

INDIAN BAR COMMITTEE

REPORT

1923-24

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REPORT OF THE INDIAN BAR COMMITTEE.

I.—Introductory.

1. The Indian Bar Committee was constituted by the Government of India Home Department resolution No. F-591-23-Judicial, dated the 7th November 1923. By this resolution the Committee was required to examine and report on—

- (1) the proposals made from time to time for constituting an Indian Bar, whether on an All-India or Provincial basis, with particular reference to the constitution, statutory recognition, functions and authority of a Bar Council, or Bar Councils, and their position *vis-a-vis* High Courts;
- (2) the extent to which it may be desirable to remove existing distinctions enforced by statute or practice between Barristers and Vakils; and to make recommendations.

The constitution of the Committee was as follows:—

President.

Sir E. M. des C. Chamier, Kt., Barrister-at-Law, Legal Adviser and Solicitor to the Secretary of State, and late Chief Justice of the High Court of Judicature at Patna.

Members.

- (1) The Hon'ble Mr. Justice V. M. Coutts Trotter, Barrister-at-Law, Judge of the High Court, Madras.
- (2) The Hon'ble Mr. Justice Dinshah Fardunji Mulla, LL.B., Additional Judge of the High Court, Bombay.
- (3) Mr. S. R. Das, Barrister-at-Law, Advocate General, Bengal.
- (4) Mr. H. P. Duval, I.C.S., Secretary to the Government of Bengal, and Superintendent and Remembrancer of Legal Affairs, Bengal.
- (5) Colonel Sir Henry Stanyon, Kt., C.I.E., V.D., Barrister-at-Law.
- (6) Rao Bahadur Tiruvenkata Rangachariar, Vakil, High Court, Madras.
- (7) Mr. Sitaram Sunderrao Patkar, LL.B., Government Pleader, Bombay.
- (8) Mr. M. M. Chatterji, President of the Incorporated Law Society, Calcutta.

Mr. J. H. Wise, I.C.S., *Secretary.*

Shortly after the issue of the above resolution Mr. Justice Mulla communicated his inability to serve on the Committee and the Government of India, in their Home Department resolution No. F.-591—23-Judicial, dated the 17th November 1923 appointed Rai Bahadur Babu Lalit Mohan Banarji, M.A., LL.B., Government Advocate, Allahabad, to be a member of the Committee in his place.

2. The President arrived in Delhi on the 18th November 1923. In order to save time and to enable the Committee, which was to assemble in Bombay on the 23rd November, to embark on its enquiry with the least possible delay, he decided to draw up and issue a questionnaire which would define, however widely, the lines which the enquiry would follow. The questionnaire was purposely designed to cover as wide a field as possible. Previous proposals for the creation of an Indian Bar had been embodied in a resolution moved by Munshi Iswar Saran in the Legislative Assembly on the 24th February 1921. These proposals were submitted to the criticisms of associations and individuals throughout India, and the opinions expressed on them proved the wide divergence of the views held and of their implications. The object of the questionnaire was, by eliciting opinions on particular aspects of the question, to provide a basis for oral enquiry and enable the Committee to focus its attention on particular points which seemed to require further elucidation. The questionnaire was necessarily issued without the concurrence of the Committee, but at its first meeting in Bombay on the 24th November 1923 the Committee formally approved the action taken.

3. We assembled in Bombay on the 23rd November 1923, and at preliminary meetings discussed the itinerary which should be followed, the evidence which should be invited and generally the manner in which the enquiry should be conducted. It was provisionally decided that, after concluding our sittings in Bombay, we should visit Madras, Calcutta and Allahabad, and then conclude our tour in Delhi. Witnesses from the headquarters of other Chartered High Courts were to be invited to meet the Committee at whichever centre was the most convenient for them, those from Rangoon being invited to come to Calcutta, those from Patna to Calcutta or Allahabad, and those from Lahore to Delhi. Subsequent events necessitated a modification of this programme. It was found impossible to obtain the presence of witnesses from Rangoon in Calcutta, and improbable that we should have the views of the Lahore High Court and Bar adequately represented in Delhi. In both places the Bar seemed to us to present peculiar features which required investigation. On the other hand if the Committee were to visit Rangoon our programme would have been disturbed and our enquiry protracted to an extent which we thought

undesirable. We therefore decided that Mr. Justice Coutts Trotter and Dewan Bahadur T. Rangachariar should, on the conclusion of our meetings in Calcutta, hear evidence in Rangoon, while the rest of the Committee went to Allahabad and Lahore. This programme was adhered to, and the Committee reassembled in Delhi on the 14th January.

4. We also gave consideration to the question of visiting the headquarters of the Judicial Commissioners' Courts at Karachi, Nagpur and Lucknow, since it was desirable for the completeness of our enquiry to have information regarding the organisation of the Bar in these places also. We decided, however, that, provided we could obtain this information by other means, it was undesirable to incur the expense and delay involved in such an extension of our tour. We therefore requested full replies to the questionnaire from these places, and in the case of Nagpur and Lucknow invited representatives of the legal profession to meet us in Calcutta and Allahabad. In the case of Karachi we were able to hear in Bombay the evidence of witnesses who had experience of the working of the judicial system in Sind.

5. At the same time we discussed the extent to which we should hear oral evidence. It seemed likely that we should receive more offers to give oral evidence than we could, having regard to the limited time at our disposal, afford to accept. We therefore decided to invite the evidence of any Judges of the High Courts which we visited who might wish to express their views, and also representatives of the various legal associations and distinguished members of the legal profession. We also invited Local Governments, should they wish to do so, to depute representatives to discuss informally the questions under enquiry. In this way we hoped to secure that every interest directly involved in any change of the existing legal system would have full opportunities of expressing its views.

6. We also discussed the question of inviting evidence from Chambers of Commerce and other commercial or political bodies which might be expected to voice the opinions of the litigant public. We fully realised the paramount interest which the public must have in maintaining the efficiency, expedition and cheapness of whatever legal system may be in existence. On the other hand any changes which may be effected in the legal system must necessarily involve the consideration of possibly technical and professional questions on which the views of laymen could not be expected to be of value. We considered that so long as we did not in our enquiry lose sight of the objects which are the primary concern of the public who have recourse to the courts, we should serve no useful purpose by hearing the evidence of persons who

could reiterate their adherence to certain ideals in the administration of justice but could not give expert views on the technical questions to which an enquiry of this kind must necessarily be mainly directed. We therefore decided to give such public bodies an opportunity of bringing their views before the Committee in writing, but not to invite them to give oral evidence. Our action in this respect has met with criticism in certain quarters, but we trust that we have made it clear that it was not prompted by any underestimation of the interest which the litigant public has in the matters under enquiry.

II.—Description of the existing organisation of the Bar in India.

7. Since all suggestions for the institution of an All-India Bar or of Provincial Bars necessarily involve some disturbance of existing arrangements, it seems to us desirable at the outset to describe briefly the constitution of the Bar in India as it now is. Full control of practitioners entitled to practise in the High Courts is under the present system vested in the several High Courts, in the case of the Chartered High Courts by their Letters Patent and in the case of the principal non-Chartered High Courts other than that of Sind by the Legal Practitioners Act, 1879, subject only, in the latter case, to certain powers of control reserved to the Local Governments. Similar provision exists in the case of the Judicial Commissioner's Court of Sind, which, with the rest of the Bombay Presidency, is excluded from the operation of most of the provisions of the Legal Practitioners Act, in the Sind Courts Act (Bombay Act XII of 1866). The enrolment of pleaders and mukhtars for the subordinate courts is regulated for the most part by rules made by the High Courts under the Legal Practitioners Act, 1879, in Bombay by the Sind Courts Act, 1866; for Sind and by the Bombay Pleaders Act, 1920, for the rest of the Presidency, and in other parts by special statutory provisions. Rules so made usually require the sanction of the Local Government when the High Court is not a Chartered High Court. Section 9 of the Letters Patent of the Calcutta High Court, which may be taken as typical, gives power to the High Court to "approve, admit and enrol such and so many advocates, vakils and attorneys as to the said High Court shall seem meet" and also gives power to the High Court to regulate by such rules and directions as it may make the manner in which such advocates, vakils and attorneys shall appear and plead or act or plead and act for suitors of that Court. Section 10 of the same Letters Patent gives the High Court power to make rules for the qualification and admission of advocates, vakils and attorneys, and also gives power to remove or suspend

from practice any such practitioners. In short, the control of the High Courts is complete. They not only determine by their rules the qualifications for admission to the different branches of the legal profession entitled to practise before them and the manner in which the members of those branches shall practise, but they also exercise exclusive disciplinary powers over all members of the legal profession, except over revenue agents in Bengal, Bihar, Assam, the United Provinces and the Central Provinces.

8. We shall now summarize the rules made by the Chartered High Courts so far as they relate to the qualifications required for admission to practise in the High Courts in the various branches of the profession. We rely on the latest information to which we have had access, but it is possible that in some cases recent modifications of the rules have not come to our notice. In the case of advocates, every High Court recognises as a primary qualification the call to the Bar in England, Scotland, or Ireland, while, with the exceptions of Calcutta and Rangoon, other avenues for admission to the roll of Advocates are provided. And, with the single exception of Lahore, all Chartered High Courts require in the case of barristers some further qualifications beyond the mere call to the Bar in the United Kingdom.

In Calcutta, where only barristers are admitted to the roll of advocates, every applicant for admission is required to furnish a certificate that he has read in the chambers of a practising barrister in England for a year, and in addition he must either have been educated in England for three years, exclusive of the time spent in chambers, or have taken a degree in the United Kingdom or a law degree in an Indian University.

The Bombay rules require a barrister to have read in the chambers of a practising European barrister of more than ten years' standing for at least one year. But the rules also admit as advocates Bachelors of Laws of the Bombay University who pass an examination under the direction of the High Court, while there is a provision whereby the High Court may dispense with the examination when the candidate is a pleader of the High Court of not less than ten years' standing.

In Madras barristers of England or Ireland are required to have read for six months in the chambers of a practising barrister in England or Ireland of not less than seven years' standing. The rules also admit advocates of Calcutta, Bombay and Allahabad and Masters of Laws of the University of Madras who have studied for eighteen months with an advocate of the High Court of Madras, this period being reduced to twelve months in the case of a candidate who has served an apprenticeship of one year for the purpose of being enrolled as a vakil.

In Allahabad the rules require a barrister of England or Ireland to be in possession of a law degree of an English University or of the Universities of Calcutta or Allahabad, or to have read for not less than a year in the chambers of a practising barrister in England, and in addition to have been educated in the United Kingdom for three years, exclusive of the year in chambers, or to have taken a degree in a University of the United Kingdom. The rules also admit Doctors of Laws of the University of Allahabad who have practised for three years in the United Provinces, and advocates of Calcutta who are otherwise eligible under the Allahabad rules. Attorneys and vakils of ten years' standing are also eligible on the invitation of the Chief Justice and Judges.

In Patna barristers of England or Ireland are required, in addition to one year's reading in chambers, to have been educated in the United Kingdom for three years, exclusive of the year in chambers, or to have taken a degree in a University in the United Kingdom or a law degree in an Indian University. The rules also admit Doctors of Laws of Allahabad or Calcutta who have practised for three years in Bengal or Behar and Orissa. There is a similar provision to that in force at Allahabad for attorneys and vakils of ten years' standing.

In Lahore, as noted above, the rules admit barristers of the United Kingdom without any further qualification. They also admit first grade pleaders who have practised as such for not less than ten years, including five within the jurisdiction of the High Court, this period being reduced to three years within the jurisdiction of the High Court when such pleaders are Doctors of Laws of the Punjab University.

In Rangoon, as in Calcutta, only barristers of the United Kingdom are admitted to the advocates' roll. A barrister of England or Ireland is required either to have read for a year in England or Ireland in the chambers of a practising barrister of over five years' standing, to have practised in the courts of the country in which he has been called for at least two years, to have read in Burma in the chambers of a practising barrister of ten years' standing for two years, or to have practised, prior to his call, as a pleader or advocate of the first or second grade in Burma for at least seven years. An advocate of Scotland is required to have practised as such in Scotland for at least two years.

9. The qualifications required for admission as a vakil in Calcutta are the degree of Bachelor of Arts or of Science followed by the degree of Bachelor of Laws, and two years' service as an articled clerk to an approved practising vakil of five years' standing. The period may be and usually is reduced by the Court and may coincide with the period during which the student is reading for his

law degree. The possessor of a law degree in an Indian University may also be admitted if he can prove four years' *bona fide* practice as a pleader in a subordinate court. Three years' service as an attorney of the High Court is also a qualification. But in every case the candidate is required to pass an examination, mainly in procedure, before the Judges in chambers though we understand that it has been little more than a formality in recent years.

In Bombay a matriculate of the Bombay University or an attorney can be admitted by passing an examination, prescribed by the High Court, and a Bachelor or Master of Laws is eligible without further qualification.

In Madras a Bachelor of Laws of the Madras University is admitted as a vakil after passing an examination in procedure and practice (this requirement being waived if the candidate has served for three years as a subordinate judge in the Presidency) and serving one year's apprenticeship with a practising advocate, vakil or attorney of the Court. In all cases the candidate must attend an approved course of lectures on professional conduct and etiquette. A Bachelor of Laws of Allahabad or Calcutta is also admitted after a similar apprenticeship. A Bachelor of Laws who has practised for five years as a pleader in the courts of a District or subordinate Judge may also be admitted as a vakil.

In Allahabad the rules admit a holder of the degree of LL.B. of the Allahabad University, or of B.L. of the Calcutta or Madras University, to be enrolled in the High Court as a vakil. There is also a test of the applicant's knowledge of the vernacular. But a vakil is only allowed to practise in the High Court after two years *bona fide* practice in the subordinate courts.

