, the last four words. In section four, the last twelve words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXVII of 1857 ...	Madras University ...	In the preamble, the last four words. In section four, the last fourteen words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXIX of 1857 ...	Land Customs, Bombay ...	In section eleven, the words "by the said schedules". In section thirteen, the words "entered in either of the said schedules as".
III of 1858 ...	State Prisoners ...	Section four.

Acts of the Governor General in Council—continued.

Number and year.	Subject.	Extent of repeal.
I of 1859 ...	Merchant Seamen ...	In section sixty-three, the words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the Court of Judicature there". In section sixty-seven, the words "and in the Straits Settlement in such manner as the Governor shall notify".
X III of 1859 ...	Cantonment Joint Magistrates	In the title, the words "and for constituting those Officers Registers of Deeds". In the preamble, the words "and that they should also be appointed Registers of Deeds within the same limits".
XV of 1859 ...	Patents ...	Sections thirteen and thirty-six.
XXXI of 1861 ...	Saltpetre ...	So much as has not been repealed.
XIII of 1863 ...	Imprisonment of Convicts, Bombay.	The whole.
XIV of 1863 ...	Amending Act X of 1859	So much as has not been repealed.
III of 1864 ...	Foreigners ...	In section twenty-four, the words "and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca".
XVII of 1864 ...	Official Trustees ...	In section three, the words "the said".
XXII of 1864 ...	Cantonments ...	In section eight, the words "and for constituting those Officers Registrars of Deeds".
XI of 1865 ...	Mofussil Small Cause Courts	In section twelve, the words "and for constituting those Officers Registers of Deeds".
XV of 1865 ...	Parsee Marriage and Divorce	Section fifty-three.
XXIX of 1865 ...	Pleadings ...	Sections one, two and three.
XII of 1866 ...	Private Water-courses ...	The whole.
XIV of 1866 ...	Post Office ...	Section fifty-five, and in section fifty-six the words "or by any Assistant to a Magistrate or Deputy Magistrate".
XXV of 1866 ...	Transfer of securities to Government.	The preamble from "And whereas" to "purposes aforesaid".
VII of 1867 ...	Purchases from Soldiers ...	In section one, first eight words.
XIII of 1867 ...	Port dues : Coast lights ...	Section two.
XIV of 1869 ...	Bombay Civil Courts ...	The second paragraph of section five. The second paragraph of section fourteen. Sections thirty and thirty-one.
XXII of 1870 ...	European British Subjects	Section one.
XXIII of 1870 ...	Coinage ...	Section eighteen, paragraph one.
XXVII of 1871 ...	Criminal tribes ...	Section twenty-three.
III of 1872 ...	Marriage ...	Section twenty and the fourth schedule.

Acts of the Governor General in Council—concluded.

Number and year.	Subject.	Extent of repeal.
X of 1872 ...	Criminal Procedure Code...	Section three.
XXI of 1872 ...	Sepoy Lunatics ...	Section six.
X of 1873 ...	Oaths ...	In section one, the third paragraph.
XVI of 1873 ...	Village Police, N.W. Provinces	In section one, the third paragraph.
III of 1874 ...	Married Women ...	Section three.
IV of 1874 ...	Foreign Recruiting ...	In section one, the third clause.
V of 1874 ...	Kulla Appeals ...	Sections one and four.
XV of 1874 ...	Laws Local Extent ...	Section nine and the seventh schedule. So much of the second schedule as relates to Madras Regulations III of 1831 and VII of 1832, and to section four of Madras Regulation IV of 1821, and to Act No. VIII of 1856.
XVI of 1874 ...	Repealing Act, 1874 ...	The whole.
III of 1875 ...	Amending Repealing Act, 1874.	The whole.
IV of 1875 ...	Merchant Shipping ...	Section two, and the third clause of section one.
VII of 1875 ...	Burma Fisheries ...	In section one, clause three.
VIII of 1875 ...	Inland Customs ...	Section two and the schedule.
X of 1875 ...	High Courts' Criminal Procedure	Sections thirty-nine and one-hundred-and-fifty-three.
XVI of 1875 ...	Tariff ...	Section two.

PART II.

Regulations of the Bengal Code.

Number and year.	Subject.	Extent of repeal.
XII of 1817 ...	Patwáris ...	In section eight, the words "the Board of Commissioners, or the Commissioner in Behar and Benares, as the case may be," and "or Commissioner". In sections thirteen, fifteen and sixteen, the words "the Board of Commissioners, or the Commissioner in Behar and Benares". In section seventeen, the words "Board of Commissioners, or Commissioner in Behar and Benares".

PART III.

Regulations of the Madras Code.

