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**MUKTEARS AND THEIR STATUS WITH
FULL REPORTS OF THE PROCEEDINGS
OF THE FIRST SITTING OF THE
ALL-BENGAL MUKTEARS CONFERENCE**

IRVAY SUTTIYARI SENI

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MUKTEARS AND THEIR STATUS

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Compiled by
Ras Vihari Sen,
Muktear, Ghulna.

Published by
Jagendra Nath Majumdar,
DISTRICT AGENT, KIBULNA.

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Part 16
Ram Gopal Bhattacharjee,
AT THE KAMALA PRESS,
KHULNA.



In Memoriam

of

**The first sitting of the All-Bengal Muktears'
Conference at Khulna in the year 1913,
this book is dedicated with the best
wishes of the compiler**

to

All his brother Muktears in Bengal.



INTRODUCTION.

"BECAUSE I AM A MUKTEAR."

I was born in a high and respectable family, and got some education both in English and in the vernacular of my own country. I can write in English and can also speak in English. I have read Milton Addison, Southey, Goldsmith, Cowper, Shakespere and works of many other well known English authors. I am always well-dressed and my appearance is not altogether ugly and repulsive. But yet I do not deserve any respect from any gentleman—and why?—"because I am a Muktear."

During the long period of my sixteen years' practice, I conducted many complicated and difficult criminal cases. I could point out and explain important decisions of several High Courts. I argued many appeals and motions with success in having the orders of the lower courts set aside. I could very ably explain the laws and convince the trying magistrates of their applications in each case. I won cases in which pleaders and vakils and sometimes counsel represented the opposite party. There was no mistake in my English nor in the law as it was explained by me; but still no importance could be placed on what I said or what I did—and why?—"because I am a Muktear."

I was a school master for several years, and taught boys of higher classes in important subjects. Several of my students are now holding important Government posts such as Deputy Magistrates, Munsiffs etc. Others are well-known pleaders. One of my pupils is now a civilian holding the post of a Joint-Magistrate, and who is still keeping correspondence with me (of course in English). But yet from amongst a dozen of my pleader and other friends somebody would very carefully eliminate me while talking with others—and why? "because I am a Muktear."

Well, once a certain pleader had gone to a mufsil camp to represent the accused in a criminal case before a sub-divisional Magistrate

The pleader wanted to look to the record of the case. The Magistrate at first in an angry mood said "No, I can't allow you to see the record." He then wanted to know who he was and the reply was "a pleader"—The Magistrate at once allowed him to see the record saying "Oh! I thought you to be a Muktear." There is not a bit exaggeration in this story. Facility in helping the court was, therefore, given to a pleader in this particular case which would have been denied altogether to a Muktear had he been there to represent the defence—and why?—"because he is a Muktear."

I remember a certain Deputy Magistrate, who now happens to be a Presidency Magistrate, once whispering to a Sub-Deputy Magistrate sitting by him in his court "well, always put down the Muktears and don't mind what they say; but attend to only what the pleaders say". But fortunately this particular Sub-Deputy Magistrate was closely related to me which the new Deputy Magistrate was unaware of and as this piece of advice gratis was not liked by the Sub Deputy Magistrate who was always fond of doing justice, the whole story soon came to my knowledge creating a laughter amongst the gentlemen present with me.

Thus the Muktears have at present become, as if, the most abominable creatures in the country, although Government has not the remotest idea that they should be treated so. Law is sometimes very wrongly interpreted by some whimsical Magistrates to suit their own conveniences, and only for the permissive clause of section 4 (r) matters have come to such a pass as if the term "Muktear" should be wiped out from the pages of the law books if the very existence of the Muktears is not possible to be wiped out from the surface of the Earth.

After having read all the law books and after having successfully passed a very stiff and hard law examination, such has at last become the lot of the Muktears! After passing their Examination they are to spend annually not a very small amount of money by way of renewing their certificates. But still they must always be kept behind as if so many culprits in criminal cases ready to be hanged at any moment,—a class deserving the keenest hatred and fit for a place far behind even the most condemned creatures of the Universe. Speak aloud—well, a Muktear will not get the required permission of the court. Repeatedly try to convince the court on a particular law point, well, the Muktear is at once disallowed to appear in a case. Speak out against

the will of a particular Magistrate for justice to an accused, we the next moment the Muktear will be seen to run to a counsel for moving the Hon'ble High Court in cancelling the order of the Magistrate passed against him in disallowing him permission in appearing in cases. Such has become almost the every day occurrence now-a-days and the Berhampur—Hamilton Case is a glaring instance of this sort of injustice done to this poor class of lawyers. Over and above this the Hon'ble High Court has curtailed their powers by certain Rules and Circular letters.

"What to do then?—To suffer in this way or to carry on constitutional agitation for moving the authorities for the removal of all these obstacles?" This thought arose in my mind one-day sixteen years ago, and I considered it as an honest piece of work in my life to take up and to agitate over. I am afraid that for want of proper representations to the authorities all these grievances have not been removed so long. When Act X of 1882 was amended, the draft bill prepared by the then Law Member Mr. M. D. Chalmers and Mr. J. M. Macpherson; Secretary to the Government of India, defined the term "pleader" in the following language ;—clause (t) of the draft bill :—

"'Pleader', used with reference to any proceeding in any court means a Pleader or a Muktear authorized under any law for the time being in force to practise in such court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorised and (2) any person appointed with the permission of the court to act in such proceeding."—But perhaps as no pressure was put forward in support of this amendment from any quarter the old definition was allowed to remain as before. I agitated over this subject through the press for a long time and then with the help of my brother lawyers of Khulna managed to convene an "All-Bengal Muktears' Conference" which was held at Khulna on the 22nd and 23rd. March last, a full report of which will be found in Part II of this book, to make a combined effort for the amelioration of our grievances—to convince the Legislature that the present day Muktears are not what they were before. We have yet (after the sad death of our Jadav Chandra Mitra of the Alipur Muktears' Bar) among us Jogendra Nath and Bhawanidas of Burdwan, Purna Chandra of Berhampur, Parvati Charaf of Dacca, Brojo Gopal of Mymensingh, Umesh Chandra of Chittagong, Tarindra Nath of Tamuk, Abdul Goni and Rai Kissore of Maldah, Kailash Chandra of Barisal, Satish Chandra of Rajshahy, Dhuban


Mohan, Joy Gopal and Akhoy Kumar of Alipur, Bireswar of Rajbari (Goalando), Satis Chandra and others of Rungpur, Mahmed Ebrahim of Bogra, Naba Kumar of Jessore, Janoki Nath of Noakhali, Jotindra Mohan of Pubna, Lalit Kumar of Comilla, Prosad Das of Dinajpur, Basanta Kumar and Raj Kissore Chowdhury of Faridpur, Sures Chandra of Jangipur, Syed Khairat Ali of Hugli, Nibaran Chandra of Ulubaria, Bireswar of Magura, Satis Chandra of Bongong, Sarada Charan, Ambika Charan, Prosanna Kumar and Binalananda of Khulna, Hridoy Nath of Kustia and several others whose names I am unable to recollect at present, who are in no way less able to conduct cases or inferior in any way either to any pleader or counsel—whose sound and solid legal help are daily saving many innocent men from the gollows and prisons. But yet this particular class of lawyers are not given ample scope to render substantial help to the administration of the country. Nothing can be more lamentable than this. I have, therefore, taken up this subject as my life's task and will continue to agitate and agitate till I get the desired end, before I am sent to the grave.