In Patna the qualifications are the possession of the degree of B.A. or B.Sc. together with the B.L. or LL.B. of an Indian University, and two years' service as an articled clerk under an approved practising vakil of the High Court. A pleader holding a degree of B.L. who has practised for four years in a subordinate court may also be admitted. Three years' service as an attorney of the High Court also qualifies. But in every case the candidate is required to pass an examination in law and procedure prescribed by the High Court, and in certain cases a language test in Hindi is required.

The Lahore rules admit English, Scottish and Irish solicitors, vakils or attorneys with three years' practice in Chartered High Courts who pass an examination in the Revenue Law, Procedure and Customary Law of the Punjab, and persons who have obtained honours in law at the Punjab University. Second grade pleaders of two years standing if they are Bachelors of Laws of the Punjab University, of three years standing if they are Bachelors of Law

of another University, and of five years' standing if they are without a law degree, may also be admitted.

In Rangoon the qualifications are the degree of Bachelor of Laws of the Rangoon University, or of the Calcutta University if the candidate has passed in Buddhist law and Burma local laws, followed by three years' practice as a second grade pleader or advocate. As an alternative to the degree in law a candidate may present himself for the first grade pleaders' examination. Solicitors of the United Kingdom are also admitted as first grade pleaders.

10. In addition to the provisions made in their rules for advocates and vakils, the High Courts of Calcutta, Bombay, Madras, Allahabad and Patna have all prescribed qualifications for enrolment as attorneys. We do not consider it necessary to set out these qualifications in detail. Only in the three Presidency High Courts is this branch of the legal profession of material importance. In the other High Courts we find that few if any persons seek admission as attorneys. We do not propose to make any recommendation affecting either the qualifications required for admission as attorneys, which we consider adequate, or their relations with the other branches of the legal profession.

11. The above summary deals only with the qualifications prescribed by the Chartered High Courts under the powers conferred by their Letters Patent. It gives no account of the various grades of practitioners entitled to appear in subordinate courts, for whom rules are made by the High Courts under the Legal Practitioners Act, 1879, and the Bombay Acts. Nor does it describe the qualifications prescribed for practitioners by the non-Chartered High Courts. Some courts, as for instance the Judicial Commissioner's Court at Karachi, differ in that they have only a single grade of practitioners entitled to appear before them. But generally it may be said that in the matter of qualifications for admission to practice the non-Chartered High Courts present no peculiar features of importance, but reproduce largely, with variations due to local conditions, the system in force in one or other of the Chartered High Courts. We do not therefore propose to set out these qualifications in detail. Nor do we propose to describe at length the many varieties of legal practitioners who practise in the subordinate courts throughout India. We have noticed a general tendency towards the unification of these grades and the gradual disappearance of the practitioners of low qualifications whose practice is confined to the lowest courts. This tendency is one which in our opinion is wholly beneficial and we look to the time when there will be in each province a single grade of practitioners entitled to appear in all courts, from the High Court to the

lowest Revenue Court. But the various provincial systems and the local conditions which they reflect vary so widely that we are satisfied that any attempt to legislate for these subordinate grades of practitioners on any but provincial lines must be doomed to failure. We do not propose therefore to discuss them at length in this report, but content ourselves with expressing the opinion that the disappearance of these grades is an ideal which should be kept prominently in view by whatever authority may be vested with the control of the Bar in each province.

12. This summary of the organisation of the Bar in the various High Courts would be incomplete without some reference to the conditions under which advocates on the one hand and vakils or pleaders on the other are entitled to practise. In the Calcutta and Bombay High Courts vakils are not entitled to appear on the original sides of the Courts, nor in appeals from the original sides except in cases in which a question of Hindu or Mahomedar law or usage arises. Advocates can appear on both sides of the Courts, but in Calcutta they must be instructed by attorneys on the original side and in appeals from the original side, and on the appellate side and in the mufassil by attorneys, vakils or lower grade practitioners, while in Bombay they must be instructed by attorneys on the original side and by attorneys or pleaders on the appellate side, and can appear without instructions outside the High Court. In Madras both advocates and vakils can appear on both sides of the High Court, but on the original side advocates can only appear on instructions from attorneys or vakils. No such distinctions exist in Rangoon, where both advocates and pleaders can appear, plead and act on both sides of the High Court. The remaining High Courts have no ordinary original jurisdiction, and all practitioners are equally entitled to appear, plead and act. In all High Courts vakils or pleaders are required to file vakalatnamas, and in all except Calcutta, where the rule has recently been revised, advocates have preaudience of vakils or pleaders. These distinctions we shall discuss later at greater length.

III.—Distinctions between grades of legal practitioners.

13. We have described above the organisation of the Bar in India as it now exists, its control and the different kinds of practitioners of which it is composed, and we have referred briefly to the conditions under which advocates and vakils practise and the distinctions which are made between them. We shall consider later the extent to which the exclusive control of the High Courts should be retained. But before doing so it is desirable to consider how far the present organisation is suitable and, as a preliminary

to this, whether the distinctions made between advocates and vakils should be maintained.

14. As has been seen, in every High Court except Calcutta, advocates take precedence over vakils or pleaders. Vakils are obliged to file vakalatnamas, while in many cases advocates are not. To take first the question of precedence, we are satisfied that a rule by which the latest joined barrister-advocate takes precedence over and enjoys pre-audience of the most senior and experienced vakil or pleader cannot be defended. In some cases advocates of High Courts have higher qualifications than vakils or pleaders of the same Courts, but they appear, from the evidence which we have heard, to be willing to abandon such precedence as they have in order that a uniform rule may be established. We have heard the views of many witnesses on the subject, and the evidence shows that this is a privilege for the exercise of which occasion rarely arises, since it is exceptional for a junior advocate and a senior vakil to be briefed together on the same side. On the other hand the evidence equally shows that when occasions do arise when a junior advocate might claim pre-audience of a senior vakil, the privilege is almost invariably waived in favour of the senior. We have not found among barrister witnesses any general desire to retain a privilege which they seldom exercise, while vakil witnesses, although they recognise the ineffectiveness of the rule in practice, unanimously wish to remove a distinction which they not unnaturally regard as a mark of inferiority. The objections to the rule lose none of their force from the fact that they are largely based on sentiment.

15. The objection to the other distinction, which relates to the filing of vakalatnamas, is not entirely based on sentiment. The ability to act without a vakalatnama may be an advantage when a vakalatnama cannot be procured in time to save an appeal or application from being barred by limitation, or when the same party has to file a number of connected appeals, for each of which a separate vakalatnama is required if they are filed by a vakil or pleader. Here again we find it hard to justify the retention of the existing distinction. With certain exceptions which need not be detailed advocates, vakils and pleaders may and do appear, plead and act under exactly the same conditions. If the filing of a vakalatnama is necessary in the case of a vakil, it is equally necessary in the case of an advocate; if it is unnecessary to impose this duty on the advocate, it is in the case of the vakil a superfluous burden from which he ought to be relieved. We have heard witnesses who would abolish vakalatnamas altogether and witnesses who would

make advocates file them as well as vakils. But in no case has it been seriously maintained that, when all are practising in the same way, this distinction between advocates and vakils has any logical foundation.

16. We are agreed therefore that these two distinctions should be abolished. But before we make a definite recommendation as to the manner in which this is to be effected and proceed to consider the more serious distinctions which exist with regard to practice on the original sides of the Calcutta and Bombay High Courts, it would be well to survey the position to which we are led if uniformity is established in these respects between advocates and vakils. These being the only distinctions which are operative in the majority of the High Courts, in which there is no original side, we are left with two grades of practitioners in these Courts, both practising on identically similar terms and neither of them enjoying any peculiar privilege or suffering under any peculiar disability. It is difficult to avoid the conclusion that the position is anomalous and that the time has come when all practitioners entitled to appear in each of these High Courts should be enrolled as a single grade and under the same designation. To preserve distinctions of form when no distinctions exist in fact is to perpetuate a potential, if not actual, source of grievance and discord. The view has been expressed that this division of practitioners into advocates and vakils serves a useful purpose even when no distinctions of practice exist, in that it provides the means for according recognition to distinguished work at the vakil bar. We find that in more than one High Court provision is made for the admission of vakils of ten years' standing as advocates on the invitation of the Chief Justice and Judges, and that when this power is exercised by the Court it is regarded as the recognition of outstanding talent. We have also evidence that in Allahabad, where such a rule exists, this elevation to the Advocates' roll is a distinction which is highly prized by the profession. It may or it may not be desirable to provide for the recognition of distinguished merit at the Bar by elevation to a higher grade of practitioners. This is a question which does not properly come within the terms of our enquiry. But if it is desirable, we consider that a more suitable form of recognition, such as the grant of the rank of King's Counsel, could be devised than elevation to a grade which, while it may contain a higher average of outstanding talent, cannot possibly be regarded as exclusively composed of successful practitioners. We do not therefore think that this consideration detracts in any way from the desirability of unifying the grades.

17. But there is a positive consideration in favour of taking this step to which we attach importance. We have found throughout

India an almost universal desire among members of the legal profession that in some measure they should be given a hand in the management of their own affairs. We shall consider later in this report the extent to which we think this desire can be met. It is sufficient at this stage to record our opinion that a system which contains divisions which are not absolutely necessary is a most unstable foundation on which to build any scheme of self-government. In fact, we regard it as an important preliminary to the proposals which we shall make in this respect that the largest degree of unification of grades of practitioners which is now possible should be effected.

18. We have confined our attention in the preceding paragraphs to those High Courts in which the only distinctions in practice between advocates and vakils are those relating to precedence and vakalatnamas. We have not touched on the distinctions which are peculiar to the High Courts at Calcutta, Bombay and Madras. But before we proceed to deal with these questions, we propose to consider how far it is possible to apply the conclusions which we have so far reached to these three Courts, in spite of the peculiar conditions which govern practice at their Bars. Our conclusion that the precedence of advocates over vakils should be abolished applies equally to all High Courts. In the case of vakalatnamas, we have reached the conclusion that the rule must be made the same for advocates and vakils on consideration of the equality on which the two grades practise in most High Courts. We decided that when both grades habitually act as well as plead, any distinction in the matter of the filing of vakalatnamas is illogical. In Calcutta, Bombay and Madras this equality of practice does not exist. But our conclusion still applies to these three Courts if we express it in the form that when the particular kind of practice is the same there should be no distinction. If there is any case in which an advocate acts as well as pleads he should be subject to the same rules as a vakil who acts as well as pleads. If a vakil confines himself to pleading, there should be no distinction between him and the advocate who does the same. In short, if vakalatnamas are to be filed in some cases and not in others, the only logical distinction is one which is based not on the grade to which the practitioner belongs but to the kind of work in which he is engaged.

19. We decided that when there are two grades of practitioners working side by side on exactly the same terms it was desirable to merge them and enrol only one grade. When we come to apply this conclusion to the High Courts at Calcutta, Bombay and Madras we are faced with the facts that in Calcutta and Bombay

pleading on the original side is confined to advocates, and that advocates on either side of the Court can only appear on instructions; while in Madras, although vakils are admitted to the original side, they do not practise on that side in the same way as advocates, in that they can both plead and act, whereas an advocate is confined to pleading. We recognise the wide cleavage which these distinctions make between the two grades. On the other hand we do not consider that the existence of these distinctions, whether in their present or in a modified form, should militate against the end which we regard as desirable in itself, namely, that one and the same title should be applied to all practitioners entitled to plead before the High Courts. We have been told that an advocate of the Calcutta High Court going out to conduct a case in the mofussil is bound by the same restriction as to acting as in the High Court itself. Whether or not this is a corollary of the fact that in Calcutta only barristers are enrolled as advocates, the same does not apply in Bombay and Madras. In both provinces advocates and vakils of the High Court when they conduct cases in the mofussil are able to do so on exactly the same terms. We regard this as an additional reason for the step which we now recommend. Without in any way anticipating the conclusions which we shall come to with regard to the original sides of the Calcutta and Bombay High Courts, which are now closed to vakils, and without disturbing the position of attorneys we recommend that in all High Courts a single grade of practitioners entitled to plead shall be enrolled, to be called advocates, (not barristers), that there shall cease to be a separate grade of High Court Vakils or Pleaders, and that when special conditions are maintained for admission to plead on the original side of the High Court the only distinction shall be within that grade which shall consist of advocates entitled to appear on the original side and advocates not so entitled.

20. We recommend that Advocates enrolled in a High Court should be entitled to appear occasionally in any other High Court subject to such conditions as may be imposed by the Bar Council attached to the court in which he desires to appear or by the court where there is no Bar Council, for example, payment of a special fee and employment of a local advocate in association with him.

21. We are now in a position to make definite proposals for abolishing the distinctions in regard to precedence and vakalat-namas. We propose that advocates who are barristers shall take precedence *inter se* according to the dates on which they were called to the bar, that advocates who are not barristers shall take precedence *inter se* according to the dates on which they became

entitled to practise in a High Court, and that an advocate who is a barrister shall take precedence over another advocate only if he was called to the Bar before such other advocate became entitled to practise in a High Court. We do not restrict the precedence of an advocate to the date on which he became entitled to practise in the particular High Court in which precedence is claimed. We provide for the case of the advocate who is enrolled as such after removing his name from the roll of advocates of another High Court. In such case we consider that he should be entitled to count his precedence from the date on which he was first entitled to practise in any High Court. Further, when a barrister has been called to the bar after admission to practise in a High Court, he should be allowed to take precedence not from the date of his call, but from the prior date of his admission to practise in a High Court. These proposals follow the lines of rules made recently by the Calcutta High Court for the appellate side, but they are intended to apply to the original as well as to the appellate sides.

22. As regards vakalatnamas we have heard much evidence both against and in favour of their abolition. Some would abolish vakalatnamas altogether, others would make them compulsory for all classes of practitioners. Neither course commends itself to us.