Number and year.	Subject.	Extent of repeal.
III of 1802 ...	Procedure of Civil Courts...	In section eleven, the words "Zillah" "of the Zillah" wherever they occur, and "by the Provincial Courts of Appeal, or the Sudder Adawlut." In section sixteen, clause <i>Second</i> , the words "Hindoo" "the judge of the Court of Adawlut" and "other," and the words and figures "under the general rule contained in section v., Regulation II., 1802, and proceed thereupon according to the regulations." In clause <i>Third</i> , the words "when they are to proceed thereupon according to the general regulations."
XIII of 1802 ...	Records of Courts ...	In section fifteen, the words and figures "in the same manner as is prescribed to the Provincial Courts of Appeal in section XII."
XXIX of 1802 ...	Karnams ...	Section four. In sections eighteen and nineteen, the words "before the Court of Circuit."
IX of 1803 ...	Customs Officer, Madras ...	In section fifty-five, the words "contrary to, or not warranted by, this Regulation." In section fifty-six, the words "conformable to the provisions contained in this Regulation." In section fifty-nine, the words "the register to" in each of the places where they occur. In section sixty-three, the words "contrary to, or not warranted by, this Regulation," and "in conformity to this Regulation." In section sixty-six, the words "to the Provincial Court of Appeal for the centre division, and from the decrees of that Court." In section sixty-seven, the words "the register of" "register of the" and "the registers of."
V of 1804 ...	Court of Wards ...	In section six, clause <i>Third</i> , the words "Courts of Appeal or to the" and "as it shall seem fit." In section twenty-four, clause <i>Second</i> , from "and it shall" to the end of that clause.
I of 1805 ...	Salt ...	In section eight, clause <i>First</i> , the words "After the date of the Regulation." In clause <i>Second</i> , the words "commercial residents." In section fourteen, clauses <i>First</i> , <i>Second</i> , and <i>Fourth</i> , the words "commercial residents" "by commercial residents." In section fifteen, the words "commercial residents." In section sixteen, the words "commercial resident" and "commercial residents." Section twenty-two.
VII of 1808 ...	Martial Law...	In the preamble, the words and figures "from the 1st day of October, 1803." Section four, from "or before any special court" to the end of that section.

Regulations of the Madras Code,—continued.

Number and year.	Subject.	Extent of repeal.
IV of 1816 ...	Village Munsifs ...	Section four, clause <i>First</i> . In sections five and twenty-seven, the word "Arcot." In section sixteen, clause <i>Fifth</i> , the second sentence. Sections thirty-two and thirty-four.
V of 1816 ...	Village Pancháyats ...	In section three, clause <i>Second</i> , and in section four, clauses <i>Ninth</i> and <i>Tenth</i> , and in section sixteen, clause <i>First</i> , the word "Arcot." In section ten, the words "and no stamp paper need be used in plaint, answer, or any process." In section eleven, clause <i>First</i> , the words "upon stamp paper of the prescribed rate according to the amount of the suit." In clause <i>Fourth</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." Section fifteen. In section seventeen, the words "on stamped paper of the prescribed rate, according to the amount decreed."
XI of 1816 ...	Heads of Villages, &c. ...	In section forty-seven, the words and figures "as directed in section X, Regulation III., 1810."
XII of 1816 ...	References to Village and District Pancháyats ...	In section three, the words and figures "under the same provisions as are prescribed by clauses <i>Second</i> and <i>Third</i> , section XIV, Regulation VI., 1816." In section five, clause <i>Fourth</i> , and in section nine, clause <i>Third</i> , the word "Arcot." Section six, clause <i>First</i> , so far as it relates to Regulation VII., 1816. In section six, clause <i>Second</i> , the words and figures "without requiring the agreement specified in clause <i>Second</i> , section IV., Regulation VII., 1816." In section nine, clause <i>First</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." In section eleven, the words "exempt from all stamp-duties, and shall be" and the words and figures "or to such charges as are specified in Regulation VII., 1816, if decided by a district Panchayat."
XIV of 1816 ...	Pleaders ...	In the preamble, the words "and to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of vakeels or native pleaders in the Zillah Courts and in the Provincial Courts." In section three, clause <i>First</i> , the words "and the several Provincial Courts" "in their respective courts" "being natives of India of the Hindoo or Mahomedan persuasion, and" "for the approbation of the Provincial Court of the division," "being a native of India and otherwise," and clause <i>Second</i> from "and shall communicate" to the end of that section. In section four, the words "the Provincial Courts" and "which is not required to be written on stamped paper." In section eight, the words "and the Provincial Court, on consideration of the judge's report." In section ten, clause <i>First</i> , the words "and the several Provincial Courts."

Regulations of the Madras Code,—continued.