I cannot conclude the introduction without expressing my sincerest thanks and gratitude to my Muktear friends of Khulna for what they did towards complete success of the first sitting of the All-Bengal Muktears' Conference that was held at Khulna on the 22nd. and 23rd. March last. What they did with the help of young volunteers is indescribable. But the Delegates who attended the Conference are the best persons to judge of it. Babus Bimalananda Sen, Prosanna Kumar Mitra, Sarada Charan Bhattacharje, Jnanendra Nath Majumdar, Haris Chandra Nandi and others were the pioneers but for whose indefatigable labour the conference could not have been a complete success. Amongst them Jnanendra Nath and Haris Chandra were really the "Silent workers" Needless to say that every one of them from the oldest to the youngest worked day and night for the success of the Conference.

The young volunteers headed by master Birendra Nath Rai did yeoman's service for the Conference. But for their timely help, the members of the Reception Committee would have been put into a most helpless condition.

No less valuable services were rendered to the Reception Committee by the leading gentry, both Pleaders, Zeminders and Talukdars of the town who vacated their respective houses for the accommodation

of the delegates. Some of them not only pecuniarily helped the members of the Reception Committee, but worked day and night to see the conference a successful one. I may specially mention the names of Babu Pryn Nath Das Zamindar, Rai Saheb Bankim Chandra Majumdar, Rai Bahadur Bipin Behari Sen, Government Pleader, Babu Nogenra Nath Sen B. L. Babu Bimalananda Das B. L. Babu Jadu Nath Chakerbarty B. L. Babu Kunjo Vehari Mukherjee B. L. Vakil and Vice-Chairman of the Khulna Municipality, Babu Jogendra Nath Bhadra, Babu Srimanta Chatterjee, Babu Mahendra Chandra Sen B. L. Vakil, Babu Annada Prosad Ghosh Zamindar, Babu Abinash Chandra Mukherjee B. L. Babu Joges Chandra Bose, Superintendent of the District Board, and Dr. Hira Lal Sen. All these gentlemen did equally work with the Muktears for the success of the Conference. The best thanks of the members of the Reception Committee are, therefore, due to them.



PART I.

MUKTEARS AND THEIR STATUS.

CHAPTER I.

When I first began practice as a Muktear in the Khulna Criminal Courts, nearly sixteen years ago, (9th. September, 1897), section 4 clause (N) of the then Criminal Procedure Code Act X of 1882 attracted my serious attention and I considered the words "with the permission of the court" in that clause as a halter round our necks. When this Act X of 1882 came under revision and afterwards became Act V of 1898 (the present code) the draft bill proposed to confer upon Muktears the very privileges which we are now contending for. But when the bill passed into law, the provisions which were in force under the former Act were reproduced in Act V of 1898 without any change.

The Hon'ble Mr. Chalmers, the then Law-member of the supreme council in presenting the draft Bill observed "that the code was administered by busymen and everything that would help them to make their task, in mastering the law, as light as possible, should not be left undone". But for reasons unknown the proposed amendment of section 4 clause (r) and that of section 340 of the present Code of Criminal Procedure (Act V of 1898) was not accepted and the disability of the Muktears remained as before.

The law, therefore, as it stands, at present places the "Muktears" in the category of ordinary laymen and the necessity of obtaining the permission of the court to appear in a

Criminal trial tantamounts to an implied refusal of their professional status., although the several High Courts have from very early times laid down in several of their decisions that the Muktears have a distinct professional status in criminal trials and the Bombay High Court had gone the length of holding that an applicant in a criminal case has the right to appear and be heard by a Muktear.

Although the standard prescribed for the Muktearship Examination is practically the same as that prescribed for the Pleadership Examination with the exception of one or two books and although the same test is applied to both the classes the law provides that the permission of the court is necessary for a Muktear, but it is not so for a pleader duly qualified, and section 340 of the Criminal Procedure Code provides that every accused has a right to be defended by a Pleader, whose responsibilities are laid down in the Legal Practitioners Act 18 of 1879 Regulation 2 of 1827 and other Acts.

To me it seems then [as I described it in the columns of the "Amrita Bazar Patrika" of the 5th. March last].

What are this class of Lawyers for ? Wherever they go, the very sound "no locus standi" is heard everywhere both in Civil and Criminal Courts, where their powers are always questioned, and they are treated as so many "dumb driven cattle".

And yet these lawyers had to pass a very hard and stiff examination to entitle them to practise as Muktears and for which they had to secure 50 p. c. of the total marks in each branch and 66 p. c. in the aggregate. The standard books they had to study, were almost the same as prescribed either for the B. L. or for the Pleadership Examination. The most difficult part of this examination is that only a limited number of questions are set every year out of so many books and so a candidate for the Muktearship Examination has to make a very minute study of the whole lots of books to enable him to answer those questions fully. They can't follow the system of cramming like examinees in other Examinations. As, therefore, a candidate has to make a thorough study of all the law books prescribed for the Muktearship Examination, he should be presumed to possess a good knowledge of those laws.

But what is to that? The learned (?) correspondent of our contemporary, the "Hindu Patriot",—who might possibly be a briefless lawyer and unable to cope with the merits of the present-day Muktears—would venture so far as to describe this class of lawyers in a manner and style to be found in the columns of one of its issues of December last. But this writer, whatever class does he belong to, should know that if the legislatures deem it necessary to raise the status of the Muktears, his vituperation and malicious remarks, if I might call them so, would never in any way shut up their eyes. I might further tell him that the present-day Muktears are in no way inferior either to him or to any other lawyer, so far as both the Civil and Criminal laws are concerned.

The Muktears of the present day know English well and therefore can understand laws and Rulings well, and there is no reason then why their status should not be raised now to enable them to practise as of right in all courts. It is no argument at all and it seems to be a queer and curious argument that the raising of the status of the Muktears would amount to doing an injustice to the pleaders. It is needless to multiply instances in which, if it amounts to doing injustice at all, similar injustices were shown to officers of higher grades of other departments. A Dy Magistrate and a Subordinate Judge are found to be promoted to the posts of a District Magistrate and a District Judge respectively doing thereby injustice to the Civilians. An Assistant Surgeon is always posted as a Civil Surgeon doing quite injustice to the passed Civil Surgeon.