The rules regarding vakalatnamas are no doubt abused in some cases, but the system has been in force for many years and we are satisfied that on the whole it has worked well. The courts generally are in favour of their retention, for obvious reasons, and many vakils and pleaders have stated that they regard the vakalatnama as a valuable protection to themselves against the vagaries of their clients. We have been referred to rules made by the Calcutta High Court and other High Courts which are designed to ensure that the taking of a vakalatnama shall not be regarded as a mere formality, and we have no doubt that in the great majority of cases the vakalatnama is a reality and serves a useful purpose.

On the other hand we think that vakalatnamas are now demanded in some cases in which there is no real necessity for them. When a practitioner is required to act a vakalatnama signed by or on behalf of his client is, in our opinion, necessary for the protection both of the practitioner and of the client. But we do not consider that the same necessity exists when the practitioner is only required to appear and plead. Advocates of Chartered High Courts now appear and plead without vakalatnamas, and no difficulty has arisen therefrom.

23. We therefore propose that all practitioners shall be required to file vakalatnamas when they act, but that when they merely appear and plead they shall be allowed the option of filing a memorandum of appearance, signed by them, giving the names of the parties to the case, the name of the party for whom they appear and the name of the person who authorised them to appear. We would not, however, apply this rule, but would maintain the existing practice, in the case of an advocate who under the rules in force can only appear on the original sides of the Calcutta, Bombay and Madras High Courts on the instructions of an attorney. The option of filing a document of either kind is proposed because of the practice which prevails in some parts of the country whereby the names of a large number of practitioners are entered in a vakalatnama and any of them may endorse his acceptance. In many cases it may be more convenient for a practitioner to make use of a vakalatnama which has already been prepared. We propose no alteration in this respect in the rules relating to Mukhtars or revenue agents.

24. This proposal may be criticised as likely to lead to complications. But it must be remembered that in the great majority of cases only one practitioner is engaged who both acts and pleads, and therefore, under the rule we propose, will be obliged to file a vakalatnama. We would add that any difficulty which might result from an unavoidable delay in procuring a vakalatnama is easily met if the courts allow a suit, appeal or application to be filed with a memorandum of appearance on an undertaking that the requisite vakalatnama will be forthcoming as soon as it can be procured and before the case proceeds further.

In the preceding paragraphs we have primarily had in view civil cases. In some parts of India vakalatnamas are and in some parts are not required to enable practitioners to appear, plead or act on behalf of accused persons. We think that it should be left to the High Courts to determine in what courts and in what classes of cases a memorandum of appearance might be substituted for a vakalatnama where a practitioner acts on behalf of an accused person.

Any loss of revenue which might result from the rule which we suggest can be avoided by making the memorandum of appearance liable, as in the Madras Presidency, to the same court-fee as a vakalatnama.

25. We now pass to a consideration of the conditions which are peculiar to the High Courts at Calcutta, Bombay, and Madras. In all these courts there is, in varying degrees, a compulsory dual

system of advocates and attorneys or vakils. We have heard many arguments on the merits and demerits of the dual system. Some witnesses have urged that the dual system not only makes for greater efficiency and expedition in the disposal of suits, but is actually no more expensive for the litigant than the single agency, others admit the greater expense of the dual agency but consider that the expense is more than justified by the gain in efficiency, others contend that the dual system is preferable in itself but that it involves additional expense which it is undesirable to impose on the Indian litigant, while others maintain not only that the single agency is cheaper but that a system whereby the practitioner who is going to plead the case has direct access to his client is the best from every point of view. We have heard on the one hand the argument that the single agency is in force in most High Courts and in the mufassil and that no question has arisen as to the efficiency of the system in these cases, on the other hand we have heard witnesses who would welcome the increased efficiency which they hold would result from an extension of the dual system, were it possible, to courts where it is not in force. The views of our Committee on this old-standing controversy are as divided as those of the legal world generally and we are not in a position to give any decision on the merits of the two systems. Notes have been prepared by Mr. Justice Coutts Trotter and Diwan Bahadur T. Rangachariar, representing different views on the question, and are annexed to this report.

26. It follows from this division of opinion between us that we do not recommend any change in this respect of the existing system in India. It would only be possible to make such a recommendation, involving as it would the uprooting of long-established arrangements on the original sides of the Presidency High Courts, if we, as a Committee, were strongly of opinion that the present system is a bad one. As it is we are all agreed that where in India a compulsory dual system is now in existence that system should be allowed to continue. It is on the basis of this conclusion that we shall proceed to discuss the distinctions between advocates and vakils on the original sides of the High Courts at Calcutta, Bombay and Madras.

27. The exclusion of vakils from the original side of the Calcutta High Court is a survival of the time when the Supreme Court had jurisdiction in Calcutta and over certain persons only elsewhere, and the Sadar Diwani Adalat and the Sadar Nizamat Adalat had jurisdiction in Bengal outside Calcutta. Barristers and solicitors alone were entitled to practise in the Supreme Court, while both barristers and vakils were entitled to practise in the Sadar Courts. The position was the same in Bombay and Madras. The High

Courts at Calcutta, Madras and Bombay, which were established in 1862, succeeded to the jurisdiction of the Supreme and Sadar Courts, the original side of the High Court taking the place of the Supreme Court and the appellate side taking the place of the Sadar Courts.

28. In the Bombay High Court there has been in operation for over fifty years a rule whereby a Bachelor of Laws has been able by passing an examination conducted by the Court to qualify himself to become an advocate and so be admitted to practise on the original side. A comparatively recent rule enables the Court to enrol as an advocate without any examination an approved vakil of ten years' standing who is a Bachelor of Laws. In the Madras High Court for nearly sixty years vakils have been entitled to practise on the original side without any restrictions. A Master of Laws who serves a period of apprenticeship may be admitted as an advocate and he becomes entitled to practise on the same conditions as advocates who are barristers. But the Calcutta High Court has never admitted as advocates any persons other than barristers, nor has it allowed vakils to practise on the original side, the result being that no one has been able to qualify himself for admission to the original side except by getting himself called to the Bar in England, Scotland or Ireland.

29. The Calcutta High Court therefore presents the extreme example of this particular distinction of classes of practitioners, since only there is the door to the roll of advocates rigorously closed to all but barristers. It seems likely that if we can find the means of bridging the gulf in Calcutta, we shall have found a solution which it should be possible to apply to Bombay, where the distinction exists, but not in such an extreme form. In Madras, where vakils are admitted to the original side, the conditions are peculiar and will be separately considered later.

30. While admitting that advantages are to be gained from a legal education in England we think that the time has come when another avenue of approach to practise on the original side of the Calcutta High Court must be provided. We have briefly referred to the origin of this restriction in the old Supreme Court, which administered a different law and conducted its business in a different language from the Sadar Courts to which vakils were then restricted. In our opinion the conditions which made this distinction between barristers and vakils the only possible arrangement when the Supreme Court and the Sadar Courts were in existence have to a great extent passed away. The language of both sides of the Court is English, while legal and general education in this country have advanced so far that it is not reasonable to require a man to leave India in order to qualify himself for admission

to the highest grade of legal practitioners. There is always a natural reluctance to abandon any established system which has worked well for the sake of principles, however laudable, when the consequences of a change cannot be accurately foreseen. But it is possible to overestimate the dangers said to be involved in a liberalisation of the rules for admission to the original side in Calcutta. We have no evidence that the rules in force in Bombay have led to any deterioration of practice on the original side there. We have come to the conclusion that it is our duty to suggest some modification of a system which imposes so marked a disability on the Indian in his own country. We are the more impelled to do so by the opinion which we hold that the present system does not always ensure the maintenance of a higher professional efficiency in the practitioner whom it admits to the Advocates' Roll. Under the present rules of the Inns of Court it is possible for any person who has been enrolled as a vakil of the High Court, although he may not have practised as such, to be called to the Bar in one year, during which time he not only sits for the Bar Examination but also reads in chambers. He is then entitled, by virtue of his call to the Bar, to be enrolled as an advocate. There is evidence that some vakils, immediately on enrolment in a High Court, have proceeded to England and got themselves called to the Bar not so much as a means of improving their equipment for a legal career, but for the purpose of obtaining in the shortest possible time a formal qualification which will automatically confer on them material advantages on their return to India.

31. We realise that our proposal to change the rules means taking away from barristers a privilege which they have enjoyed exclusively in the High Court for more than sixty years. We should be reluctant to make any proposal detrimental to any genuine vested interest, but we do not consider nor, we suppose, would it be seriously urged by the supporters of the existing system, that in this case any question of vested interest is really involved. This privilege is one to which the vakil Bar cannot be said ever to have submitted willingly. As long ago as the time of the passing of the Legal Practitioners' Act 1879, Mr. Nanabhai Haridas, who was afterwards a Judge of the Bombay High Court, raised the question whether it was any longer necessary to restrict vakils to the appellate side of the High Courts in the Presidency Towns, and he proposed the omission of what is now the proviso to Section 4 of that Act. The feeling has always been present with vakils that this rule was an injustice which should be done away with, and the feeling found expression in correspondence which passed between the Vakils' Association of Calcutta and the High Court during the ten years following 1911.

The case has been strongly represented before us by Vakil~~s~~ others, and the demands which are now made come ~~from~~ accumulated force of many years' unavailing effort and the agitation aroused thereby.

32. We realise that any scheme whereby the original side ~~is~~ thrown open without restriction to all who are now practising at the Vakil Bar would lead to a disorganization of existing conditions which no theoretical desire for unification could possibly warrant. We also realise the great difference between practice on the original side and practice on the appellate side. On the other hand we feel that no scheme would be complete which made provision for future entrants into the legal profession but gave no opening to men already practising as vakils, should they elect to do so, to practise on the original side. Our proposals therefore provide both for the present vakils and for the future. We guard against the possible effects of a rush to the original side by imposing conditions which will make the process gradual, and we make provision for the possession of the qualifications which work on the original side demands. The correspondence between the Vakils' Association and the Calcutta High Court shows that the vakils of that Court proposed that the Court should proceed on the lines which we have suggested.

33. We have recommended elsewhere that all who are entitled to plead in a High Court should be called advocates, but in setting out our proposed scheme we refer to those who are not barristers as "vakils" in order to avoid misunderstanding. We should also explain that when we refer to a Bar Council we anticipate the proposals which we shall make later in this report. We propose:—

- (1) that vakils of not less than ten years' standing shall be entitled to be admitted at once to practise on the original side;
- (2) that vakils of less than five years' standing shall similarly be entitled to be admitted after they have read for one year with an advocate, approved by the Court, practising on the original side: During that year they should be allowed to plead, but not to act, on the appellate side or in the subordinate courts;
- (3) that vakils of less than five years' standing shall similarly be entitled to be admitted on the same terms and subject to the same restrictions, but shall in addition pass an examination, to be prescribed by the Court, in commercial law and practice on the original side;

- (4) that the rules for the admission of vakils shall provide that a Bachelor of Laws who wishes to practise on the original side of the High Court as well as on the appellate side shall, after passing the examination for the degree of Bachelor of Laws, read for one year with an advocate or attorney, approved by the Court, practising on the original side, and pass an examination, to be prescribed by the Court, in commercial law and the practice on that side. A vakil admitted on these terms should be entitled to practise on the original side in accordance with this scheme;
- (5) that the name of a vakil admitted to practise on the original side shall be entered on a special list. A vakil should be entitled at any time to have his name removed from that list, but a name once removed should not be restored to the list;
- (6) that as regards practice on the original side, vakils and others entitled to practise on that side shall all be subject to the same rules;
- (7) that vakils whose names are on the special list shall be subject to the same restriction as barristers when practising on the appellate side or in the subordinate courts;
- (8) that proposals (1) to (3) shall remain in force for seven years from the date when the scheme comes into force, that proposals (4) to (6) shall remain in force for seven years or until they are modified whichever is the longer period, but that proposal (7) shall remain in force for seven years and shall then cease to have effect unless the High Court, if there is no Bar Council, or the Provincial Bar Council with the approval of the High Court otherwise determines.

34. We consider that these proposals should apply equally to attorneys, but that no attorney should be required to pass a further examination, and that those of less than ten years standing should be required, instead of reading with an advocate, to abstain from acting in any court for one year from the date of announcing their intention to apply for admission to practise as advocates on the original side.

35. We consider that the arrangements we propose, while they give no more than reasonable facilities for men to qualify for admission to all sides of the High Court without the necessity of going to England to be called to the Bar, are so devised that they will not result in a rush to the original side which might embarrass

the work of the Bar there and seriously overcrowd the profession on that side of the Court.