Number and year.	Subject.	Extent of repeal.
		In clause <i>Second</i>, the words "a register or" and "report the circumstances of the case, together with his own opinion upon it, to the Provincial Court, who will." In section eleven, the words "without the previous sanction of the Provincial Court," and from and including the words "but in such" to the end of the section. In section thirteen, the words "on unstamped paper." In section fourteen, the word "Arcot" wherever it occurs. In section fifteen, clause <i>Second</i>, the words "or registers" and "either by a deduction from the fees which may become due to the offender, or." In section eighteen, clause <i>First</i>, the word "register." In clause <i>Third</i>, the words "Provincial Courts or to the" the second sentence, and the words "Provincial Courts and of the." In section twenty, the words "of the Provincial Courts," and "under the provisions contained in the following clauses of this section." In section twenty-five, clause <i>First</i>, the words "the Provincial Courts" and the word "Arcot" wherever it occurs. In clause <i>Third</i>, the words and figures "written on the stamped paper prescribed in section XI, Regulation XIII, 1816." In section thirty-six, the words "on unstamped paper." In section thirty-nine, the words "or district" and the figures "VI" and "VII." In the Appendix No. 1, the words "or in the Provincial Court for the division of." In the Appendix No. 2, the words "or the Provincial Court for the division of."
VIII of 1817 ...	Estates of Native Soldiers	The Appendix, except No. 5.
I of 1819 ...	Settlement of Land-revenue	In the preamble, the last eleven words. In section two, the words and figures "Section IX, Regulation XXVI., 1802, is hereby rescinded; and." In section four, the words "from and after the promulgation of this regulation."
II of 1819 ...	State Prisoners	In the preamble, the last nine words. Section eight. In section nine, the words "to the Provincial Court of Appeal and Circuit."
IV of 1821 ...	Petty Thefts	In section six, clause <i>First</i> , the word "Madras."
IX of 1822 ...	Embezzlement by Public Servants	In the preamble, the last ten words. In section three, clause <i>Third</i>, the words and figures "in the manner prescribed in Section VII, Regulation III of 1802." In section four, the second sentence. In section five, clause <i>Fourth</i>, the word "Arcot." In section eight, the words "before the criminal judge (who is hereby empowered to take cognizance of such cases)" and "by him." In section nine, the words "on oath." Section ten, from the words "and the rules" to the end of the section. Sections seventeen and eighteen.

Regulations of the Madras Code,—concluded.

Number and year.	Subject.	Extent of repeal.
III of 1823 ...	Embezzlement	In section one, the last ten words.
VII of 1828 ...	Subordinate and Assistant Collectors	In section one, the last ten words. Section seven.
V of 1829 ...	Hindu Wills	In section one, the last ten words.
I of 1830 ...	Sati	In section one, the words "from the time of their promulgation." In section four, clauses <i>First</i> and <i>Third</i>, the words "before the Court of Circuit." Clause <i>Second</i>, the words "at the discretion of the Court of Circuit."
VI of 1831 ...	Hereditary Village Offices	Section four, clause <i>Fourth</i> , from "and for this purpose" to the end of that clause. Clause <i>Fifth</i> .
X of 1831 ...	Prohibition of sale of Minors' Estates for arrears of revenue	In section one, the last ten words. Section three, down to the words "enacted that."
XI of 1832 ...	Hidden treasure	In section one, the words "as soon as promulgated" In sections two and seven, the word "Madras" wherever it occurs. In section three, the words "or to the assistant judge of the auxiliary court." In section four, the words "or assistant." In section six, the words "Madras" and "or assistant." In section eight, the words "or to the assistant judge of the auxiliary court." In section nine, the words "or of the assistant judges of the auxiliary courts" and the words "to the Provincial Courts." Section ten.
XIV of 1832 ...	Buying Soldiers' necessaries	In section one, the last ten words. In section two, clauses <i>First</i> and <i>Second</i>, the words "from and after the date of the promulgation of this regulation," and "before the criminal, joint criminal, or native criminal judge within the limits of whose local jurisdiction the offence may have been committed."

PART IV.

Regulations of the Bombay Code.

Number and year.	Subject.	Extent of repeal.
II of 1827 ...	Pleaders	In section fifty, clause <i>Third</i>, the words "under the rules contained in Section LVI of this Regulation". In section fifty-one, clause <i>Second</i>, the words "according to Section LVI of this Regulation". In section fifty-six, the words "under the rules regarding commissioners, contained in the Third Clause of Section XXXVIII of this Regulation". Appendix A, Appendix D.

Regulations of the Bombay Code,—continued.

Number and year.	Subject.	Extent of repeal.
V of 1827 ...	Limitation ...	In the title, the words, "defining the Limitations, to Time, within which Civil Actions may be prosecuted, and" and the word "Interest".
XII of 1827 ...	Police ...	The preamble. In section nineteen, clause <i>Sixth</i> , the words "personal restraint". In the same section, clause <i>Seventh</i> , the words "which shall be tried before the judge, or of his assistants, exclusively".
XIII of 1827 ...	Criminal Courts ...	In section thirty-four, clause <i>Third</i> , the words "to the magistrate above mentioned".
XVI of 1827 ...	Revenue Administration ...	In the preamble, the words "to have effect throughout the zillahs subordinate to Bombay". In section two, clause <i>Second</i> , the words and figures "as more particularly specified in Regulation XVII A. D. 1827, Chapters VIII and X". In the title to Chapter III, the words "of hereditary district and village officers inclusive of". In section twenty-five, clause <i>Third</i> , the words "according to the Regulations".
XVII of 1827 ...	Jurisdiction of Revenue Authorities.	The title from "vesting" to the end. In the preamble, the words "to have effect throughout the territories subordinate to Bombay". In section twelve, clause <i>Sixth</i> , the words "Sudder or any". In the title to Chapter IV, the words "and pen jurisdiction of the zillah magistrate and criminal judge in such cases".
XIX of 1827 ...	Revenue Administration ...	The title from "and for Collecting" down to "Horses," and the words "and also for levying Fees in the Court of Petty Sessions and Police Offices". In the preamble, the words "and whereas it has further been deemed expedient, under the authority of the British legislature for such purpose given, to levy certain taxes and fees at the presidency of Bombay". In section thirteen, clause <i>First</i> , the words "in the mode prescribed in the preceding section". In section twenty-nine, the words "in the manner and before the authority specified in Section XIV Clause First, or by confession before the said authority," and from "and in case" down to "provided for".
XXI of 1827 ...	Duty on Opium ...	The title from "made with" down to "India". In the preamble, from "that the importation" down to "be prohibited". In section two, clause <i>First</i> , the words "(either such as established by this or any other Regulation)". In section fifty-eight, clause <i>Second</i> , the words "which duty shall be fixed as prescribed in Section LVII, Clause Fifth, and". In section sixty, clause <i>Second</i> , the last eleven words.