Merits always should be taken as a criterion to test a man's fitness and if a Muktear can conduct a case no less efficiently than a Pleader, I fail to understand why parties would be deprived of the services of a lawyer at a much moderate fee. A poor man may not have sufficient means to place his brief in the hands of a good pleader, but he may engage the services of an experienced Muktear, who can better conduct the case on his behalf than a raw and new pleader. Law should not be such as to force a man to engage the services of pleaders only, and if it is so I must say such law to be defective and needs, therefore, an amendment as it does not allow a party to a suit to exercise his own choice in selecting a lawyer for him.

The most difficult position into which a man, can be placed is the position of an accused person in the Sessions Court—both in Sessions cases and in appeals and motions before the Sessions Judge. Though it was many times held by different High Courts that the Muktears, as of

right, can appear before a Sessions Judge nevertheless they are not allowed to do so which deprives an accused person the advantage of engaging the services of a lawyer at a moderate cost. The accused is, therefore, forced either to engage a good pleader at a much exorbitant high fee or to stand as undefended. The Sessions Judge is sometimes seen in many districts to request a junior pleader who happens to be present in court to accept the brief for the accused in such undefended cases, yet I don't think that the accused by that means is given full opportunity of defending himself, as otherwise he would have been in a position to engage the services of an experienced Muktear who would have been in a much better position to fight out the case for him. * *

Upon this the "Patrika" had the following Editorial Comment :—

"A paper On 'Powers of Muktears' written by the well-known Muktear of Khulna, Babu Ras Behari Sen, and published elsewhere, will be read with interest. In days gone by it was the Muktears who enjoyed the bulk of the legal practice. Vakils and Pleaders, however, gradually came into eminence and the authorities sought to throw down the Muktears as a negligible body. It is however, a fact that the Muktears of the present day are not what they were a few years back. In so far, therefore, that they should strive to improve their status, their efforts should command public sympathy. What they think now absolutely necessary for the protection of their interests is to bring about an amendment of clause (r) of Section 4 of the Criminal Procedure Code. It would appear from Babu Ras Behari's paper that it is the absence of a "comma" in the section which is doing all the mischief, reminding us of the proverb—"for want of a nail the whole wheel comes off." So a "comma" which is generally regarded as an insignificant thing may bring comfort to thousands of Muktears and make the profession more attractive. Questions of these legal niceties are, of course, for the legislature and the High Court to determine. From the point of view of public interests, however, we can remark that if the Muktears are up to the mark,—both as regards their intellectual equipment and moral calibre, they ought to be encouraged, and not discouraged, as affording cheap legal aid to the bulk of the poor litigants of our country. And if the discouragements they as a body are now receiving from sundry quarters succeed in improving their professional tone and capabilities, they ought to welcome their present dark days as harbinger of better one to come."

The following letter which appeared in the columns of the "Bengalee" news paper in its issue of the 12th. December, 1912 written by Mr. G. N. Ray Choudhury will interest the readers as to the status of the Muktears :—

"Sir,—By dint of an unflinching forensic intelligence and an unflagging zeal to deal out even-handed justice to all who stand before him in need of the same, Sir Lawrence Jenkins has made an indelible impression of the majesty and excellence of British justice upon the hearts of the Bengalees. It is not, however, in the matter of meting out justice to the litigants alone but also in the consideration of the much vexed question of the removal of all unmerited disabilities under which certain sections of the legal practitioners have hitherto been made to labour that His Lordship has shown that fair field and no favour is the keynote of his policy in the administration of justice in Bengal.

The just claims of the Vakils to rise in status equal to that of the Advocates and to be given a fair field along with them in the matter of enjoying the loaves and fishes of the litigant world is receiving serious consideration at his hands and seems to be in a fair way to be decreed. With such a Chief Justice at the helm to listen to the wails of the depressed it is certainly not hoping against hope to get a redress of the grievances under which the poor Muktears are smarting. The Muktears are made to go through an examination as stiff as the "Pleaders," their Syllabus covering almost as wide a range as that of the latter. In the field of practice they have as a body, at least shown as much forensic ability as the "Pleaders". Yet the poor Muktears are not permitted to practise beyond the Criminal Courts. All that makes this difference is that the Muktears are below one rung of the University ladder. But has not the time yet come to slacken a little the rule that makes University degree the "sine-qua-non" of a passport to profession. Do not the actual results in the practical field of work and the customs in vogue in other civilized countries belie such an assumption? An Ananda Chandra Ray of the Dacca Bar and a Digambar Sanyal, late of Faridpur, the two lawyers of East Bengal whose legal acumen have been the talk of the litigant public in that part of the province could, considering their University qualifications have been relegated to the subordinate position of the Muktears had they been born in this generation. Many an eminent Counsel like Mr. J. N. Roy and others of his ability would share the fate of the Muktears in the field of profession had they not the means to cross the seas. These

facts placed before our kind-hearted Chief Justice would, I am sure, make out an overwhelming case against the unfair and inequitable treatment accorded to the Muktears."

It is known to all that in many out-lying subdivisions and in the interior of the District, Pleaders and Vakeels are hardly available and there the muktears are the only lawyers whose services are daily requisitioned by the litigant public, and it has been rightly said that the muktears form an indispensable factor of the Criminal Courts in the mufsil and render no small help to the courts and parties seeking their assistance. In a country where the masses are still illiterate and quite ignorant of the ways and means of the courts and can hardly manage their legal affairs unaided the services of the muktears can hardly be underrated in the mufsil.

Although the word "Muktear" is not mentioned explicitly in the Charter Act (vic-cap.) and in the letters patent granted to the High Courts, yet their status and rights have been recognised and controlled by several Indian statutes viz The Legal Practitioners Act XVIII of 1879; section 4 (r) of the present code of Criminal Procedure (Act V of 1898); as also by the old Act of 1861 and by section 37 (b) of the old Civil Procedure Code (Act XIV of 1882) ss 126-127 of the Indian Evidence Act (the provisions of these sections having been judicially made applicable to the muktears ; (vide I. L. R. 25 Cal 736); section 25 of Reg. I of 1896 (for Upper Burma); section 25 (1) (e) of Reg. VIII of 1896 (for British Beluchistan) section 59 of Reg. VII of 1901 (for N. W. Frontier Provinces) still curiously enough in spite of the generous recognition of their legal position by the Imperial and Provincial Legislatures and their inclusion in the legal profession as an integral part thereof, the muktears are still labouring *inter alia* under some disabilities which sometimes work great hardship upon them: and they are not allowed to practise in the Criminal Court as a matter of right but only by indulgence of the court. Even in the Civil Court of the lowest grade, the muktears do not enjoy

the same privileges as they do in the subordinate Criminal Courts with permission. There they are allowed only to *act* and *appear*, but not to *plead* (High Court Rules No. 5 of the 6th. February, 1882). Under the Old Code of Civil Procedure (S. 37) the certificated Muktears were included amongst the "the recognised agents" of the parties and could act for them when "holding the special powers-of-attorney authorising them to do, on behalf of their principals, such acts as may legally be done by Muktears," but the now Code of Civil Procedure has done away with this provision and no special provisions have been made in it for the qualified Muktears.