36. In Bombay the present conditions are different. Arrangements already exist whereby a Bachelor of Laws can gain admission to the original side by passing an examination prescribed by the Court, but it is to be noted that he cannot present himself for that examination until two years after he has passed the examination for the degree of Bachelor of Laws. There is also a provision whereby Bachelors of Laws who are Vakils of over ten years' standing may become advocates on the invitation of the Chief Justice and Judges. From enquiries made in Bombay we learnt that there are now on the roll of the High Court, as against 333 advocates who are barristers, 33 who passed the Advocates Examination and 10 who were admitted under the ten years rule. The numbers actually practising cannot be ascertained. A witness in Bombay estimated that 85 per cent. of the barristers admitted as advocates in recent years were men who had gone to England as vakils and had taken advantage of the concessions which the Inns of Court allow, and that only the remaining 15 per cent. had completed the full course of twelve terms. From 1903 until recently a vakil was required to keep a minimum of six terms. He may now be called after keeping four terms on certain conditions. These facts seem to us to point unmistakably to the conclusion that the facilities given for the admission of non-barristers as advocates have in fact been extremely limited. We were told that the advocates' examination was until recently, when the standard was lowered, considered difficult, and that even now it is more difficult than the examination for a call to the Bar, and the result has been that rather than wait for the prescribed two years and then try to pass the Advocates' examination many who could afford to go to England have preferred to take the easier and shorter course of becoming vakils and then getting themselves called to the Bar. In fact the call to the Bar has been regarded by many as an easy way round the serious obstacle which the advocates' examination has presented. As regards the ten years rule, which has been in existence in one form or another since 1895, the fact that only ten advocates have been admitted in this way forces the conclusion that the benefit supposed to be conferred is largely illusory. Moreover we disapprove in principle of a rule which enables a Court to make invidious distinctions between practitioners. The result of applying to Bombay the arrangements we have suggested above for Calcutta would be to substitute in the case of the Bachelor of Laws who wishes to be admitted to practise on the original side a period of reading in the chambers of an original side practitioner, followed by an examination in commercial law and original side

practice, for the advocates' examination which he is under the present system required to pass. He would also be relieved of the necessity of waiting for as long a period as two years before he can appear at the examination. We attach the greatest importance to the practical training derived from reading in good chambers, and we consider that the absence of any provision for such reading is a defect in the present rules in Bombay for the admission of advocates who are not barristers. In fact, we wish to add to our recommendations, in connection with the scheme we are proposing for Calcutta and Bombay, that those who wish to practise as vakils only on the appellate side and in the subordinate courts should be required to read with an advocate approved by the Court who is practising on the appellate side.

37. At the same time we consider that in Bombay, as in Calcutta, provision should be made for a limited number of years for those who are now practising as vakils or attorneys of the High Court to obtain admission as advocates to the original side of the Court if they are of more than ten years' standing and to qualify themselves for such admission in the manner which we have suggested if they are of less than ten years' standing.

We therefore recommend that the arrangements which we have proposed above should apply to the Bombay as well as to the Calcutta High Court. The only modifications which we would make in adapting the proposals to the conditions in Bombay is that the restrictions referred to in proposals (2), (3) and (7) should, in the case of Bombay, not extend to the subordinate courts.

38. In the Madras High Court the existing arrangements are peculiar. On the appellate side advocates, vakils and attorneys may and do appear, plead and act. On the original side vakils may and do appear, plead and act, but they cannot appear, plead, or act in Insolvency cases. Advocates, whether barristers or not, may appear and plead only when they are instructed by attorneys or vakils, and they are not entitled to act. In Insolvency cases advocates can appear and plead, but only on instructions from attorneys.

Our colleague Mr. Rangachariar, who is strongly in favour of the unified system, *i.e.*, the system under which all practitioners are entitled to appear, plead and act, would prefer on principle to put an end to what remains of the dual system on the original side of the Madras High Court. He would continue the system of enrolling attorneys, but would provide that all advocates, vakils and attorneys should be entitled to appear, plead and act. He maintains that it would be to the advantage of junior advocates that they should be allowed to act and so be able to get into direct touch with clients instead of being dependent on the retainer of

attorneys. Mr. Justice Coutts Trotter, on the other hand, is strongly in favour of the dual system, and would on principle prefer to make that system compulsory on the original side by requiring that every practitioner appearing and pleading should do so only on the instructions of an attorney or a vakil. Both recognise, however, that since vakils have for about 60 years been entitled to appear, plead and act on the original side and attorneys have been practising as such for an even longer period, their respective proposals would entail a considerable disturbance of existing conditions. The rest of the Committee also feel that this is a case where definite vested interests exist and that these interests should not lightly be overridden.

39. We have accordingly decided to recommend that on the original side an advocate should have the option of appearing and pleading only, in which case he would do so on the instructions of an attorney, or of appearing, pleading and acting in the same way as vakils now do, but that he should not be entitled to do both. We propose that if any advocate wishes to act on the original side he should give an undertaking not to appear and plead on the instructions of an attorney. On the other hand, if a vakil wishes to appear and plead on the original side on the instructions of an attorney he should undertake not to act in any case on that side of the Court. In short, we leave the existing system as it is, but we give to advocates the option of assuming the position which vakils have under the present system and to vakils the option of assuming the position which advocates now have. We feel that in this way vested rights will be safeguarded and at the same time relief will be afforded to junior advocates who wish to avail themselves of the right to act on the original side. We are conscious that the arrangement proposed is not ideal, but we are unable to suggest any other way of dealing with a difficult situation.

It may be that, if Bar Councils are established in accordance with the proposals which we shall make later, the Bar Council at Madras may in the course of time be able to devise a more satisfactory solution.

40. We are all agreed that the practice in Insolvency cases in Madras should be assimilated to that which we proposed above for the original side. We are also agreed that a curious inequality regarding fees on the original side should be removed. At present if an advocate appears on the instructions of an attorney the latter's bill of costs is taxed between party and party in the usual way and various fees are allowed both for the advocate and the attorney according to a prescribed scale. But if an advocate appears on the instructions of a vakil or if a vakil appears with

or without another vakil there is no regular taxation of costs between party and party, but the vakil's fee is calculated as in the mufassil courts on an *ad valorem* basis, that is, it depends on the value of the subject matter in dispute. The result is that if the successful party is represented by an attorney he receives from his adversary an amount which is commensurate with the costs actually incurred by him, but if he is represented by a vakil he receives on account of his vakil's fee the amount allowed on the *ad valorem* scale and certain amounts on account of witnesses, etc., but nothing on account of the expense, which may be considerable, incurred by his vakil in the preparation of the case. The High Court has full powers to deal with the matter, and we recommend that no time should be lost in equalising the practice for advocates and vakils. We suggest that if costs are to continue to be taxed on an itemized scale as between party and party when an attorney is engaged, the Court should at least have discretion, when there is no attorney, to allow more than the *ad valorem* fee when it is obvious that other costs have actually been incurred, as, for instance, when a case has been prepared by a second vakil or when two vakils appear and the case of sufficient value or importance to warrant special treatment. We may note that a provision already exists whereby the Court can certify for two counsel on the original side, and on the appellate side can allow for more than one advocate or vakil.

41. Before we pass from the subject of the distinctions which exist between the different branches of the legal profession in India there are certain other distinctions which require consideration. There are certain appointments which by Statute are reserved for barristers. For instance, under Section 101 (4) of the Government of India Act, 1919, not less than one-third of the judges of a Chartered High Court, including the Chief Justice but excluding additional judges, must be barristers of England or Ireland or Members of the Faculty of Advocates in Scotland of not less than five years' standing. Again, a barrister of five years' standing may be appointed to be a judge of a Chartered High Court, whereas a vakil must be of ten years' standing before he can be appointed. Another distinction is that vakils are, while barristers are not, according to most authorities, liable to be sued for negligence in the conduct of a case, while vakils may, but barristers may not, according to most authorities, sue for their fees.

With regard to appointments, we are of opinion that no appointments should be reserved for barristers as such. All those who are entitled to practise in a High Court should be equally eligible for appointments reserved for members of the legal profession. Neither a barrister of only five years' standing nor a

vakil of only ten years standing is likely to be appointed to be a judge of a Chartered High Court, but the rule as regards standing should be the same for all classes of practitioners. Our recommendations in respect of these distinctions are supported by the great majority of those whom we have consulted.

42. In practice the distinction relating to suing for negligence and being sued for fees is not of great importance. Suits by or against legal practitioners in respect of fees and the conduct of cases are extremely rare. But we consider that in any case in which a legal practitioner has 'acted' or agreed to 'act' he should be liable to be sued for negligence, and entitled to sue for his fee.

IV.—Proposals for the establishment of an Indian Bar and Bar Councils.

43. It is believed that the first proposal for the establishment of an Indian Bar was made by Lord Haldane, who was of opinion that the training and education offered to Indian students by the Inns of Court in England was unsatisfactory and that it was not desirable that Indians should be encouraged to go to England to qualify themselves for admission to the legal profession in India.

Giving evidence before Lord Lytton's Committee in July 1921, he advocated the establishment of a Bar in India to which men should be called, and the setting up of a Council to which all questions of legal education, control, enrolment and disciplinary action should be transferred. It is not known whether Lord Haldane had ever visited India or whether he intended to advocate the establishment of an All-India Bar as distinct from provincial Bars. But it is noticeable that he referred to Manitoba, which has a Bar of its own distinct from the Bars of other provinces in Canada. On the whole it seems probable that he had not formed any definite opinion on the question whether one Bar should be constituted for the whole of India or separate Bars for the different provinces.

44. In India the first definite public proposal for the establishment of an Indian Bar seems to have been made by Mr. Iswar Saran when he moved a Resolution in the Legislative Assembly in 1921, recommending "legislation with a view to create an Indian Bar so as to remove all distinctions enforced by statute or by practice between barristers and vakils". He disavowed any desire to prevent Englishmen from joining the Bar in India or Indians from getting themselves called to the Bar in England with a view to practising in India, but he recommended that all such persons should be called to the Indian Bar in the same way as they may be called to the Bar in the self-governing dominions. He

advocated the abolition of all distinctions between barristers and vakils as regards precedence, pre-audience, the production of vakalatnamas and eligibility for judicial appointments, and he proposed to set up statutory bodies consisting of members of the legal profession to provide for the education of law students and to take over the powers of the High Courts as regards the admission and control of legal practitioners. He reserved for further consideration the question whether the Bar should be organised on an all-India or on a provincial basis. On behalf of the Government of India it was stated in the Assembly that they were prepared to be guided by the expression of definite constructive public opinion. The Government of India proceeded to collect opinions on the subject of the Resolution, attention being directed to the following specific questions :—

- (1) Whether the constitution of the Bar should be by an Act of the Legislature or otherwise.
- (2) The organisation of a Council of Legal Education.
- (3) The disciplinary powers of such a body.
- (4) The changes, if any, which the proposed scheme would necessitate in the existing law.
- (5) The desirability of separating or uniting the functions of solicitor and counsel in India.
- (6) The effect which the constitution of an Indian Bar would have on the tendency of Indian students proceeding to England to be called to the Bar.

45. In September 1922, Mr. K. C. Neogy introduced into the Assembly a Bill to remove the distinction between barristers and vakils as regards the right to practise on the original side of the High Courts at Calcutta and Bombay, and in the same year Mr. Girdhari Lal Agarwala introduced a Bill to relieve all practitioners from the necessity of filing vakalatnamas.

Opinions on both these Bills were collected in the usual way and the Bills were referred to Select Committees. Before the Committees could make their reports our colleague Diwan Bahadur T. Rangachariar introduced into the Assembly a Bill to 'consolidate and amend the law relating to Legal Practitioners in India and to empower the Government of India and Local Governments to establish Bar Councils in each Province'. We think it unnecessary to state in detail the provisions of this Bill, for Mr. Rangachariar described them as being only of a tentative character, and stated in effect that his object was to call attention to the different questions involved in the proposals to establish an Indian Bar.

46. We have had little difficulty in coming to the conclusion that it is not practicable to set up an all-India Bar in the sense of a body of legal practitioners admitted to practice and controlled by one central authority for the whole of India. The notion of an all-India Bar has proved attractive to some minds as being in accordance with what is called the national movement. But it is not possible to have an all-India Bar in any real sense unless there is to be throughout India a single type of advocate possessed of the same qualifications and entitled to practise in all the courts of the country. It might perhaps be possible to secure uniformity in the three Presidencies, but our enquiries in the different places which we visited have satisfied us that elsewhere this would not be possible. The tendency is for the presidencies and provinces to develop on their own lines, education is more advanced in some than in others and the same degree of proficiency cannot at present be attained or insisted on throughout India. From a practical point of view nothing is to be gained by setting up a central body which shall prescribe different qualifications for admission to the profession in the different provinces. A central body would necessarily have inadequate knowledge of local conditions, and apart from Burma, where opinion is strongly opposed to that province being included in any all-India scheme, there are not wanting indications that a provincial Bar would not readily submit to being governed by a body which would necessarily contain a majority of members insufficiently acquainted with its special needs and difficulties. Another consequence of the establishment of an all-India Bar in the sense indicated above would probably be the removal of the language and residence tests which have been devised by some provinces in order to protect themselves against their stronger neighbours. The latter test is presumably based on deliberate considerations of policy which we do not feel entitled to interfere with as it were by a side wind. Most of those who advocate an all-India Bar appear to do so on the ground that it would be difficult, if not impossible, to set up in each province a Committee or Council of legal practitioners independent and strong enough to exercise satisfactorily and with general acceptance the powers now entrusted to the High Court. There is force in this consideration, but we think that if an ultimate controlling authority is required, as in our opinion would certainly be the case, it would be better to rely upon the High Court of the province concerned than upon an untried all-India authority. It is conceded by those who advocate the constitution of an all-India Council that it would be necessary for that body to delegate its disciplinary authority to provincial Councils. Busy practitioners could not be expected to attend frequent meetings of an all-India Council at places far distant from their homes, and judges would hardly feel justified in

doing so. Any useful purpose which might be served by the constitution of an all-India Council, such as the gradual co-ordination of standards, could in our opinion be as well attained by occasional meetings between representatives of provincial Councils or even by correspondence between them.

47. No institution corresponding to an all-India Council with definite powers of control is to be found in any other part of the Empire. The English, Scottish and Irish Bars are entirely distinct from each other, although there is a Supreme Court of Appeal for the United Kingdom. Canada has a Supreme Court in which barristers, advocates, solicitors, attorneys and proctors of any of the provinces may practise. But each province has its own separate Bar constituted by provincial legislation. Practitioners in the different provinces are not even designated by the same title.