Regulations of the Bombay Code—concluded.

Number and year.	Subject.	Extent of repeal.
		In section sixty-four, clause <i>Fourth</i> , the words "in the mode prescribed in Section LVII, Clause Fifth". Section seventy.
XXII of 1827 ...	Military Courts ...	In the preamble, the words "which shall have effect within the territories subordinate to the presidency of Bombay."
XXV of 1827 ...	State Prisoners ...	Section six. In section seven, the words "and to the Sudder Adawlut".
XXIX of 1827 ...	Dekkhan and Khândesh ...	In the preamble, the words and figures "to have effect from the 1st September 1827". Section two, from "and the said territories" to the end of clause <i>Second</i> . Section three, clause <i>First</i> , from "it is hereby" down to the word "First". In section five, clause <i>Third</i> , the last twenty-one words.
V of 1830 ...	Revenue Administration ...	In section one, clause <i>Third</i> , the words "and zillahs." Clause <i>Sixth</i> , the words "zillahs throughout". So much of section two as has not been repealed.
VII of 1830 ...	Dharwar ...	In the preamble, the words and figures "to have effect from the 1st of June, 1830". In section two, the first six words.
XIII of 1830 ...	Jâgirdârs ...	In section four, the last thirteen words.

PART VI.

Acts of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
IV of 1862 ...	Markets and Fairs ...	Section five.
V of 1862 ...	Bhâgdârs and Narwadârs...	In section two, the words "and it is hereby further enacted, that."
VI of 1862 ...	Ahmadâbâd Taluqdârs ...	In section fourteen, from "upon oath" down to "perjury."
II of 1863 ..	Claims to exemption from Land-Revenue.	In section three, the words "either at law or in equity." In section six, clause <i>Second</i> , and in section ten, the words "or Court of Law or Equity."
VI of 1863 ...	Public Conveyances ...	In section seven, the words "standing in the name of the Commissioner of Customs."
VII of 1863 ...	Summary Settlement of Claims to exemption from Land-Revenue.	In section seven, the words "either at law or in equity". In section nine, clause <i>Ninth</i> , and sections fourteen, twenty-eight and twenty-nine, the words "or Court of Law or Equity".

Acts of the Governor of Bombay in Council,—continued.

Number and Year.	Subject.	Extent of repeal.
IX of 1863 ...	Cotton Frauds ...	In section fourteen, the words "commutation and."
V of 1864 ...	Mámlatdárs' Courts ...	Section eighteen.
VIII of 1866 ...	Sale of Poisons ...	Section twenty-one.
XIII of 1866 ...	Witnesses before Legislative Council.	Section five.
XIV of 1866 ...	Edulabad and Wurrungsom	The preamble, and sections one and four.
III of 1867 ...	Cantonments ...	In section fifteen, the words "Bombay Act No. IV of 1865 (<i>an Act for the Regulation of Mofussil Goals and the enforcement of discipline therein</i>) or by" and the word "other." Section twenty-eight.
III of 1869 ...	Funds for local works ...	In sections two and thirteen, the words "or Sub-Collector" "and Sub-Collector," "or Sub-Collector respectively" wherever they occur. In section nine, the words "Act XXVI of 1850, or" and "other."
I of 1872 ...	Bombay City Police Super-annuation Fund.	Sections one and nine. In section three, the words "as well as all moneys and securities which have accumulated under the Sections of Act XIII of 1856, repealed by this Act." Section six.
II of 1872 ...	Repayment of loan to Bombay Corporation.	In section three, the words "under Bombay Act II of 1865." Section nine, down to "enacted that."
III of 1872 ...	Bombay Municipal Act ...	Sections one, sixty-three, seventy-two, three hundred and six. In section sixty-two, the words "on and from the date when this Act comes into operation." In section sixty-four, the words "from and after the day on which this Act comes into operation." In section two-hundred-and-twenty-nine, the first eleven words, and the words "after the date when this Act comes into operation." In section two-hundred-and-thirty-five, the first six words. In section three hundred and seven, the words "from the date referred to in the preceding Section."
I of 1873 ...	Bombay Port Trust ...	Section fifty-seven, from "Until such" to the end. Section fifty-eight. In section seventy-three, the proviso.
II of 1873 ...	Amending Bombay Municipal Act.	Section three.
IV of 1873 ...	Amending Bombay Act II of 1864.	Section two, clause one.