So far as the Criminal Court is concerned under the Code of 1861, the permission of the court was not necessary for a Muktear to represent an accused, and the necessity for taking such permission was first provided for by Act XX of 1865, *now repealed by Act XVIII of 1879*; (also vide *M. H. C. R.* pp. 37); and the Muktears have now to depend upon the pleasure and indulgence of the Criminal Court owing to the said provision in the present Criminal Procedure Code, and if the permission is withheld which is now and then done, they can not act and plead on behalf of their clients.

Their position in the Civil Court which has not hitherto been very enviable, was made much worse under the new Code of Civil Procedure (Act V of 1908) which deprived them even of the special privilege enjoyed by them under the old Code; their position there having in fact been lowered to that of persons merely holding powers-of-attorney on behalf of parties with the result that they can not legally *plead* without the special leave of the court obtained in every case which is seldom given.

It was always the only contention of the Mukhtears therefore that they should not be taken in the same category with "other persons" who happened to be at the most persons having some knowledge of court business either by experience

or otherwise and mostly officers of the District and Local Boards or Municipality or Forest and other departments.

CHAPTER II.

High Court Rulings.

(1) (C. W. N. Vol: XV).

Mymensingh Case.

CRIMINAL REVISION NO. 13 of 1911.

Ishan Chandra Bhar, Accused—Petitioner.

To enumerate the several decisions of the different High Courts about the powers of the *Muktears* in Criminal Courts I think the Mymensingh decision should be taken up first. This case was reported in 15 C. W. N.

In this case the petitioner had been convicted by a Deputy Magistrate under section 325, Indian Penal Code, and sentenced to one day's simple imprisonment and to pay a fine of Rs. 40/-. Against this order of conviction and sentence a *Muktear* presented an appeal before Mr. Walmsley, Sessions Judge of Mymensingh. The learned Sessions Judge observed:— "This appeal is presented by a *Muktear*. I held the other day that at present it is not the practice for *Muktears* to present appeals and plead in this court. This appeal is obviously presented with a view to testing that decision, for it is almost time-barred." He then fixed a date on which he heard the representations of the Pleaders and the *Muktears* as to the right of the latter to appear before the Sessions Judge and

dismissed the appeal summarily, as in his opinion, Muktears should not be allowed to appear before the Sessions Judge.

Against this order a Rule was issued, calling upon the District Magistrate of Mymensingh to show cause why the appeal should not be re-heard on the ground that a *Muktear* has a right to appear for the defence of an accused person in any Muffisil Court.

This Rule was heard by Mr. Justice Holmwood and Mr. Justice Sarafuddin. Their Lordships passed the following judgment:—

“The issue of this Rule appears to have raised a general question between Vakils and Pleaders and *Muktears* as to the right of the latter to appear in Criminal Cases. It was never intended that such a question is obviously one which has been disposed of by the terms of the law and by the High Court Rules. The law is contained in section 340, Criminal Procedure Code, read with Section 4, clause (r) of the same code. Every person accused before any Criminal Court may of right be defended by a Pleader; and Pleader in this connection includes any *Muktear* or other person appointed with the permission of the court to act in such proceeding.

This particular practitioner has a 15 Rupee license entitling him to practise as a *Muktear* in all Civil and Criminal Courts subordinate to the High Court except the Calcutta Small Cause Court. It is, therefore, clear that subject to the permission of the Criminal Courts in each case (and this applies equally to the Sessions Judge and the Magistrates) he is authorised to practise.

What we intended in issuing the rule was to emphasise the position that an accused person having the right to be defended by the class of persons enumerated in section 4 clause (r), it would rarely be a wise discretion on the part of the Sessions Judge or the Magistrate to refuse permission to a

Muktear appearing for the defence. That appears to be the tenor of the rules which have been laid down by this court for the guidance of Magistrates ; and as the certificate is the same for both Sessions Judge's Court and Magistrate's, we presume that the rules laid down for Magistrates are equally applicable to Sessions Judges. "The terms of section 340 do not warrant any general rules for the exclusion of *Muktears* in all cases, but only allow the exercise by Magistrates of a discretion in each case as it arises. The Magistrates are expected not to deprive parties of legal aid which they could frequently obtain at a moderate cost by indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials." Every Magistrate is found in each case that comes before him to use the discretion vested in him by law before giving permission to an uncertified Pleader and in deciding whether permission should be given or not, the character of the person appointed to plead is one of the matters to be taken in to consideration.

If has been urged before us by the learned counsel in showing cause against the Rule that if this latter rule is applied in practice, the result would be that no *Muktear* can be excluded on either side except on personal grounds and this will result in their being admitted to universal practice.

In the first place, we have to point out that this Rule does not apply to *Muktears* but to uncertified Pleaders. Under section 4 clause (r) a *Muktear* is a certified Pleader when he obtains the permission of the court to appear in any particular case.

We quite agree with the learned Judge that *Muktears* should not be permitted to appear in the Sessions Court where their appearance is unnecessary or where there is no reason of their appearance. But that is a matter which must be decided independently in every case and no general rule can be issued. The learned Judge seems to have discussed the matter from the

point of view in general practice. He has laid down, that as a general practice, *Muktears* should be allowed to appear in every case in Magistrates' Courts, as they do now and as a general practice they should not be allowed in any case to appear in a Sessions Court. Those general rules are both of them equally erroneous. The Magistrate has to decide in every case whether he will permit a *Muktear* to appear; and the Sessions Judge has to decide in every case whether he will permit a *Muktear* to appear and we think that it is very difficult to exclude a qualified practitioner when he appears for the defence of an accused person and that is all that we desired to put forward when we issued this Rule.

It is not competent to the Court below to say that this matter was put forward to test the right of *Muktears* in as much as the appeal was almost out of time. The fact that the appeal was almost out of time may have been the very reason for employing the very first practitioner that came to hand, namely a *Muktear*, there being nothing against the appearance of the *Muktear* in this particular case. We think that the Rule should be made absolute and that the appeal should be re-heard. Of course, the learned Sessions Judge may still exercise his discretion at the hearing of the appeal and may permit a *Muktear* to argue it; but that will largely depend upon the question whether the accused person is in a position to employ a Vakil or Pleader and whether he elects to do so.

All we are anxious to avoid is that the defence of an accused person may not be shut out merely by the fact that he is represented by a *Muktear*.

Bombay Case.

(2) (I. L. R. 6 BOM.)

Before Mr. Melvill and Mr. Justice Pinhey.

CRIMINAL APPLICATION FOR REVISION NO. 203 of 1881.

Imperatrix Versus—Shib Narayan Gando.

This was an application for a revision of an order passed by M. B. Baker, Joint Sessions Judge of Poona at Sholapur.

The accused was originally tried by Knan Bahadur Darasha Dosabhai, Magistrate (first class) at Sholapur, of the offence of retaining stolen property, and sentenced to suffer rigorous imprisonment for eighteen months.