The Commonwealth of Australia has a High Court in which any person may practise who is entitled to practise in any of the States either as barrister or solicitor or both, and the High Court also has power to enrol its own practitioners. But each State in the Commonwealth has a separate Bar attached to its own Supreme Court. In some of the States there are both barristers and solicitors. In others, for example in Victoria, the functions of barristers and solicitors are united in one person. In America there is no such thing as an United States Bar. Each of the 48 States has its own Bar and the Federal Union also has its Bar. The Federal and State Bars are linked together by the establishment of voluntary organisations, such as the well-known American Bar Association, in which representatives of the different Bars meet for the purpose of discussing legal reforms, qualifications for admission to the Bar and legal education. If provincial Councils are established in India we see no reason why their representatives should not form a similar association. Apart from the circumstance that India has no Supreme Court conditions are probably less favourable in India to the establishment of one Bar for the whole country than they are either in Canada or Australia.

48. While we are of opinion that the establishment of an all-India Bar or all-India Council is not practicable we think that the time has come when the bars attached to some of the High Courts should be accorded a measure of self-government. At present legal education is almost entirely in the hands of the Universities, and such influence as the Bar can bring to bear on it is due to individual members of the Bar being members of the Faculties of law and the Bar has no control direct or indirect over the prescription of qualifications for admission to the profession. Moreover as regards the important question of discipline, the only power which the profession now has is the power to exclude practitioners from

its associations and informally report cases of misconduct to the Courts.

Where Bar Councils are established they should, we think, be given some definite representation on the Faculties of law. For the present it is unlikely that the Bar will be able itself to make arrangements for the education of students, though it may be able to supplement the education given by the Universities by the provision of practical training or lectures on the procedure of the Courts and the duties of members of the legal profession. If the Bar were to undertake the entire training of candidates for the profession the Faculties of law would probably cease to exist. We think it best to preserve the existing University law courses, which appear generally to give satisfaction and to ensure reasonable efficiency; and not to supersede them until it is demonstrated that a more efficient machinery is ready to take their place. That has certainly not been shown to our satisfaction.

49. As regards admission to the profession and the discipline of practitioners there is a strong demand in all the provinces that powers should be conferred upon local Bar Councils similar to those which are exercised by the governing bodies of the Bars in the United Kingdom and the self-governing dominions. At the various centres which we have visited and from witnesses who came from places which we have been unable to visit we have enquired whether at all, and if, so to what extent, the different Bar and Vakils' Associations have endeavoured to exert their influence in such matters. We regret to say that the result of our enquiries is not such as to enable us to feel confident that Councils at all the High Courts would at present be able to make the best use of the power which witnesses have suggested should be conferred upon them.

Our enquiries have made it clear that the bars at the different centres vary greatly both in their numerical strength and in the prestige which attaches to them: and we think it would be impossible to suggest a uniform system based on a supposed equality of membership or authority of the bars in all the centres which in fact does not exist.

50. In the Punjab we found that there has been in existence for a number of years a Bar Council, consisting of the President of the Bar Association, two senior lawyers nominated by the Association and two members selected by the Judges, of whom one must be an advocate or vakil practising in the High Court and the other is ordinarily the Registrar. This council is appointed under the direct authority of the High Court, and is intended to act

as a disciplinary committee. - It has power to inquire into charges of misconduct against advocates and pleaders practising in the Punjab, such cases being referred to it by the Judges or brought to its notice by complaint made to it by any member of the legal profession or by any association of legal practitioners. If the Council holds that a charge of misconduct has been established, it submits its proceedings with a recommendation to the High Court. But there is a provision in the rules whereby the Council can, in cases where it is alleged that a fee has been paid but not earned, dispose of the case itself, by ordering a refund, and if its decision is accepted by the practitioner complained against and a refund is made, the case is not reported to the Court at all. We were informed that most of the cases which come before the Council are disposed of in this way. We heard further that in spite of the power of the Council to deal with cases brought to its notice by an individual practitioner or an association, it was never called on by either to deal with such a malpractice as touting, which all admitted to be rampant in the Punjab. In fact it was generally admitted that under the conditions now existing there a Bar Council at Lahore would not function at all unless it were entirely controlled and guided by the Bench.

51. There can however be no doubt that throughout India abuses exist with which the courts cannot deal effectively without the assistance of the Bar. We think that the stronger bars should be empowered by law to assist the courts in this and other matters, and we are not without hope that when definite powers are vested in them they will make a real effort to act up to their new responsibilities.

52. Many different suggestions have been made to us as regards the composition and powers and local extent of the jurisdiction of Bar Councils. For example, some would constitute Councils entirely on an elective basis, while others would have a certain number of ex-officio members or give power to the High Court to nominate a certain proportion of the members. Some would have the Councils composed entirely of legal practitioners, while others would include judges also. Some would hand over unconditionally to the Councils all the disciplinary authority now exercised by the High Courts, while others would reserve a right of control to the High Courts by way of appellate or revisional authority. Others again would reserve all disciplinary authority to the High Courts and invest the Councils with no more than an advisory capacity. In view of the great variety of opinions which we have received and the ill-concealed doubts in the minds of responsible witnesses whether it is safe to entrust Bar Councils with the powers now exercised by the High Courts, and in particular whether the

Councils can be expected to be free from communal, political and religious influences, we feel that entirely uncontrolled power should not be conferred upon them at present.

53. A system which is suitable for one country may be entirely unsuitable for another, and it would not be safe to assume that any of the systems in force in the Empire would be entirely suitable for India. But as the claim now made that the Bar in India should be allowed to govern itself is avowedly based on the systems which prevail in the United Kingdom, the self-governing Dominions and the United States, it may be desirable to state shortly the essential features of some of those systems. In England the right to call to the bar is vested in the Inns of Court, governed by Benchers, being past and present judges and senior members of the Bar. Regulations have been made by the Inns regarding the admission of students, their examination and the calling of them to the bar. Disciplinary authority is exercised by the Benchers and there is a right of appeal to the judges as Visitors. A recent instance of the exercise of the right of appeal shows that it is by no means confined to cases in which a barrister has been disbarred. In Ireland the system is much the same, except that the disciplinary authority of the Benchers is not so extensive as in England and the appeal lies to the Lord Chancellor. The admission of solicitors in England is conducted by the Law Society under the authority of rules made by the Master of the Rolls. Previous to 1919 a Committee of the Society could recommend to the court that a solicitor should be struck off the rolls. Since 1919 the Committee has had power to strike a solicitor off the rolls, but an appeal lies to the court at the instance either of the solicitor or of the person who instituted proceedings against him.

The High Court of Australia makes rules regarding the admission of persons to practise in the court and alone has power to strike a practitioner off the rolls.

In New South Wales and Queensland practitioners are admitted by a Board consisting of the judges, the Attorney General and two barristers. In South Australia the Supreme Court makes rules for the admission of practitioners. The Law Society may enquire into complaints of misconduct by practitioners and make a report to the Court, which may call for further enquiry if necessary. Final orders are passed by the Court.

In Victoria there is a Council of Legal Education which may make rules to be laid before Parliament as to examination, articles and admission of practitioners. The Law Institute has powers similar to those of the Law Society in South Australia.

In Western Australia practitioners are admitted by a Board. The same Board has power to enquire into cases of misconduct and report to the Court.

In Tasmania also practitioners are admitted by a Board. The Law Society has certain disciplinary powers, but the power to strike off the rolls rests with the Court.

In New Zealand the Court makes rules regarding the qualification and admission of practitioners. The Court alone has power to suspend or strike off the rolls. In South Africa, admission to the profession is under rules made by the Court, which has power to suspend or strike off the rolls.

In Canada the Bars have somewhat larger powers, according to the latest legislation on the subject.

In British Columbia there is a Law Society governed by Benchers who educate, examine and call students to the Bar, and admit solicitors. They may suspend, disbar or strike off the rolls for good cause any barrister or solicitor, but their order is subject to appeal to the judges of the Supreme Court as Visitors.

In Manitoba also there is a Law Society governed by Benchers who have powers similar to those of the Benchers in British Columbia. But the Court has a similar power and can restore a barrister or solicitor struck off the rolls by the Benchers.

In Ontario there is a Law Society governed by Benchers who have power to suspend or disbar or strike off the rolls both barristers and solicitors. The court has power to restore a solicitor, but in the case of a barrister the power of the Benchers appears to be absolute.

In Newfoundland the system is the same, but there is a right of appeal to the Supreme Court.

In the United States of America each State determines for itself what shall be the qualification of candidates for admission to its own Bar. In almost all the States the power to admit to practise and to disbar rests with the court. In Washington the power rests with the State Board of examiners.

54. This summary is not complete, but according to the latest information available is accurate as far as it goes. It will be seen that in none of the countries, states or provinces mentioned, except in the province of Ontario, has the Bar been invested with final disciplinary authority, and in Ontario the last word rests with the Court in the case of a solicitor. It is necessary to emphasise this point because it has been made clear to us in the course of our

enquiries that many who expressed themselves in favour of wholly independent Bar Councils in India with final disciplinary authority, have done so in ignorance of the fact that they are advocating an institution which is almost without parallel in the Empire or the United States of America. The constitution of Bar Councils of any kind is an experiment the value of which can only be tested by experience, and it is in our opinion unthinkable that the first flight should carry the Bar in India to a position which the English Bar, with centuries of traditions and experience in self-management, has never yet aspired to. We have found in nearly all the responsible views we have heard on this subject a feeling that in one way or another the authority of the High Courts should be retained. And even those witnesses who would give final authority to a Bar Council have generally desired that the High Court should be represented on the Council itself. From the evidence we have heard we think it would be unduly optimistic to believe that in all provinces the Bar Councils will be wholly immune from religious, political or communal influences; and we doubt whether a Council could always be assured of having the full weight of professional opinion behind it if it dealt severely with a case of misconduct. Nowhere, on the other hand, have we heard any complaint regarding the way in which the High Courts have exercised their powers, and we feel that we can only interfere with an established system which is generally admitted to have worked well if we ensure that the system to be set in its place has a reasonable chance of continuing the work successfully. If the first step taken is successful and the experiment proves that Bar Councils can exercise their powers to the satisfaction of the High Courts, the legal profession and the public, there is no reason why their powers should not be gradually increased. But in the meantime we would move with caution, and, while we all agree that Bar Councils should be constituted at certain places, we would not give them greater powers than we feel they can properly exercise.

The great majority of advocates and vakils in India act as well as plead. They are in immediate contact with the lay public and their position is to be compared rather with that of the solicitor than with that of the barrister in England and elsewhere. It will be seen that the powers which we propose should be given to Bar Councils are similar to those exercised by the Incorporated Law Society in England up to the passing of the Solicitors Act, 1919.

55. For the purpose of our proposals regarding Bar Councils, Assam having no separate High Court and comparatively few legal practitioners must be treated as part of Bengal. Sind could not conveniently be brought under a Bar Council at Bombay, and

probably would not willingly consent to such an arrangement, were it possible. Similarly we think that there can be no question of placing the Bar in Oudh under a Bar Council at Allahabad. Territories outside the Governors' Provinces are not affected by our proposals. In those territories there are many courts having the powers of High Courts at which we think it would be impossible to set up Bar Councils. We have been unable to visit Nagpur, Karachi and Lucknow, but the opinions which we have received from those places and the evidence which we took ourselves at Lahore lead us to doubt whether it would be advisable to establish Bar Councils at those four centres. For the present we recommend that statutory Bar Councils be established only at Calcutta, Madras, Bombay, Allahabad, Patna and Rangoon, but that provision be made for setting up Councils at Lahore, Nagpur, Karachi and Lucknow when experience has been gained of the working of the Councils at the centres we have indicated.

56. We have already said that we look forward to the time when pleaders and others entitled to practise only in subordinate courts will disappear and all legal practitioners will be entitled to practise in the High Courts as well as in the subordinate courts and revenue offices. For this reason and also because we think that it would be better for the present to confine the membership of and electorate for the Bar Councils to the highest grade of legal practitioners, that is, those who are Advocates of the High Courts, we propose that all other legal practitioners should continue as at present to be enrolled and controlled by the High Court.

57. A Bar Council, if it is to function properly, must be a small and compact body. We propose that the number of members should be limited to 15. Four should be nominated by the High Court, including, where possible, the Advocate General or the Government Advocate and the Government Pleader. The remaining eleven, of whom six should be advocates of at least ten years' standing, should be elected by Advocates of the High Court, provided that in Calcutta and Bombay the High Courts should determine how many of the eleven should be Advocates entitled to practise on the original side. The first Councils should hold office for 3 years, the term of office of subsequent Councils being determined by rules to be framed by the Councils themselves.

58. The question whether judges should be members of a Bar Council has been much canvassed. Some judges have stated that they would object to serve on a body in which they would necessarily be in a minority, and we feel that there might be difficulties when questions of discipline were under discussion or when, as we hope will not be the case, the councils are liable to be affected

by extraneous influences. We propose therefore that the nominated members also should ordinarily be advocates. But the evidence which we have taken suggests that for the present it may be advisable in some places for judges to assist the Councils by their presence. We would therefore leave it open to the High Courts to nominate judges past or present if they think proper.

59. We recommend that a Bar Council should have power to make rules subject to the approval of the High Court in respect of the following matters:—

- (a) The qualifications, admission and certificates of proper persons to be advocates of the High Court.
- (b) The powers and duties of advocates.
- (c) The conduct of any examination which may be prescribed by it and the fees to be paid for appearing at the same.
- (d) Legal education, including the delivery of lectures to students and the fees chargeable therefor.
- (e) Matters relating to the discipline and professional conduct of advocates.
- (f) Procedure and practice in cases falling within the disciplinary jurisdiction of the Council.
- (g) The method of holding elections of members of the Council and all matters incidental thereto.
- (h) The meetings of the Council, the quorum necessary for the transaction of business, the election of a President or other officer and the appointment of committees for special purposes.
- (i) The period for which a Council, after the first Council, should hold office and the filling of vacancies occurring between elections.
- (j) The terms on which advocates of another High Court may be permitted to appear occasionally in the High Court to which the Council is attached and
- (k) any other matter prescribed by the High Court.