Acts of the Governor of Bombay in Council,—concluded.

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	Steam boilers ...	Section one.
VI of 1873 ...	District Municipalities ...	Section one. Section four, clause 4. Sections nineteen and twenty. Section twenty-one, clause four.
VII of 1873 ...	Salt ...	Section two.
II of 1874 ...	Jails, Bombay City ...	Section one. Section six, down to "Governor General, and". Section seven, the first thirteen words.
III of 1874 ...	Hereditary Offices ...	Section two and the schedule.

Government of India.

LEGISLATIVE DEPARTMENT.

A
BILL

FOR

The repeal of certain obsolete enactments.

(Mr. Hobhouse.)

Govt. Central Branch Press, Simla.—11-10-75—69 copies.

*L. J. 3018
2973*

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to facilitate the preparation of the revised edition of the Indian Acts and Regulations which has been undertaken by the Legislative Department, and of which the first volume, containing the general Acts from 1834 to 1863 inclusive, has lately been published.

SIMLA;

The 9th October 1875.

A. HOBHOUSE.

Government of India.

LEGISLATIVE DEPARTMENT.

Annexure

TO

Bill for the repeal of certain obsolete enactments.

(Statement of Objects and Reasons.)

(Price)

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 29th September 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I.,
presiding.

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

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

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

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

LAW REPORTS BILL

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the improvement of Law Reports. He said that the Committee had made no change in the Bill and had recommended that it be passed.

PANJAB CHIEF COURT APPEALS BILL

The Hon'ble MR. HOBHOUSE also introduced the Bill to provide an appeal from certain decrees of the Chief Court of the Panjab, and moved that it be referred to a Select Committee with instructions to report in a week. He said that Act IV of 1866, which regulated the Chief Court of the Panjab, provided no appeal from decrees made by a single Judge of the Court in the exercise of original civil jurisdiction. The consequence was that appeals from such decrees would only lie to the Judicial Committee of the Privy Council, and much waste of time and money was caused by this state of things. The Bill which he now introduced was intended to supply the defect which he had indicated, and the opportunity had been taken to enable the Appellate Court to remand suits and order retrials, and to empower the Judges to make references to a full Bench as to points of law. The Bill had been prepared in close communication with Mr. Justice Boulnois and Mr. Justice Campbell, and he

MERCHANT SEAMEN'S LAW AMENDMENT.

(MR. HOBHOUSE) desired to express his obligations to those learned persons for the assistance which they had afforded. That circumstance also justified his proposing so short a time for the Committee's report. It was desirable to pass the Bill quickly, because the hearing of several cases had been postponed in expectation of this alteration in the procedure of the Chief Court. And seeing the nature of the Bill, and with whose assistance it had been prepared, it was difficult to suppose that anything would be gained by publication or any lengthened consideration.

The Motion was put and agreed to.

MERCHANT SEAMEN'S LAW AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to amend the law relating to Merchant Seamen, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the object of this Bill was to make a number of small but important changes in the law relating to Merchant Seamen, which could not conveniently be postponed until that law was consolidated and amended. He had mentioned the points when he procured leave to introduce the Bill and had now to show how the Bill dealt with them.

The first object was to determine disputes whether or not a seaman was "distressed" within the meaning of the sections of the Merchant Shipping Act, 1854, relating to distressed seamen. For that purpose, section 3 provided that the Local Government might certify of any seaman that he was distressed, and that the Master of a ship should be bound to receive such a seaman, and it imposed a penalty in case of refusal.

The next object was to put a check upon the practice of discharging European seamen, which, it was alleged, was often done merely for the purpose of supplying their place with lascars. Sections 4 and 5 were directed to this object. Section 4 repeated the existing law to the effect that no Master should discharge a seaman without written sanction from a Government officer. But it somewhat varied the terms of the existing law in order to preclude a doubt which had been raised whether the officer had complete discretion to give or withhold his sanction. And whereas at present there was no special penalty for breach of this law, it was now proposed to impose one. Section 5 gave the Local Government power to prohibit a Master from engaging Native seamen. This would put a great reserve of power into the hands of the Government, which would probably be used seldom, but which it might use on finding that improper and causeless discharges of European seamen were taking place.

By section 6 provision was made that where a European seaman deserted, the master or owner should report the desertion to the Local Government.

Sections 7 and 8 extended the provisions of section 88 of Act I of 1859, and contained certain rules as to European seamen imprisoned for breaches of discipline or other petty offences on the complaint of the Master. The previous sanction of the Local Government was in that case rendered necessary to the engagement of Natives of India. The Local Government was also empowered to tender an imprisoned seaman to the Master, and, if the Master refused to receive him, the Master might be required to deposit, not only the wages, &c., due to the seaman, but also such sum as might be sufficient to defray the cost of his passage home and of his lodging and subsistence till he started.