The accused preferred an appeal to the Joint Sessions Judge, and engaged one Narayan Vishnu, a Muktear, to conduct the appeal on his behalf. Mr. Baker refused to hear him. He said: "Narayan Vishnu, a Muktear, wished to appear on behalf of the appellant, but the Court declines to grant him permission to do so. He contended that he had a right to appear in an appeal; but with this contention I can not agree, for the appellant is as much "a person accused of an offence" when the case is before a court of appeal as when it is before a court of original jurisdiction. I do not consider that the Legislature can have intended to give unqualified practitioners privileges in an Appellate Court which are denied to them in a court of original jurisdiction. To admit Muktear is to injure qualified Pleaders; and this particular Muktear has already been warned that he would not be permitted to appear in this court. Mr. Baker then went in to the merits of the case, and confirmed the conviction and sentence.

The accused thereupon applied to the High Court.

There was no appearance in the High Court either on behalf of the accused or the Crown.

[13]

Per Curiam :—The appellant in a criminal case has a right to appear and be heard by a Muktear. It is impossible to say what effect the arguments of the Muktear might or might not have produced on the Sessions Judge in the case. The order of the Sessions Judge confirming the conviction and sentence on Shivram must be reversed and he must be ordered to re-try the appeal of Shivaram after giving notice to the Muktear, and hearing him if he appears.

Bhanga Case.

(3) (C. W. N. IX)

CIVIL RULE No. 3627 of 1904.

Before Pratt and Mitra, JJ. Jogendra Nath Bhattacharjea and another, Petitioners V. Government Pleader of Faridpur, opposite party. 19th. January 1905.

The Muktears at Bhanga applied to the Munsiff there for permission to file applications under section 103, 108, 278, 244, 291, 310A, 311, 322, and 335, Civil Procedure Code, and sections 85 and 174 of the Bengal Tenancy Act. The Munsiff being of opinion that under the rules framed by the High Court under section 11 of Legal Practitioners Act they were not authorized to act, rejected their petition.

Against this order an application was made to the High Court.

Babu Giris Chandra Pal for the petitioners

Referred to Secs 36 and 37 C. P. C.

A Muktear is an authorized agent.

Sec 1 C. W. N. 11. Referred to Sections 7 and 9 of Legal Practitioners Act. Muktears have been authorized to practise

in the Civil Court. The word "practise" has not been defined in the Act, but it means "appearing and acting in the Court."

[Mitra, J.—Can a Muktear plead ?]

No. My contention is only they can act. The word 'act' has been defined by White J, at P 568 of 7 C. L. J.

Referred to Sec. 6 of Legal Practitioners Act. It authorizes the High Court to frame rules regarding the qualification of Muktears.

If certain powers are given to Muktears, the High Court cannot take away those powers. Rules framed under sec. 11 must be consistent with the Act. See sec. 16 of the Act.

Referred to Rules Nos. 16 and 34 and to the Rules framed by the Chief Court of the Punjab and 8 C. W. N. 403.

Babu Ram Charan Mitra for the opposite party—Rules framed by the High Court ought to be decisive of the question. In framing the rules the learned Judges were careful in referring to the sections of the Code on the Bengal Tenancy Act. None of the above sections is mentioned in the rules.

Referred to Sec. 11 of the Legal Practitioners Act.

The petitioners ought to file an application to the Full Court to extend the powers.

The rules are exhaustive. The granting of prayer would be practically giving unlimited power.

Babu Giris Chandra Pal in reply.—

Referred to section 13 of the Legal Practitioners Act. If a Muktear exceeds the power given under the rules, he is not amenable.

Held—That the functions and powers of Muktears are given by rules framed under section 11 of Legal Practitioners Act by the High Court. Their functions are limited by the

L 15]

rules. Rule 34 lays down the powers and also the sections of the Civil Procedure Code and the Bengal Tenancy Act. If proper representations are made, the High Court may extend the power. As the rules now stand they cannot be allowed to act.

Tamluk Case.

(4) (C. W. N. VOL VII.)

REV. No. 932 of 1902.

[In the matter of Tarendra Nath Chatterjee.

In this case a rule was granted calling upon the Sub-Deputy Magistrate of Tamluk (Midnapur) to show cause why his two orders of the 20th. August 1902, prohibiting the petitioner from appearing in two cases as a Muktear, should not be set aside.

It appears that on the 20th. August first in the case of Sattya Bewa against Narendra Ghaki and again in the case of one Kini Dasi against Ram Chandra Adak, he passed an order refusing him (petitioner) permission to appear. It is stated in the petition also that on the same day he stated generally that he would not allow the petitioner to appear in any case before him. The Sub-Deputy Magistrate has sent in an explanation in which he admits that the first two orders were passed by him but he makes no reference to the general order alleged to have been made refusing to allow the petitioner to appear before him in any case.

From the explanation it is clear that the orders in question were passed not in consequence of anything that happened in the two cases which were before him on the 20th. August but in consequence of an unpleasantness which had arisen in another case on the 7th. August between the petitioner and another Pleader and a Muktear.

In our opinion the Sub-Deputy Magistrate was not justified in passing the orders complained of. If the petitioner had been guilty of misconduct calling for punishment on the 7th. August, it was, we think, the duty of the Sub-Deputy Magistrate to have dealt with the matter on its own merits giving the petitioner an opportunity of defending himself if so advised. It was unfair to punish the Petitioner for anything that he may have done on the 7th. of August by passing orders refusing to allow him to appear in the cases which came on after that date. The orders are set aside, and rule is made absolute.

(5)

THE RIGHTS OF MUKTEARS

MYMENSINGH JUDGE'S ACTION CONDEMNED.

Justices Holmwood and Sharfuddin disposed of the rule issued on behalf of Ishan Chandra Bhat, calling on the District Magistrate of Mymensingh to show cause why his appeal should not be re-heard.

Mr. S. P. Sinha with Babus Harendra Narayan Mitra and Bhudeh Chandra Ray appeared in support of the rule. Mr. B. Chakravarti with Mr. Orr, Deputy Legal Remembrancer, represented the Crown.

The petitioner was convicted by a Deputy Magistrate of causing grievous hurt and sentenced to one day's simple imprisonment and to pay a fine of Rs. 4/- . Against this order Babu Braja Gopal Rose, Muktear, verbally applied for permission of Mr Walmsley, Sessions Judge of Mymensingh, to present an appeal. The Sessions Judge, in the course of his order said :—"This appeal is presented by a Muktear. I held the other day that at present it is not the practice for Muktears to present appeals and plead in this court. The appeal is obviously presented with a view of testing that decision, for it is almost time-barred." The Judge then fixed a day to hear the representatives of Pleaders and Muktears and after hearing them summarily dismissed the appeal. The rule was issued on the ground that the Sessions Judge erred in law in holding that Muktears were not entitled to present criminal appeals and practise generally in the Court of Sessions.

[17]

Mr. Chakravarti : I do not raise any question about this appeal being reheard, but the question for consideration is whether a Muktear as of right is allowed to appear in the Court of Sessions.

Mr. Justice Holmwood : It is the right of the accused and not of the Muktear that is at issue. *Why should not an accused person be represented by a licensed Muktear ?*

Mr. Chakravarti then read Section 4, Clause (r) of the Criminal Procedure Code.