The rules regulating the election of the first Council and the filling of vacancies before rules are made by the Council should be made by the High Court, and it should be provided that no rules shall be made affecting the special provisions we have suggested for the original sides of the Calcutta and Bombay High Courts so long as those provisions remain in force.

60. A Bar Council should have power either of its own motion or on complaint or on a reference by the High Court to inquire into all matters of the kind referred to in sections 12 and 13 of the Legal Practitioners Act, 1879, breaches of rules and other improper conduct in which an advocate of the Court is concerned, and make a report to the High Court with a recommendation as to the action, if any, to be taken by the Court.

A Bar Council should also be entitled to be heard in any matter relating to the admission of an advocate or in support of any report made by it to the court.

61. The existing disciplinary jurisdiction of the High Court should be maintained, but the Court should be bound before taking disciplinary action against an advocate, except in regard to contempt of court and the like, to refer the case to the Bar Council for enquiry and report. On receipt of a report from the Bar Council the Court should be empowered itself to make or require the Council to make further inquiry. At the request of a Bar Council or on its own motion a High Court should be authorised to order an enquiry to be held by a local court.

Provision should be made for procuring with the sanction of the court the attendance of witnesses and production of documents required by the Council for an inquiry, and witnesses should receive the same protection as when they give evidence before a court.

The High Courts should retain their power to fix the amount payable by a party in respect of the fees of an adversary's legal practitioner.

62. We have expressed elsewhere our opinion that attorneys should continue to be enrolled as such in the three Presidency High Courts where alone they are to be found in any numbers. We have excluded attorneys from the Bar Councils which we have proposed, because although some witnesses were in favour of giving the Bar Councils powers of control over all classes of practitioners, including attorneys, the great majority, including the attorneys themselves, supported the view that attorneys should have a completely separate organization.

In Calcutta there appear to be 275 attorneys, of whom 206 belong to the Incorporated Law Society. In Bombay also there is a considerable number of attorneys, of whom 147 are members of the Incorporated Law Society.

In Madras there are about 30 attorneys, nearly all of whom belong to the Attorneys' Association, which is not an incorporated

body. In Calcutta there was a difference of opinion on the question whether the Incorporated Law Society should be given statutory power to control its members. In Bombay the President of the Society stated his personal opinion that such power should be given. The fact appears to be that neither Society is really interested in the question or has given it much thought. If the Societies in Calcutta and Bombay make a definite request that statutory power of control should be given to them we see no reason why the request should not be granted. In that event we would suggest that disciplinary power should be given to them similar to that enjoyed by the Incorporated Law Society in England before the passing of the Solicitors Act, 1919, namely power through a Committee to enquire into cases of alleged misconduct and to make a report to the Court.

The number of attorneys in Madras being so small, it is doubtful whether it would be practicable to give them statutory power of control. They appear to be content to remain under the control of the High Court.

V.—Miscellaneous.

63. There are one or two matters to which reference should be made before we close our report. In the first place we would discuss briefly the effect which our proposals may be expected to have on the recruitment of barristers, whether English or Indian, to the Indian Bar.

64. Lord Lytton's Committee found that in October 1921 there were 337 Indian students on the rolls of the Inns of Court. It is believed that there are now well over 500. But in both cases the number includes men who take the course not with any intention of practising in the courts but as part of their general education while they are studying for entry into the public services.

Between 1901 and 1920 no less than 1,997 Indians joined the Inns of Court. The chief reasons which in the past led such large numbers of Indians to go to England to be called to the English bar appear to have been that it was considered to be much easier to pass the Bar examination in England than to qualify as a vakil of a High Court in India, and that there were distinctions between barristers and vakils in such matters as precedence, eligibility for appointments and practice on the original sides of the High Courts.

65. The Bar examination in England is more difficult than it used to be and the standard of general education required for admission to an Inn of Court is higher than it formerly was. Further all the Chartered High Courts except Lahore now require

more than a mere call to the Bar as a qualification for the enrolment of a barrister as an advocate. In many instances, as indicated in an earlier part of this Report, an applicant for enrolment is required to have read in the chambers of a barrister in England or to have other qualifications. The provisions referred to appear to have resulted in a diminution in the number of barristers enrolled in courts which require qualifications beyond that of a call to the Bar. The average number of barristers enrolled in the last four years in the Lahore High Court, which is content with a mere call to the Bar, is 20, while the total yearly enrolments in the High Courts at Calcutta, Madras, Bombay, Allahabad and Patna together amount to an average of only 25; and of the 42 enrolled in Calcutta in the four years just one half were vakils who availed themselves of the shorter course with reading in chambers in England.

* With the special privileges hitherto enjoyed by barristers we have already dealt and if our proposals in this connection are accepted there will not be the inducements which now exist for students who do not also desire a University education in England to go there for their legal education.

66. The evidence recorded by us and by the committee presided over by Lord Lytton leads us to the conclusion that in the past a considerable number of students have gone to England insufficiently equipped and so have not had the opportunity of availing themselves to the full of the educational facilities there provided. We are far from being opposed to students going to England, enlarging their general knowledge there and profiting by the better teaching there available, but we are of opinion that only fully equipped students or those who also wish to take advantage of an English University course are likely to gain real benefit by such a visit. We anticipate, however, that with the removal of distinctions between barristers and vakils and the prospects which we propose shall be open to advocates educated in India to hold the highest posts in the legal profession the number of those who go solely for the purpose of a call to the English Bar will be diminished.

67. In the past many Englishmen have come out to the country to practise in the Indian courts, but of late years their numbers have decreased, though a certain number still come out to Rangoon and a few have recently joined the Lahore and other High Courts. There is a consensus of opinion that in the past the presence of Englishmen practising in the courts has been a source of strength to the Bar itself and we would do nothing to discourage their coming, but they should be admitted to practise as advocates on terms equivalent to those on which Indians are admitted.

68. We desire to add a few words regarding the rule of some of the High Courts which makes reading in chambers in England a necessary or alternative qualification. Under Regulation 44 of the Consolidated Regulations of the Inns of Court a vakil may be exempted from keeping a certain number of terms if he produces a certificate from a practising barrister *approved by the Council of Legal Education* that he had read for 12 months in that barrister's chambers. Reading in suitable Chambers in England is in our opinion most valuable, but it cannot be expected that the Council of Legal Education will take upon itself the burden of finding or approving of chambers for Indian students to whom Regulation 44 does not apply. It is difficult for other Indian students to find suitable chambers and we fear that there can be no doubt that reading in chambers in England has been in many cases a mere formality. We think that the High Courts should consider the advisability of allowing Indians to read with an approved Indian practitioner instead of reading in chambers in England, at least when it is shewn that the individual cannot obtain entry into suitable chambers in England.

69. We would next refer briefly to a system which we found to be in existence in certain places in India, namely the system of partnerships between legal practitioners. We apprehend that there is nothing in the conditions on which a student is called to the Bar in England which prevents him from entering into partnership with other legal practitioners in countries in which such partnerships are permitted or recognized. Partnerships between legal practitioners of all classes have long been recognised in Rangoon and Karachi and have been found to suit the conditions prevailing in those towns. We think that such partnerships should be permitted wherever all classes of legal practitioners are entitled to act as well as to appear and plead.

70. We feel that our report would not be complete without some reference to an evil which was brought prominently to our notice in the course of our enquiry. The evidence which we have received leaves no doubt that touting of various kinds prevails in most parts of India. The law with reference to touting was strengthened in 1896, but has proved entirely ineffective. The plain fact is that unless the legal profession assists the courts to suppress touts little can be done by way of legislation.

One of the principal causes of the existence of this evil is the serious overcrowding of the legal profession. Touting has undoubtedly increased with the increase in the numbers admitted. It would appear that in some provinces in the near future there will not be any necessity to retain the lower grades of legal practitioners. If the profession of the law is closed to all but those who

have qualifications entitling them to practise in the High Courts and the qualifications of entrants are raised, the number admitted should not be excessive and it may be possible to enforce a higher standard of discipline.

We trust that the Bar Councils will regard the suppression of touting as one of their principal concerns.

71. In conclusion we desire to express our warm appreciation of the services of our Secretary, Mr. J. H. Wise, I.C.S., who made all the arrangements for our tour and has been of great assistance to us in the preparation of our report.

E. M. D. CHAMIER,

President.

V. M. COUTTS TROTTER,

S. R. DAS.

H. P. DUVAL.

HENRY J. STANYON.

T. RANGACHARIAR.

L. M. BANERJI.

S. S. PATKAR.

M. M. CHATTERJI.

J. H. WISE,

Secretary.

Delhi, the 1st February 1924.

MEMORANDUM BY MR. JUSTICE COUTTS TROTTER

THE DUAL AGENCY.

The following memorandum is intended to put forward what in my opinion can be said for the maintenance of the dual agency, where it already exists, and is not in any way to be taken as a plea for its extension to any court where it does not exist and to which our unanimous report does not suggest that it should be extended. I have written it deliberately in my own name, though of course after careful discussion of the matter with all my colleagues; I have done so on full consideration, because I necessarily am compelled to express opinions on controversial topics, to which I do not wish to bind any of my colleagues except in so far as they desire to subscribe to them specifically.

The witnesses who canvassed the rival merits of the dual and single agencies directed themselves in the main to three topics, efficiency, purity and costliness: and I propose to deal with these in that order. I have made a special study of this matter, and besides my experience of both systems as a judge sitting in Madras, I have for my own satisfaction done the following things over and above hearing the evidence given before us. In the first place, I read through a number of counsels' briefs kindly put at my disposal by firms of solicitors or advocates in Bombay, Calcutta and Rangoon. Secondly, I attended the trial of original suits in all three courts. In Rangoon, owing to the non-appearance of witnesses who had volunteered themselves, but had failed to come forward, I had nearly two whole days available for the purpose.

The question is one which for practical purposes only concerns the High Courts of Bengal, Bombay and Madras. In Bengal barristers have the sole right of audience on the original side and can only appear when instructed by an attorney. Furthermore, a barrister in Bengal cannot appear on the appellate side, unless instructed by a solicitor or a vakil, and in the mofassil he must be instructed by a vakil or pleader. In Bombay, advocates must be instructed by an attorney on the original side, but can take instructions from an attorney or vakil on the appellate side and direct from the client in the mofassil. In Madras, the two systems exist side by side. A barrister can in theory take instructions, either from an attorney or a vakil; in practice hardly any barrister ever appears except on the instructions of an attorney. On the other hand, a vakil can appear on the original side of the Madras High Court instructed directly by the client. In Rangoon there are a few solicitors—only three said to be in active practice, and many

barristers, but the dual agency does not exist, and the client has direct access to the advocate who is going to conduct his case in court. These being the facts, I propose to deal with the question under the three heads I have outlined.

Efficiency.—I do not think that any disinterested enquirer can doubt that under the dual agency, the work of preparing and presenting cases to the court is infinitely better done than under the other. Subdivision of labour and specialization everywhere tend to efficiency, and markedly so in the law. The mere fact of having to put together a brief, i.e., the materials on which another man will fight the case in court, tends to completeness and compactness of preparation. The documents are properly inspected, copies are prepared for the use of counsel and judges, irrelevant evidence, whether oral or documentary is weeded out, and the whole material is focussed on the true issues of the case. Proper proofs of the witnesses are taken and they are confined to what is relevant. Under the system of the single agency, cases are prepared in a much more slipshod way: the inspection of documents is perfunctory, irrelevant matter is most inadequately excised, and the court gets far less efficient assistance all round. The matter of course affects the client, who is necessarily a gainer by having his case well presented to the court; but it affects the courts even more. The situation was graphically summed up by a Bombay judge who had experience of both systems: of the single agency as Judicial Commissioner in Karachi, of the dual as a High Court Judge in Bombay. He is a civilian and not a barrister judge, and therefore can have no associations or predilections to obscure or prejudice his judgment: and he said that he could get through as much work in an hour in Bombay under the dual agency as he could get through in a day at Karachi under the single. Similar testimony abounded from witnesses who are familiar with both systems. No doubt some allowance must be made for the fact that the most skilled practitioners naturally tend to practise in the highest court of original jurisdiction, rather than in an up-country centre, however important; but I feel no doubt that most of the increased efficiency should be ascribed to the system and not to the superior qualities of individual practitioners. My perusal of the briefs put at my disposal confirmed this view entirely. The Bombay and Calcutta briefs were complete in every respect, such briefs as a barrister in England would expect to receive from a good firm of solicitors—clear instructions, complete copies of documents and carefully drawn proofs of all the witnesses. Any advocate could perfectly well conduct the case on the materials so put before him. The Rangoon briefs were altogether a different affair—those on the appellate side doubtless had a complete record, but on the

original side they were unintelligible; a copy of the pleadings and interlocutory orders, copies of a few but by no means of all the letters, no proofs of witnesses, no extracts from the account books of the opposite side. No one could possibly have conducted the case from the haphazard bundle called a 'Brief', unless he had seen all the witnesses and gone through the documents personally. This impression was confirmed by what I heard in court of trials in progress. In Bombay and Calcutta everything was ready to hand and the cases were got through promptly and in a business-like way. In Rangoon I heard the trial of a heavy commercial suit involving 2 lakhs before a trained commercial judge. The barristers who appeared had worked up their own briefs, and the result was chaos and an appalling waste of time—I heard 2 hours spent in a roving enquiry into the contents of a ledger; had it been properly inspected and proper notes made on inspection, the whole of the relevant entries could have been put before the court in five minutes. Both sides were represented by eminent counsel, members in each case of a leading firm: but counsel on both sides were obviously picking up their real case as they went along.