The Bill then contained a clause (section 9) slightly increasing the space required by Act I of 1859, section 70, for European and for Native seamen.

Lastly, a clause had been added to remove a doubt which had been raised as to the meaning of an expression in section 54 of that Act. That section declared in effect that where a seaman's wages were payable in India under an agreement wherein the wages were expressed to be payable in pounds sterling or some other non-Indian denomination of coin, the seaman was entitled to the amount estimated according to the "established par value" of the coin. The Bill declared that the expression in question should be taken to mean the rate of exchange for the time being fixed by the Secretary of State for India in Council to regulate transactions between himself and the Government of India. MR. HOBHOUSE believed that this was the true construction of the Act, and it certainly was the one which had been acted on; but it was not clear. A high legal authority had expressed a contrary opinion, and it was desirable to place the matter beyond question.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette*, and the *British Burma Gazette*.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPKINS moved that the Hon'ble Sir W. Muir and the Hon'ble Sir A. J. Arbuthnot be added to the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-Revenue.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS REPEAL.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble Mr. Hobhouse moved for leave to introduce a Bill for the repeal of certain obsolete enactments. He said that the Council were aware that the Legislative Department had undertaken the task of producing a revised edition of the Acts and Regulations now in force in British India. Of this work the first volume, containing the general Acts of the Governor General in Council from 1834 to 1863, both inclusive, was now in the hands of Hon'ble Members; the first half of the second volume had already been printed; and it was hoped that the remainder of the general Acts (by which he meant Acts extending or extendible to the whole of British India or to the Presidency Towns) would be published early next year. It was proposed then to publish a volume containing (a) the unrepealed Madras Regulations, (b) the Acts of the Governor General in Council relating exclusively to the Madras Presidency, and (c) the Acts of the Local Council. In preparing for this volume it had been ascertained that, notwithstanding the numerous repeals effected by Acts X of 1861, XVII of 1862 and III of 1873, and also by Madras Act II of 1869, there still remained in the surviving Madras Regulations a not inconsiderable amount of obsolete matter. The primary object of the Bill which he now asked leave to introduce was to excise this matter. At the same time the opportunity would be taken to remove from the Indian Statute-book certain Acts and portions of Acts of the Governor General in Council, and certain fragments of Bombay Regulations and Acts, which might now be safely dispensed with.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb: The Hon'ble Mr. Hope and the Mover.

On the Bill to amend the law relating to Merchant Seamen: The Hon'ble Mr. Eden, the Hon'ble Sir A. J. Arbuthnot and the Hon'ble Mr. Hope and the Mover.

The Council then adjourned to Wednesday, the 13th October 1875.

SIMLA;

The 29th September 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

How

Whitley Stokes Esq.
Secretary to the Govt of India,
Legislative Department.

The Hon'ble D. F. Carmichael,
Acting Chief Secretary to the Govt of
Madras.

Dated Simla, the 18th October 1875.

Sir,

I am directed to forward herewith copies of the Bill for the repeal of certain obsolete enactments (with annexure), which was introduced into the Council of the Governor General on the 13th instant, and was referred to a Select Committee to report thereon in two months, and to request that His Excellency the Governor in Council will favour the Government of India in this Department with an expression of his opinion on the proposed repeals. —

2. — I am also to request that the Bill

Bill and Statement of objects and reasons
may be published in the York St. George's
Gazette.

I have the honour to be,
Sir,

Yours obedient servant
Wm. H. Stokes

Secretary to the Govt of India

25/12/75

N^o 594.

Madras, 2nd December 1875.

From
 H. G. Prichard
 Government Solicitor,
 Madras,
 To
 The Honorable W. Huddleston
 Chief Secretary to Government,
 Fort St. George,
 Sir

At the request of the Advocate General, I have the honor to forward herewith a copy of his Observations with reference to Bill XII of 1875 and the Repeals in Part III of portions of the Madras Regulations. -

I have the honor to be,
 Sir,

Your most Obedient Servant,
 H. G. Prichard
 Government Solicitor.

N^o 138.

Madras, 25/12/75

Reverend the
 Members of the Madras
 Legislative Council
 I enclose herewith
 a copy of the
 observations of the
 Advocate General
 on the Bill
 for the amendment
 of the Madras
 Regulations.
 I have the honor
 to be, Sir,
 Your obedient
 servant,
 H. G. Prichard

No 138.

Madras, 2nd Dec 1875

The undersigned the
Member of the Madras
Legislative Council
in relation to the
Bill & amendments
to the Madras
Regulations in the
Year 1875

Madras, 2nd Dec 1875
The Government
Legislative Council
Madras
No. 594
1875
1875

25/12/75

No 594.

Madras, 2nd December 1875.