Mr. Justice Holmwood : The practice is to appoint a Muktear when the accused is undefended.

Mr. Chakravarti : The learned Sessions Judge said : "I am willing to allow the accused to be represented by a Muktear," but he objected to the right of the Muktears as a body to appear before the Sessions Court.

Mr. Justice Holmwood : Of course not. It is the rule of this court that he should take permission in every case. *The license of the Muktear says that he is entitled to practise in all Civil and Criminal Courts subordinate to the High Court, except the Calcutta Court of Small Causes.* We issued the rule on the ground that the Judge ought to have allowed the Muktear to appear in this court. Magistrates are expected not to deprive accused persons of legal help by indiscriminate exclusion of legal practitioners authorised to practise before them.

Mr. Sinha : The Sessions Judge made a general rule that Muktears should not be allowed to appear before him as there was a large number of Pleaders at Mymensingh. He said he would not hear the Muktears.

Their Lordships in making the rule absolute observed that it was unwise for a Magistrate or a Judge to refuse a Muktear to appear for an accused person without a reasonable ground. The appeal was directed to be reheard.

CHAPTER III.

Press Comments.

(1)

(Amrita Bazar Patrika 24th. April, 1909.)

We published a letter from Babu Rash Behari Sen, Muktear, Khulna, in our issue of the 19th. instant, regarding the powers of the Muktears. In their application to the Hon'ble High Court, the Muktears have preferred certain prayers which appear to be reasonable. One of the most important of these, relating to a privilege on which the Muktears have evidently set their minds, is embodied in the following words in the petition :—"That Muktears may be allowed to practise in all Subordinate Criminal Courts by virtue of their professional license, and that no special permission of the Court be deemed necessary in each particular case." We are told that there is no great obstacle to the granting of this prayer from the legal point of view, and that the removal of the restriction will be welcomed by a large section of the litigating public. Their professional license is granted to the Muktears under section VII of the Legal Practitioners Act, which authorizes them to practise in all Criminal Courts subordinate to the High Court. This Section runs : "On admission under Section 6, of any person as Pleader or Muktear, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year, etc., etc.," The section, it is evident, does not put any limit or restriction regarding the powers of the Muktears, and certificates are granted to them accordingly, signed every year by the District Judge on behalf of the Hon'ble High Court. There are different kinds of certificates granted to the Muktears costing Rs. 15/-, Rs. 10/-, and Rs. 5/- respectively. The first two allow the

Muktears to practise in all Criminal Courts subordinate to the High Court, and the last one only in the courts of the first instance and not in the appellate courts. Section 4 clause (r) restricts the privileges of the Muktears as it lays down that permission is required for Muktears to appear in Criminal Courts.

The Criminal Procedure Code was introduced so long ago as 1861; it then being Act 25 of 1861. It next became successively Act V of 1862, Act VIII (Supreme Court) of 1862, Act XIII of 1865, (High Court) Act VIII of 1866, Act VIII of 1869, Act X of 1872, Act XI of 1874, Act X of 1882, Act III of 1884, Act IV of 1891, the last one being Act V of 1898. The Code was introduced at a time when the educational standard fixed for the Muktearship Examination was much lower than now. A working knowledge of the Vernacular was all that was required, and an acquaintance with English, in order to understand the Laws or even the Records of the cases in that language, was considered unnecessary. After that the passing of the Middle-Vernacular and Middle-English Examinations was prescribed for candidates for the Muktearship Examination. But now Entrance passed candidates only are allowed to appear in the Muktearship Examination (as formerly for the District Court Pleadership Examination). Many of the candidates now-a-days go up for the Muktearship Examination after having read up to the First Arts. This being the case we think the restriction and the need of taking permission stated above is unnecessary. The Muktears of the present day are up to the level of the District Court Pleaders. We understand that there are Muktears who conduct cases and submit appeals in certain Mufassil Courts no less efficiently than the average pleaders. The amendment as suggested above in favour of Muktears may easily be carried out, we are assured, by only inserting a comma after the words "any Muktears" reserving the necessary permission only for "other person." The important community of Muktears will feel deeply beholden to any

member of the Imperial Legislative Council who may come forward to propose the suggested amendment of Sec. 4 clause (r) of the Criminal Procedure Code. The raising of the practising powers of the Muktears will have the effect of reducing the cost of legal help and will thus be a boon to men of limited means who are so unfortunate as to need the services of better Lawyers.

(2)

(Amrita Bazar Patrika 13th. July, 1910.)

We would once more like to invite the attention of the members of the Supreme Legislative Council to the unnecessary restriction laid down in clause (r) of section 4 of the present Code of the Criminal Procedure, regarding the powers of Muktears. Under the provision of the clause, Muktears have to take the permission of every Criminal Court in which they may appear to conduct cases. We fail to account for such a restriction at the present moment, when Muktears are to be met with in every district who are not only quite up to the mark but conduct criminal cases with rare and exceptional ability. We have published in the columns of this paper several letters from Babu Ras Behari Sen, Muktear of Khulna, who has for a long time been agitating for the removal of this restriction, which is, we believe, not only quite unnecessary but a great bar to the advancement of the Muktear class. When Muktears of quite exceptional merits are to be found almost in every district, we beg to hope that the clause would be so amended as to give them free scope in Criminal Courts. By way of illustration we may refer to the merits of the late lamented Babu Jadab Chandra Mitra, Muktear of the Alipur Bar, who was in no way inferior to many Pleaders or Vakils in conducting criminal cases and whose ability was again and again testified to by both clients and Courts. But why multiply instances? We believe, if the opinion of

Magistrates were to be collected on the subject, these would lend support to our contention for an early amendment of the clause in the interests alike of the Muktears and of the general public. The matter is surely one which deserves the attention of the members of the Supreme Legislative Council.

(3)

(Amrita Bazar Patrika, 25th. March, 1910.)

Regarding the letters that appeared in the columns of this paper a few days ago from Babu Rash Behari Sen, Muktear, Khulna, about the "Powers of Muktears" we wish some member of the Imperial Legislative Council would take up the matter and move for an amendment of section 4 clause (r) of the present Code of Criminal Procedure, removing the restriction as laid down in that clause affecting the Muktears.

Considering the present standard of qualifications of the Muktears the restriction as to their requiring permission to argue is clearly unnecessary. When Act V of 1828 (the present Code) was still in the stage of a bill before the Legislative Council, the draft proposed to confer upon Muktears the very privileges contended for now. But when the bill passed into law the provisions which prevailed under Act X of 1832 were embodied in the present Code without any change. So, the necessity of an amendment as suggested was thought of long ago.

(4)

(Amrita Bazar Patrika, 30th. July, 1910.)