The reason is clear: an advocate who is busy in court all day cannot give the time to get up his materials properly. He must have conferences, draw pleadings and write opinions when he is not actually arguing in court, and the preparation of cases for hearing is patently neglected. It may sift itself out in the end, but it involves a great waste of judicial time, and one cannot wonder that there are serious arrears in courts whose time is so whittled away. In Madras, the vakils on the original side do their work very well, but that is because the substance of the dual agency prevails there. The work, other than that which goes to solicitor and counsel, is on the whole very adequately handled. But it is all in the hands of a few men, who each have in their office a team of juniors who get up their cases for them, inspect the documents and take notes for the use of the leader in court, and take proofs of the witnesses. The result is reasonably satisfactory from the point of view of the dispatch of business: it has other evils which will be best dealt with under the head of costliness. It has driven the work into very few hands: and the leading vakil on the original side is credited with having 40 per cent. of the cases which do not go to attorneys and barristers. In cases on the Madras original side where junior vakils are employed who have no assistants to get up their cases for them, they are presented to the court in a state of confusion, and the judge has to muddle along as best he can, at the cost of endless waste of time. Indeed, it constantly occurs that he has to point out what materials are necessary for a proper trial of the case, and adjourn it for them to be procured and produced.

2. *Purity.*—A good deal of misunderstanding prevailed about this, and it was very difficult to get the witnesses who advocated the rival systems to understand the opposite point of view. The protagonists of the single agency appeared to think that the dual agency involved that no barrister should ever see his client before the trial in conference in any circumstances. They dilated on the advantage to the barrister of knowing what his client's case was from his own lips, and on the satisfaction derived by the client by coming into personal touch with the man who was actually going to conduct his case. The advocates of the dual agency at times used language which suggested that no honest practitioner could see a client or a witness without contamination and without yielding to the temptation to coach him as to what exactly he was to say to suit his case.

I do not share either of these extreme views. Barristers in England constantly have conferences with their lay clients brought to their chambers for the purpose by the instructing solicitor. Again every barrister can and must see expert and professional witnesses in conference in order to understand the trend of their evidence, which would otherwise be unintelligible to him. But he does not see and does not take the proofs of witnesses who are to speak to facts, which under the single agency he must do. I have no doubt that it is a great advantage in the interests of a high professional standard that he should not. The most scrupulous practitioner who examines witnesses out of court cannot help unconsciously conveying to the witnesses' mind what evidence would be most useful to the case. It is said that the attorney under the dual agency is subject to the same temptation. In my opinion it makes all the difference that the man who interviews the witnesses is not the man who is going to examine them in court. The rule against leading questions in examination in chief loses much of its force if the examiner has been in contact with the witness. I fully accept our joint conclusion embodied in our report that it would be impracticable to impose the dual agency on courts where it does not exist—as it would be impracticable to forbid solicitors from appearing as advocates in country courts in England. But that the dual system is a valuable safeguard against malpractices, and tends to the independence and dignity of the Bar, I do not question, and I think it would be a retrograde step to abolish it in those courts where it has taken firm root, *i.e.*, Calcutta, Bombay and to a certain extent Madras.

Moreover, the single agency undoubtedly opens the door to touting, and the evidence before us leaves little room for doubt that that evil is rampant in Indian courts despite all the efforts that

have been made to curb it. Touting is of course possible under the dual system, but it is much more difficult and consequently much more rare.

3. *Costliness*.—Every one fixes on this as the vulnerable point in the dual system, and on the surface it is easy enough to say that in the nature of things two men must cost more than one, and very few of our witnesses said anything more than that. The careful figures given to us by the Taxing Officer at Calcutta appear to show conclusively that under the existing scale, litigation under the dual agency on the original side is extremely moderate in its cost in that city, and no one has suggested that it costs any more in Bombay or Madras than it does in Calcutta; No doubt you could get the work more cheaply done—possibly by a single agency, but I do not gather that there is any real dissatisfaction with the dual system in the Presidency towns, where the contested suits are substantial in the amount at stake or the principle involved or both, and where the litigants are more concerned to have their work well done than to quarrel over items in a bill of costs. The alternative system is the *ad valorem* fee; and so far as it obtains in High Courts on their original sides, it appears only in Burma and Madras, which require separate examination.

As to Burma, there is no taxation of profit costs, as distinct from out of pocket, by an officer of the court by items. But the trial judge has a discretion to indicate the proper *ad valorem* scale which should be applied to a given case and acts as a rough and ready taxing master. Such a method must proceed largely by impression and guess work, and it is obvious that the costs so fixed as between party and party, must in many cases fall below what is legitimately charged as between solicitor and client; and a proper Taxing Officer would doubtless allow many charges as between party and party which at present are irrecoverable from the losing side. At the same time so far as could be gathered, the system works without great dissatisfaction; and I gravely doubt whether barristers working as in reality they do under the single agency in Burma would have the time or the equipment to prepare proper bills of costs with items.

In Madras the results of the co-existence of the two systems side by side in original suits, are obviously anomalous and unfair in their incidence. Where a vakil appears there are of course inevitably present the inherent vices of the *ad valorem* system. A case involving a large sum may be defended merely to gain time, and when it comes to trial go through practically as an undefended case, casting no burden of work on the plaintiff's vakil, and yet he gets a heavy *ad valorem* fee allowed against the other side.

On the other hand, a difficult and complicated suit may entail elaborate preparation, may raise a question of vital importance, and yet, because the actual sum of money at stake is small, may carry with it a trivial fee recoverable from the losing side. Worst of all, there is a maximum vakils fee of Rs. 1,000 for profit costs, which cannot be exceeded: and may apply to a case which has involved months of careful preparation, and has perhaps occupied several days at the trial.

All this matters little to the vakil in assured practice. His fee as between himself and his client he fixes without reference to the *ad valorem* scale, but according to the amount of work he expects to have to do in the case though of course the *ad valorem* fee allowable is naturally his minimum. But it works out in practice that no vakil of any standing in the court will take up a case at any figure that is not far in excess of the *ad valorem* fee recoverable from the losing side. That is obviously unjust to the client who has to pay fees which are a reasonable remuneration for the work done, but a large portion of which he cannot hope to recover from the other side. And of course the vakil in large practice has to keep up an office and a staff of juniors to get up his cases for him. He charges his client with a fee which covers a proportion of these matters; not one rupee of that part of his fee is recoverable from the other side. It is said that some junior vakils are content to appear for *ad valorem* fees, because it levels itself up: while they are underpaid for what they do in some suits, they are overpaid in other. That may be well enough for them, but it is no consolation to the losing side in the latter class of case. Moreover, in the big commercial centres, the continued existence of the solicitor is absolutely vital to the community. The big business concerns have millions of English capital invested in them, and employ thousands of Europeans in their direction and supervision of the vast number of Indian workmen in their employment. They require to have the type of advice that they can only get from a solicitor trained in the English system—it is immaterial whether he is Indian or European by birth) and no racial question whatever is involved. A solicitor is a man with a business training, quite other apart from his knowledge of law: and neither a barrister nor a vakil has that training. The solicitor is entirely a creature of the dual agency, and if it goes, he goes with it. But he is indispensable to the business world; and I see no way to preserve him other than by continuing the dual system where it now obtains. To my mind, any attempt to weaken the present system in the big commercial towns would be a rash and unwarranted experiment and might gravely jeopardise the commercial and industrial future of India.

In Rangoon, there are very few solicitors though it is a big commercial and industrial town. As against that, firms who do not have a solicitor partner, usually have one who has had the training of a chancery barrister, and is therefore accustomed to drafting and advisory work whether in connection with the transfer of property or the formation of companies or the settling of business agreements. In the firms which only contain barristers, the position may not unfairly be summed up by saying that one of the partners (usually one trained in chancery chambers) has practically turned himself into a solicitor, and concentrates on the class of work undertaken by his firm which would be done in England by a solicitor.

I am quite aware that advocates of the single agency claim that vakils exist who are as competent as solicitors and attorneys to serve the needs of the commercial community of India. I am convinced that any one who will impartially compare the training required from an attorney and its nature, with that required from a vakil, will see that it plainly cannot be so. It also fails to be observed that the vakils who protest themselves able to do what I may call solicitors' work have large practices as advocates, which they do not for a moment propose to relinquish; on the other hand, no solicitor who gave evidence before us indicated the slightest desire to be given any opportunity to practise as an advocate in the higher courts. The inevitable conclusion is one that I do not hesitate to draw, and put forward with any weight that may be ascribed to my personal experience in Madras. I do not believe that any one who claims the right to appear in court as an advocate and who has not gone through the training involved in the serving of articles is fitted in the least to do the class of work which properly appertains to the solicitor. In a place like Madras, leading vakils with an office of junior assistants may undertake drafting work which is done in the rough by their juniors and finally supervised by themselves. Neither junior nor leader has been through the mill that the solicitor has, and the leader who professes to look through the draft spends the greater part of his day as an advocate in court and can have little time left over to supervise drafts, even if he were a skilled draftsman, which in fact he is not. If vakils in any appreciable number wish to become solicitors, I would grant them facilities for doing so, and tide over the difficulty of their not having served their articles in the ordinary way. But it would be an essential condition that they should abrogate the right to appear as advocates and I question whether they would welcome such an option. The lay client is the person who has to be protected, and it is a useless pretence to offer him the services of a man who purports to be considering his case in office, but in

reality is fighting cases in court as an advocate all his time, and leaves his office work to his juniors.

V. M. COUTTS TROTTER.

Delhi, the 1st February, 1924.

We agree with the above.

S. R. DAS.

M. M. CHATTERJI.

NOTE BY DEWAN BAHADUR T. RANGACHARIAR.

THE DUAL SYSTEM.

During the anxious and prolonged discussion we had in Committee during the last week on the problems before it, there are 3 or 4 guiding principles which we kept prominently in view—at any rate which I kept in view—in making suggestions and accepting suggestions.

It was recognised almost at the outset, that the conditions varied from province to province, that no question was to be decided merely on *a priori* reasoning as to the merits or demerits of any particular system in the abstract, that we must maintain the state of things where it has existed for long, that vested interest should not be lightly disturbed, that local opinion should be respected and favoured whenever possible, that violent or sudden changes should not be introduced in any province, and that any changes which were recommended should be so framed as to cause the minimum amount of disturbance.

It was in the view mentioned above we have refrained from considering the merits or demerits of the dual system as we find it in each province and our conclusions stated above were reached quite apart from this consideration.

We have, however heard evidence on this point and from my long experience in a province where both the systems have been in vogue in the same court, I have come to some definite conclusions and I place them on record for what they are worth, as the question is bound to come up again sooner or later.

I consider that the dual system is quite unsuited and unnecessary even for the original side of the various High Courts in the 3 Presidency Towns and the advantages claimed for that system are more or less problematical and are not substantial enough to make it necessary to keep up a variety different from the prevailing one which has taken root throughout the whole country. I will shortly substantiate this position by a few main considerations.

The best evidence in support of this conclusion is that actual experience gained by the concurrent trial of both the systems in the capital city of the Madras Presidency where alone the conditions under which the trial took place over a long period have been fairly equal on both sides. Neither in Bombay nor in Calcutta have the conditions been favourable for instituting a fair comparison. The class of suits tried in the different courts in the mofussal and the calibre and equipment of the Bar or of the Bench there are very different from what obtains in the High Court. The unitary system to use a short expression has almost displaced

the dual system in Madras and during all the years this process has been going on, there has been no sign of any dissatisfaction either from the Bench or from the public. On the other hand warm advocates of the dual system on the Bench of the Madras High Court hitherto candidly recognised that "the vakils on the original side do their work very well", "that work is adequately handled", "the result is reasonably satisfactory from the point of view of despatch of business" and that "the situation so far as litigation is concerned works well enough".

There has been no complaint of any importance that the tone of the Vakil Bar in Madras is not all that is desirable. Only recently Sir Walter Schwabe, the Chief Justice who retired last month, paid a high compliment to the Vakil Bar for their ability and for the way in which the traditions of the English Bar are being kept up by them and he favoured unification. The greatest compliment that can be paid to the way the unitary or fusion of functions system has worked in Madras lies in the fact that the Madras Government advocates that the unitary system should be made universal there.

The barristers in Madras though brought up in the English traditions, in a body, demand unification. There are only one or two who cling to the dual system.

There has been no complaint on the part of the litigant public that their work was not properly attended to or that justice suffered by reason of the fusion of functions. On the other hand if the voice of the litigant public is to be any factor at all, I am almost certain that the litigant public would protest against the dual agency, especially having regard to the enormous cost which that system would entail in a poor country like this. There has been no agitation from within the ranks of the profession in the presidency, that the profession must be reorganised on the basis of a dual agency in the interests of efficiency or otherwise.

It will be recognised that much may be said on both sides arguing on *a priori* grounds. There are two sides to every question and advocates, eminent ones too, are not wanting on either side.

On the one hand it has been urged that the dual system contributes to efficiency as the result of a division of labour, that it brings into existence a band of specialists, that the advocate who is not in touch with the client and has not been collecting materials for a case is likely to bring to bear a freshness of outlook in the conduct of a case, that it at least makes one section of the profession clean, that it imparts a dignity and prestige to the Advocate because of his non-identification with the client, owing to the interposition of a professional gentleman between himself and the

client. On the other hand, it has been urged with equal force that the virtues claimed for the dual agency are imaginary, that it is purely a historical accident in England, that in the early stages of man's profession it is impossible to demarcate the professional functions, that there is no necessary incongruity and antagonism between the pleading and acting functions, that advocacy is the best school of law, that the average practitioner under the single agency system has good working, all round knowledge and is better than either the Barrister or Solicitor of the dual agency system, that there is no high principle involved in compelling a young man to make choice when he enters the profession and closing the door against all honourable ambition and putting an embargo upon the full play of talent in the case of one set of practitioners, that the dual agency strikes at the fundamental principle of the administration of justice in making litigation so expensive as to act as a deterrent to the poor man in asserting his just rights.