From
H. G. Prichard
Government Solicitor,
Madras,

To
The Honorable W. Hudleston
Chief Secretary to Government,
Fort St. George,

Sir

At the request of the Advocate General, I have the honor to forward herewith a copy of his Observations with reference to Bill XII of 1875 and the Repeals in Part III of portions of the Madras Regulations. -

I have the honor to be,
Sir,

Your most Obedient Servant,
H. G. Prichard
Government Solicitor.

No 137

Forwarding a copy of the
Advocate General's Memoir
- No 1375 and the Repeals
in Part III of portions of the
Madras Regulations -

No 3336
Advocate Genl.
C. S. 194.

1875. 29th
The Government Solicitor
Madras
1875. 29th
1875. 29th
1875. 29th

With reference to Bill XII of 1875, and the Repeals proposed in Part III of portions of the Madras Regulations, I have the honor to submit the following observations.

The object of the Bill is understood to be, to put the law into the shape which it ought to wear in a volume hereafter to be published under the authority of the Government of India, containing the acts specially applicable to the Presidency of Madras, and with a view to this, a number of unimportant corrections are made in those of the Madras Regulations which are mentioned in Part III. These amendments consist principally of omitting particular expressions which have become obsolete or inaccurate, and in no instance affect any practical improvement in the law.

It may be worth the consideration of the Government whether, instead of taking the trouble to make these somewhat minute amendments, it would not be better to recast the Regulations themselves in a shape more in accordance with the present state of the law. Minute verbal corrections of laws which are fundamentally inaccurate only do harm as giving a sort of sanction to the law in its amended form which it ought not to have. My meaning will be better understood from the details criticism of the proposed amendments which follows.

Regulation III of 1802 - Section 11. In this section the words "Zillah" and "of the Zillah", "by the Provincial Courts of appeal or the Sudder Adawlut" are repealed. The whole section has, however, I believe

Ch. 1000

[illegible]

Barrett. The Regulation as it stands, is in many respects obsolete. See for instance Secs: 14, 15 and 18. Sec: 31 has been modified by Act I of 1846.

Regulation VII of 1817. Lands granted for public purposes - this Regulation ought not to be reprinted without considerable alterations.

The whole law as to superintendence of charitable endowments, especially religious endowments is in truly deplorable state. Any amount of formalisation goes on, and the existing machinery is totally inadequate to check it.

Regulation I of 1819. Should be dealt with in the Bill now pending in the Council for its amendment.

Regulation I of 1820. These sections though repealed by Madras Act III of 1861 are kept alive as to the Town of Madras by Act XIX of 1852. There are some important alterations in Act XIX of 1852 which should be effected before it is republished in a revised edition.

Regulation IX of 1822. The preamble might be repealed, and probably the whole Regulation without inconvenience.

Regulation III of 1823. This appears to be a misprint. The Regulation might with advantage be embodied in the Regulation as to Collectors.

Regulation VII of 1828. Should be recast.

Regulation V of 1829. Exhibits very forcibly the curious fluctuation of opinion which has existed in the Government and the Courts as to Hindu Wills. Regulation III of 1802 appeared to give sanction

to Hindu Wills. In Regulation V of 1829 it is stated that Regulation III of 1802 is at variance with Hindu law, and its provisions, so far as they recognise Hindu Wills, are cancelled. Since then there has been another change of opinion and the law now recognised in the Courts of this Presidency is that the Hindu's testamentary power over self-acquired property is co-extensive with that which he possesses *inter vivos*, and that a childless Hindu can devise ancestral property. Regulation V of 1829 possesses now only historical interest, and should be repealed.

Similar criticisms might be made on the other proposed amendments of the Bill. On the whole my opinion is that the amendments now proposed are too insignificant to be worth the trouble of making, - that the Regulations, even when amended, will be very far from a correct and convenient exposition of the law, and that the Government of India should be informed that the Government of Madras deprecates any publication of the Regulations or Acts specially applicable to Madras, in a revised edition, until the necessary amendments in the law have been carried out.

The few surviving Madras Regulations might with great ease be thrown into an intelligible and compendious form, and I shall be happy to undertake the task of consolidating them, should the Government be pleased to give me instructions to do so.

Signed / J. S. Cunningham.

30. 11. /75.

/True Copy/

H. G. Richards
Government Solicitor

1875

285336 of 1875

Enclosure in letter from
the Government to the
to the Secy of the Govt
Government of Madras
dated 22.2.1875.
No 594.

deposited with Secy of the Govt
+ Secy of the Govt
19/2

28/2/75
Sud. Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters; -

From the Secy to the Govt of India, Legislative Dept,
dated 18 Oct/75, No 575.

From the Govt. Secy, Madras, 2nd Decr/75, No 594.

Order 28 February 1876 No. 370

the Government
of the Madras
Presidency

The Govt in Council agree
in thinking that it will
be desirable to make the
amendments proposed by the Bill for the
repeal of obsolete enactments, so far
as the Madras Presidency is concerned,
and that it will be better in him
to make verbal alterations, or partial re-
peal, proposed by Part III of the Bill,
which is attached to the Bill, because
the Regulations themselves in keep-
ing with the present state of the
law.