In the light of the agitation set on foot by Babu Rash Behari Sen, Muktear, Khulna, to secure an improvement in the

status of Muktears, who are now as a body, better educated and better trained than before, and many of whom can hold their own against Pleaders and Vakils the judgment of Mr. Justice Chamier of the Allahabad High Court in a case from the Badaun district has a great significance and importance. The report of the case appears in another column ; and it will be seen that His Lordship relied in the matter on the Full Bench Ruling in the case Anant Ram and others I. L. R. 30. All. Page 66. We read in the report :—Muktears have a certain status in the profession they had been admitted to practise after acquiring certain qualifications and the bulk of the criminal work." Such being admitted by the situation, it is but right and proper to remove the restrictions in unnecessarily weighing them down as to the privilege of practising in Criminal Courts.

(5)

(Calcutta Weekly Notes, Vol. XII No. 24.)

A Full Bench of the Allahabad High Court (vide I. L. R. 30 All. 66) have held that Muktears are not entitled to practise generally and as of right in Criminal Courts, but they can act only when they have received permission of the court to act in any particular proceeding. This decision is based upon the interpretation of Sec. 4 (r) of the Criminal Procedure Code and Sec. (9) of the Legal Practitioners' Act. In the definition of the word "Pleader" in Sec. 4 (r) is included "any Muktear or other person appointed with the permission of the court to act in such proceeding ;" so apparently a Muktear who is not appointed with the permission of the Court has no authority to act for an accused in a Criminal Court. In section 340 Criminal Procedure Code, we find that the accused is given the right to be defended by a "Pleader," so unless the word pleader includes a Muktear, a Muktear has no right to defend an

accused in the Criminal Court. Nevertheless it has been the practice for Muktears to appear for accused persons in Criminal Courts without any formal permission of the courts. The Full Bench held that this practice did not confer any right upon the Muktears to appear in criminal proceedings without the permission of the court.

The old type of Muktears or Law Agents are fast disappearing. In Bengal no one is now allowed to appear for the Muktearship Examination unless he has passed the Matriculation Examination of the Calcutta University. Then the Law Examination that he has to pass gives him a more comprehensive knowledge of law that is possessed by many a junior Magistrate. With the raising of the standard of qualification, the standard of professional morals amongst the Muktears is bound to rise. They have been described by an eminent Judge of the Calcutta High Court as the poor man's counsel. It was on this ground that the proposal for the abolition of this class of Legal Practitioners was opposed and abandoned. The same objections would hold good with regard to any restriction against the Muktears appearing as a matter of course before Magistrates. We are, therefore at one with Banerjee, J that if permission to act in a criminal case be asked for by a Muktear, such permission should not be refused except for valid reasons.

(6)

(Calcutta Weekly Notes, Vol. XII No. 40.)

The Muktears practising under the jurisdiction of the Calcutta High Court, have submitted to us a draftmemorial to the Hon'ble Judges which contains some very reasonable prayers. A recent Allahabad Ruling (I. L. R 30 All 66) which we noticed in these columns, and also the fact that the new Code of Civil Procedure makes no reference to this class of

Legal Practitioners has evidently alarmed them. With regard to the former, we may say, that it has no application in Bengal. It has been the invariable practice in all the mufsisil Magisterial Courts in Bengal, Behar, Orissa and Assam to allow the Muktears to appear and plead in criminal cases as a matter of course. The High Court has never contemplated and the Magisterial Courts have never required the Muktears to take special permission to appear in each case. No occasion has arisen for a change in the practice.

There was once a proposal for the abolition of this class of Legal Practitioners. But it was the Hon'ble Judges of the Calcutta High Court who opposed the proposal on the ground that the result would be to do away with the "poor man's counsel." Consequently the proposal was dropped and gradually the qualification and standard of examination of the Muktears have been raised. Now-a-days no one who has not passed the Entrance Examination of the Calcutta University is entitled to offer himself for the Muktearship Examination. Further, to qualify themselves as Muktears they have to pass an Examination in Hindu and Mahomedan Law and also in Criminal and Civil Law and the Revenue law of the province.

The standard and the nature of the Examination is almost the same as that of the Pleadership Examination. The Muktears of to-day are regarded as fairly educated men and we see no reason why their privileges should be curtailed instead of being enlarged. We regard the prayer in their petition that they should be allowed to offer themselves for Pleadership Examination after five years' practice as very reasonable.

It is true that Sec, 37 clause (b) of the Code of Civil Procedure of 1882, which is now in force, specifically mentions that parties may put in appearance, &c, through Muktears holding special powers of attorney. The new code of 1908 makes no specific mention of Muktears by name in the corresponding provision *viz*, Order III, Rule 2, but provides that any

person holding powers of attorney can act on behalf of the parties. It is explained in the statement of objects and reasons of the new code that this widening of the provision includes Muktears as a matter of course, and it is, therefore, unnecessary to repeat the provision of the old code in the new one. Further, it should be remembered that the powers and the privileges enjoyed by Muktears are not defined by any section of the Civil Procedure Code but are conferred on them by certain rules made by the High Court in accordance with Sec. 11 of the Legal Practitioners' Act.

Under Sec. 11 of the Legal Practitioners' Act "the High Court may from time to time, make rules, directing what shall be deemed to be the functions, powers and duties of Muktears practising in the subordinate courts." The Calcutta High Court in accordance with this section has laid down the functions, powers and duties of Muktears to be chiefly the following :—"To present a plaint, to produce documents for his client, to tender a written statement, to apply for and receive processes, to file interrogatories and affidavits, to file notices for service, to apply for records being sent for, to apply for adjournment, to apply for Summonses to witnesses, to apply for execution, to apply for leave to bid, to apply for commission to examine witnesses, to apply for an injunction, to apply for an order of reference to arbitration and certain other matters relating to arbitration, to file a memorandum of appeal or a cross-objection duly signed by a Pleader, to deposit rent under the Bengal Tenancy Act, to apply for Probate or letters of Administration if unopposed, to apply for a certificate of guardianship or a certificate to collect debts if unopposed." Since it is a long established practice that the Muktears may appear and plead in the mufasil Magisterial Courts in these provinces without any special permission, we think, formal recognition should be given to it in the rules.

(Calcutta Weekly Notes, Vol. XIV No. 37.)

We publish in another column a letter representing that the Muktears are as of right entitled to practise in the mufussil Magistrates' Courts. So far as we are aware they have enjoyed this privilege for a very long time. It is only by a very doubtful interpretation of Sec. 4 clause (r) sub clause (2) that it has been held by the Allahabad High Court that the Code of Criminal Procedure requires that permission of Magistrates should be taken by Muktears to act in any proceedings before them. Apart from the question of proper interpretation of the above provision, it is a well known fact that Muktears have for a long time practised in the Criminal Courts without being required to obtain such permission. Some eminent judges in the High Court of Bengal have been known to characterise them as "poor men's counsel" and it is on that ground that this Honourable Court opposed the proposal that was made some years ago for the abolition of this section of the legal profession.