At any rate it cannot be said that there is anything sacred or inviolable in the dual agency system, when we find that is not the system obtaining in the great continent of America or in most of the Colonies, and in most of the courts in this country. Viscount Bryce bears testimony to the fact that in spite of the non-existence of the dual agency in America the profession as a whole has stood on a level with the profession taken as a whole in England and that the Bar in America has reached a power and social consideration relatively greater than the Bar ever held on the eastern side of the Atlantic. In recounting the advantages of the single agency system in the light of American experience he points out that the average city practitioner in America is a much better lawyer than the average Barrister or Solicitor. The single agency system affords a far better prospect of speedy employment than the beginner who is not strongly backed can look to in England. He says that according to the universal witness of laymen and lawyers no man who combines fair talent with reasonable industry fails to earn a competence within six or seven years of his career and to have an opportunity of showing whether he has in him the makings of something great. The gain to the client is still clearer and even those very few American Counsel who say that for their own sake they would prefer the English plan admit that the litigant is more expeditiously and effectively served where he has but one person to look to and deal with throughout. It does not suit him, say the Americans, to be lathered in one shop and shaved in another.

Even in England in recent times there has been a sharp difference of opinion though it must be admitted that the volume of opinion in favour of the total abolition of the existing system is not

quite strong as yet. It is somewhat noteworthy that such an eminent authority as Sir Edward Clarke was in favour of the fusion of functions. Lord Haldane has advised it for India. A section of Solicitors and a section of the junior Bar have also been in favour of the single agency system as practice tends under the dual agency to drift into the hands of a few practitioners who were influentially connected or who are related to Solicitors. The late Mr. Benjamin who was acquainted both with the English and American systems was of opinion that for countries not having a historic Bar, it would be difficult to maintain the separation which exists in England.

My own experience in Madras amply bears out most of the claims made on behalf of the single agency system in America.

In the original side the Vakil both acts and pleads. It is true in important causes a senior practitioner is associated with a junior practitioner in the work of preparation. But the question is not whether in the case of a very busy practitioner a junior is also associated with him but whether the junior if he does merely the junior counsel's and Solicitor's work in certain cases does not also do in certain causes what may be called an advocate's work of arguing cases and of examining witnesses. I know of a number of young men who are doing the preparation and the instructing work as well as what I might call the pucca advocate's work of conducting and arguing cases and to their credit it must be said they do the one kind of work quite as efficiently as the other kind of work. This is quite different from the dual system as it is understood in England.

Under this system more than 80 per cent. of the cases on the original side is done by Vakils for both the parties.

There are about 150 Vakils who have work of some sort or other on that side, of whom more than 50 have a fair amount of work, earning Rs. 500 a month or upwards—*vide* Mr. Grant and Mr. V. V. Srinivasan.

In the Madras High Court with its limited quantity of original side work, with only two courts (sometimes only one) sitting to hear cases I should say that that is a very fair distribution. In Calcutta, with its heavy original side, with four times the work, the evidence was that only two dozen barristers got on and the optimistic correction made later was that 40 men make a living.

In Bombay, where the work of the original side is even very much larger, with 7 courts sitting, there was the same story. In fact, the evidence given by the Bar Association, Madras, and by Mr. Justice Devadoss was that they advocated the unitary system because the juniors would have a better chance of getting work from the larger number of patrons, the clients, than the

smaller number the attorneys. In the appellate side in Madras the work has spread out considerably. A casual perusal of the original side cause lists, has convinced me that a fairly large amount of work on the original side is in the hands of nearly 70 to 80 Vakils and a very small quantity of work in the hands of four or five attorneys or attorney firms. During the first ten years of my practice between 1891 and 1901, there was a much larger volume of work in the hands of attorneys and counsel on the original side.

Luckily some of the more serious objections to the attorney system have been removed from the unitary system as it prevails in Madras.

It is considered unprofessional for a Vakil to stipulate for fees varying with the result of a cause. He is not to engage himself in any business without the express permission of the Court.

It is not considered honourable conduct for a Vakil to get an interest in the subject matter of the litigation in which he is engaged. There is a professional robe also to remind him constantly of the honourable profession to which he belongs. In such matters the vakil's position is more approximate to that of a Barrister and with the safeguards the fusion of functions in Madras has tended to efficiency and popularity and to the existence of a fairly high tone in the profession.

The conditions even in the Presidency Towns are quite different from what they are in England. The language of the court is not the language of the client or of the witnesses. There are only very few cases in which Europeans are parties. Probably one in 2 or 3 hundred. The Indian client will never be content unless he goes to the man who handles his case in court. The Indian witnesses are nervous and timid set of people and have not the intelligence or education of English witnesses. There are great advantages to be gained by direct interview with the witnesses on the part of the advocate. The Indian Attorneys have not the same knowledge, ability or training to handle Indian witnesses, and to elicit all they know as the experienced Advocates can. Leading questions are as much prohibited under the dual as under the other systems. The European Attorney is at the mercy of his interpreter often his own clerk. He does not know the language, is not familiar with the customs and manners nor with the language or method in which documents and accounts are written and kept. The dual system with the European Attorney with a European Barrister means to the client he is at the mercy of the Attorney's clerk. The great advantage to the profession in my view from the fusion system as it prevails in Madras is both the senior and the junior profit by it. The junior of to-day becomes the

senior of to-morrow and very soon becomes a leader. The opportunity for work, for contract with clients and for getting known to the Judges and to leaders in the profession is great and within a very short time the juniors of merit are able to set up business on their own account. Almost every leading man within my experience emerged out of this system. Justice Sundara Ayyar worked with Sir Subrahmania Ayyar, Sir K. Srinivasa Ayyangar first with Willie Grant and later with Sundara Ayyar, S. Srinivasa Ayyangar with Sir V. Bashyam Ayyangar also. Sir V. C. Desikachariar and C. R. Tiruvenkatachari. Similarly T. R. Venkatarama Sastri, with Sir P. S. Sivaswamy Ayyar, Alladi Krishnaswami Ayyar with Sundara Ayyar and later with Sir K. Srinivasa Ayyangar, C. P. Ramaswami Ayyar with Kumaraswami Sastri and many others like that. I was myself working with Mr. Wedderburn for the first 5 years of my practice on the appellate side. The senior when he becomes a senior is fully equipped for his work having gone through the various stages himself. All these things will cease to exist if the dual system is to be made compulsory. The risk of contamination with the witnesses is there always. Is it not there to the attorney? Is his branch considered any the less honourable? Eminent Counsel in Calcutta, Mr. Pugh, was a barrister first, an attorney next and is now a barrister. What about the hundreds of barristers practising in the other High Courts and in the districts and in the Colonies? They have not suffered by contamination. The chances of abuse are less if you leave that risky work to be done by a superior man. So long as the safeguard of preventing undue interest in the subject of litigation is there, the risk is not a serious one. Both in America and in our own country the tone has not deteriorated on this account.

An iron-bound caste system of attorney and advocate is detrimental to the attorney and is not as good to the advocate as the fusion system. Average ability is less under the dual system. The attorneys look to the counsel for even simple questions. If despatch of business in court is secured under the dual system it is because the work gets into the hands of a few leading counsel. They know the judges and judges know them. But is that desirable? If there is laxity in preparation under the unitary system, a little attention on the part of the trying judge is bound to set it right.

We cannot have perfection in this world! If so we must be importing the best judges from England. Can we get them? In the case of the dual system there is divided responsibility to the client. The last word as regards efficiency is certainly not in favour of the dual agency. True the mechanical portion is better done. The materials are methodically arranged, neatly got up

As regards intellectual preparation the other system in which two people jointly work is decidedly more suited. The junior and the senior in the unitary system are both in touch with the main essentials of the case. The Advocate is responsible to the client. There are opportunities for frequent consultation without the incubus of piling up fees. The client gets the advantage of his legal advisers picking the brain each of the other—there is more harmony among them as they are each other's choice and the legal advisers getting into direct touch with the client and therefore more thorough with the facts. The Indian client cannot unburden himself as easily as the Englishman. The hands of the clock will be moving and the bill of costs also.

There is undoubtedly the risk of the Advocate identifying himself unduly with the clients' interests. Some identification is necessary in the Advocate. He is not to assume to himself the functions of a Judge.

But as Lord Haldane has remarked :

“ There is only one real safeguard and that is to have an *esprit de corps* among the Bar and a high standard of honour that would search out and repress inequities far better than any amount of technical rules ”.

Litigation under the dual system is more expensive and I cannot accept any protestations to the contrary. There is always a tendency to mount up costs against the defeated party by unnecessary proceedings. When I was working with Mr. Wedderburn, I have seen pages and pages of quotations from Lindley on Partnership or such other books in the briefs delivered to him. Mr. Inverarity has referred to this tendency in his evidence. The tendency for securing agreements with the client is there. If it is said that the unitary system is more conducive to touting, the dual system encourages nepotism and undue interest in the result of the case. The Solicitor's ugly daughter and multiple pounding are well known sayings. It is also stated that struggling junior barristers are faced with heavy handicaps, in the shape of sons and nephews of Solicitors. There will always be black sheep under any system. Man-made laws during the ages have not destroyed crimes. It is impossible to affirm that a larger percentage of dishonourable persons are produced under one system rather than the other. When it is admitted that in over one thousand and odd civil courts in the country where by far a larger number and more important and intricate cases are disposed of the dual system is unsuited, it requires a very strong case to force it and that partially on three courts. The survival in that area of the system is due to historical accident. The reason for its existence was that English law as such applied to that

court. That no longer is the case. English law may be the guide but not the law. When impossible rules are set up for observance, dummy attorneys and dummy pleaders and other make-believes continue to exist.

Eminent Barristers will continue to settle fees with the most successful clients and take briefs direct. A thing cannot be good for the Barrister in Allahabad and Patna and yet be bad in Calcutta. What is good in Karachi and in Ahmedabad cannot be evil in Bombay. Lay opinion does ask for the abolition of the dual system where it exists. Indian opinion, commercial and otherwise, both in Calcutta and Bombay is decidedly against it. There has been constant agitation both in Calcutta and Bombay over this question during the last 10 years. We have not got the dual system here as it prevails in England. We cannot have it. In England litigation is conducted under the directions of a junior Counsel who is a specialist. Counsel's advice is often resorted to. Can that be done here? Will the Indian litigant be in a position to bear the cost?

It is again said that the system of *ad valorem* fees works as a hardship in some cases. True; but it is not peculiar to the original side vakils of Madras. It comes into prominence there because both systems of taxation are extant on that side. Madras has always held that the costly system cannot be allowed to continue. That was why the City Civil Court was established, notwithstanding the fact that it had all along the cheaper agency of the vakil on the original side also. The rule as to Vakil's fees can be revised.

There is one more argument urged, which has also to be noticed, namely, the necessity of preserving the solicitor for the English capitalist's benefit. At whose cost, is the first question. Is it at the cost of the Indian litigant who has to pay? If to the English investor it is a necessity to have the attorney, let him find his way to secure his presence. No one has suggested that attorneys should not be enrolled hereafter. Such Attorneys' work as there is will always find its way to him or to other hands who can do that sort of work. If the Barrister in Rangoon can learn the art of drafting and conveyancing by practice, surely the vakil in Madras can do it, and he does it. Paying work will always find a man to do it. Only he will call himself differently. What does the investor do in the United States of America and in the Colonies where the unitary system prevails? With all respect, I fail to recognise any force in the argument. The English firms in Presidency towns do mostly exporting and importing business for the benefit of traders, which does not need the investment of millions of English capital. Such capital as has been invested is

mostly outside the Presidency towns. The planting and the mill areas are in the districts, where he has to be content with the unitary system. The line of reasoning "that for the benefit of the English investor the English Attorney is necessary, the English Attorney can be kept alive only by enforcing the dual system which is ideally better, it must be enforced at all cost" ignores the true interests of the vast Indian litigant public. What about the Indian commercial and business interests? The Englishman will and does prefer the European Attorney who is not suited to the Indian.

Conclusion.

It is essential to have a homogeneous bar throughout the country. Then only "esprit de corps" will come into existence. It is impossible to introduce the dual system where it does not exist. Uniformity is desirable and necessary. No great harm will be done by abolishing the dual system where it exists.

T. RANGACHARIAR.

The 27th January 1924.

No. F.-591-23.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

JUDICIAL.

RESOLUTION.

Delhi, the 26th March, 1924.

The Indian Bar Committee, with Sir E. M. desC. Chamier, Barrister-at-Law, as President, was appointed by the Governor General in Council under the orders contained in the Resolutions of the Government of India in the Home Department, Nos. F.-591-23-Judicial, dated the 7th and 17th November, 1923, respectively. The Committee assembled at Bombay on the 23rd November, 1923, and after visiting and recording evidence at several places, submitted their report to the Government of India on the 7th February, 1924. Before coming to final conclusions upon the proposals of the Committee, the Governor General in Council considers that the Report should be placed before the public, and he has accordingly been pleased to order that it shall be published for general information.

2. The Governor General in Council desires to take this opportunity of expressing his high appreciation of the services rendered by the President, Sir Edward Chamier, and by the Members of the Committee.

3. From the estimates received from the Secretary of the Committee, it appears that the total expenditure which has been incurred by the Committee and will be incurred in the printing of the Report will be about Rs. 1,17,000.

Order.—Ordered that a copy of the above Resolution be communicated to all Local Governments and Administrations, the Calcutta High Court, and the Legislative Department, for information.

H. TONKINSON,

Joint Secretary to the Government of India.

DELHI
GOVERNMENT CENTRAL PRESS
1924