2. With reference to the
case of views, as to how the work
of amendment, if carried on, should
proceed, it is observed that he allows
to clause 7, section 16, Reg III of 1862,

18/2

3. As to Reg V of 1864, ~~and Reg~~
~~of 1867~~ the local legislature is
actually at present dealing with
this enactment. A bill has been
drawn, and is under consideration
of a Select Committee, providing
a complete machinery for the pro-
tection of estates belonging to dis-
qualified proprietors. As to Reg
I of 1819, an Act has just been passed
by the local legislature repealing the Reg, and
making better provision for the disposal
of alienated holdings.

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 By appt Dec 16, 1972
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Act has received the assent of His Grace the Govr, and under the terms of Section 40 of the Indian Councils Act of 1861, is now being forwarded for the assent of the Govr Genl. The Govr in Council also objects to the repeal of the second sentence of clause 5, Section 16, of Regt of 1816. It seems a good legal direction, and it is advantageous to have the whole law in one Act. The same remark applies to the proposed repeal in Reg V of 1816 ~~and the repeal of clause 17 of Regt of 1816~~.

4. The Govt ~~are~~ not, however, disposed to concur in the opinion of the Advocate Genl that Regt of 1816, on the subject of Pleaders, should be entirely superseded, & that Act of 1865 should be brought into force by Notification in the Gazette. The Govt have already expressly objected to the extension of its provisions to this Presidency, considering them as far as related to Revenue agents altogether unsuited to the circumstances of Madras; and it will be seen that the Board of Revenue, & the Judges of the High Court also, were opposed to the Pleaders' Act. A letter of this Govt to the Govt of India & papers recorded in Legislative Proceedings 18 Dec/71, No 175.

5. If the Govt of India accept the views of this Govt that it is not expedient advisable to publish any revised edition of the Regulations or Acts applicable to Madras, until the necessary amendment in the law itself has been carried out, this Govt will be prepared to avail ~~itself~~ ^{take it} in consideration.

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Advocate Genl to collect & consoli-
date the enactments actually in
force in ^{clear} intelligible and con-
cise form.

As regards the Acts of
the Governor General in Coun-
cil enumerated in Part I of the
Schedule, it is for the purpose that
the following suggestions will need to
be considered in further dealing
with the Bill.

Schedule, Part I.

Act VIII of 1856. The words "Madras
and" in the second column of the
Schedule should be struck out, as
this Act was repealed, as regards the
Madras Presidency, by Madras Act
V of 1860, section 1.

Act III of 1859. Section 3 of this Act,
so far as it affects this Presidency,
and section 5 should be repealed.
They are now obsolete; Regulation
VII of 1832, which contained the
rules for the trial of small suits
in Military Bazaars and for the
trial by Panchayat of suits against
native officers and soldiers, having

been repealed by the repealing
Act XVI of 1874.
Act II of 1865. In section 12, in
addition to the words proposed for
repeal, the words "or District" between
the words Village and Panchayats,
and the words "or by a single officer
duly authorized and appointed"
to the end of the section, should
also be repealed. The reference to
District Panchayats in this Act
is no longer necessary, as Reg VI of
1816, which provided for that class of
tribunals, was repealed by the Madras
Civil Courts Act III of 1873; and the
latter portion of section 12, which
saves the jurisdiction of officers
appointed to try small suits in
Military Bazaars and Cantonnments
and of Military Panchayats, is
now obsolete; Regulation VII of
1832, which provided for the appoint-
ment of such officers and for con-
vening such Panchayats, having
been repealed by the repealing Act
XVI of 1874.

Act XXI of 1864. Section 5 may
be repealed, as it is ^{obsolete} ~~repealed~~.

ordered that the follow-
ing letter be dispatched to the
Govt of India.

D

Govt. India 8 Sept 29/2

Despatched with 5000
H. B. 2

Ind. Dept.

N^o 371

The Secretary to the
Govt of India,

Legislative Dept.

Sir,

In reply to your letter dated
18 Oct/75, N^o 575, giving cover to a
Bill for the repeal of certain ob-
solete enactments, I am directed
to submit for the favourable con-
sideration of the Govt of India,
the accompanying copy of Resolu-
tions dated 30 Nov/75 submitted
by the Advocate General of Mad-
ras, on the expediency of the mea-
sure so far as this Presidency is
concerned, and to state the con-
currence of this Govt, with that
officer, in the opinion that it
would be better to re-enact the
Madras Regulations themselves
in a shape in keeping with the
present state of the law, than to

make the more verbal amend-
ments proposed in Part III of
the Schedule attached to the
Bill.

2. I am to invite the at-
tention of the Govt of India
to the accompanying Proceed-
ings of this Govt of this date, &
to advise the strong recommend-
ation of His Grace the Govt
in Council that a revised edition
of the Madras Regulations and
Acts may not be published, un-
til the necessary amendment
of the law itself has been carried
out, and that this Govt may be
authorized to accept Mr. Cou-
sin's offer to collect and
consolidate the Madras Regulations,
in so far as they may be actually
in force, in an intelligible and
compendious form.

50661
2/6
Jas St John
28 February 1876

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