We are unaware of any intention on the part of the framers of the Code of Criminal Procedure of 1898 to curtail the privilege which Muktears have long enjoyed of appearing before Magistrates in all criminal cases without any restriction. The proper interpretation of Sec. 4 clause (r) sub clause (2) under the circumstances must be that contended for by our correspondent. The new class of Muktears have to be undergraduates of the Calcutta University and have to acquit themselves creditably at a stiff legal examination. With their superior education, they are bound to turn out to be a very worthy class of practitioners if only the privileges they have so long enjoyed should in no way be curtailed, and a sufficient scope given to them for earning a livelihood by pleading in open court. If, however, the privileges enjoyed by their predecessors are curtailed and the scope of their professional work restricted to the preparation of criminal cases for instructing other Pleaders,

the effect of it on the Muktears as a body will not be ennobling. A sharp line of division between lawyers who may only act and those who may only plead serves to add to the cost of legal procedure and not unoften, to difficulties on the part of the judicial officers in quickly ascertaining the facts of the case. Outside the British Isles this distinction is regarded as anomalous. In India where we are not hampered by obsolete traditions and vested interests of the legal profession, we should by no means encourage the growth of this distinction.

(8)

(Amrita Bazar Patrika 30th, July, 1910.)

Mr. Justice Chamier has just disposed of the case of one Anokhey Lall who had been convicted under section 457, I. P. C. by Munshi Abdul Latif Khan, Magistrate 1st. class, in the Badaun District on the 5th. March 1910, and sentenced to six months' rigorous imprisonment and a fine of Rs. 10/- or in default six weeks' further rigorous imprisonment. This case raises an important point with regard to Muktears being heard before criminal courts. An appeal was filed by the prisoner on the 11th. March 1910, through one Jagannath Prasad Muktear, against his conviction and sentence to the Court of Sessions at Moradabad. The appeal was made over to the additional Sessions Judge for disposal. On the 16th. March 1910, the Additional Sessions Judge, called on Jagannath Prasad to show cause as to why he should be permitted to appear. The appeal came on for hearing before the learned Additional Sessions Judge Mr. R. C. Jute, I. C. S., on the 12th. April, and the learned Judge disposed of the appeal without hearing the Muktear employed by the accused. He held that the evidence was sufficient for conviction and that the appellant had been properly identified, his defence being of the most worthless description. At the end of the order the learned Judge proceeded to

observe as follows:—"Accused employed a Muktear to appear on his behalf. I directed that he should show cause for so doing. He has not shown cause in any adequate fashion. As I consider that the practice of having Muktears is most unfair to better qualified Pleaders, except in unusual circumstances, I have declined to hear the representative engaged by the appellant in this case." This matter was taken up before the High Court in revision and the petition was admitted by Sir John Stanley, C. J., and the applicant released on bail. After notice to the Crown it came on for final hearing before Mr. Justice Chamier. It was contended for the applicant that even if he assumed that Muktears can be allowed to appear before Criminal Courts with the permission of the presiding officers, in this particular case the permission to appear and the fact had been implicitly given the moment the appeal filed by the Muktear had been admitted and registered. In this case there was no appeal by the prisoner except the appeal by the Muktear and that has been received and adjudicated upon as a valid appeal. No officer is at liberty to withdraw permission once granted except for valid reasons and even on this narrow ground there had been no valid trial of the appeal. But it was further submitted that the Full Bench case of Ananta Ram and others I. L. R. 30 All. page 66 did not contemplate that presiding officers are at liberty to refuse permission to Muktears for no reason whatsoever. Muktears have a certain status in the profession, they had been admitted to practise after acquiring certain qualifications and they had the bulk of the criminal work. One of the learned Judges in the Full Bench case points out that permission is not to be refused except having regard to particular circumstances and for valid reasons. In the present case the court has exercised an arbitrary discretion, no reasons being assigned for refusing to permit the Muktear in question to appear. At Budaun the Bar is not overcrowded by Barristers and Vakils and even the reason given by the learned Sessions Judge did not exist.

Mr. Justice Chamier after hearing the learned Assistant Government Advocate in support of the order of the court below held that the said order was not justified by the Full Bench Ruling in the matter of Anant Ram and others I. L. R. 30 All. page 66. There did not appear to be anything against the particular Muktear and the general ground on which the decision was founded could not be sustained. His Lordship must, therefore, hold that there has been no valid trial of the appeal and set aside the order of the learned Additional Sessions Judge. His lordship would direct the appeal to be laid before the learned Sessions Judge of Moradabad for disposal. The appellant would remain on bail till his appeal had been disposed of in accordance with law.

(9)

(Bengalee, 2nd. March, 1913.)

MR. HAMILTON AND THE MUKTEARS.

Considerable excitement, as our readers are aware, was caused among the Muktears practising in the District of Murshidabad by an order of the District Magistrate, Mr. Hamilton, depriving them of the right to appear in and conduct criminal cases in his or any other Criminal Court. The Muktears, it is apparent, were not prepared to quietly submit to this order. The law on the subject is clear and the rulings are equally decisive. Section 4 (R) of the Criminal Procedure Code lays down :—

“Pleader” used with reference to any proceedings in any Court means a Pleader authorised under any law for the time being in force to practise in such Court, and includes (1) an advocate, a Vakil and an Attorney of a High Court so authorised, and (2) any Muktear or other person appointed with the permission of the Court to act in such proceeding.

Section 340 says that “every person accused before any criminal court may of right be defended by a Pleader.” It is

obvious from the text of the Code and of the section just quoted, that technically the Muktear has not, as of right, the power to appear and plead in a Criminal Court ; he has to take the permission of the court. But in practice the permission is seldom refused, and all the rulings point to the conclusion that it should not be refused and a Circular-letter of the High Court, supports the same view. Let us here quote the rulings and the Circular letter. The Circular-letter of the Calcutta High Court dated the 29th. August, 1870, is in these terms :—

It would rarely be a wise direction on the part of a Sessions Judge or a Magistrate to refuse permission to a Muktear appearing for the defence. A Magistrate or Sessions Judge must decide in every case whether he will permit a Muktear to appear. A Muktear should not be permitted to appear where his appearance is unnecessary or where there is no reason for his appearance. In deciding whether permission should or should not be given the character of the person appointed to plead must be taken into consideration.

It is thus obvious that a wholesale order excluding Muktears as a class such as was passed by Mr. Hamilton was indefensible in the light of the authorities we have quoted. The Muktears have a strong case ; they have justice and we may add the sympathies of the public on their side, and they are bound to persevere and to win. The Criminal Procedure Code will soon come under revision. We hope the right of the Muktears to appear before the Criminal Courts which they now practically enjoy will be definitely recognised and its permissive character done away with. The Muktears are an educated body of men. They are all under-graduates ; they have to pass a stiff legal examination in which they must obtain 66 per cent of the marks awarded, and on the whole they are a body who command public confidence. Their status should be approximated to their qualifications.

(Bengalee, 2nd. March, 1913.)

A telegram from the Secretary to the Muktears' Association at Berhampur informs us that through the kind intervention of the Commissioner of the Presidency Division the grievances of the Muktears have been removed and good feelings restored between them and the District Magistrate. This is as it should be, and we congratulate all concerned upon the happy termination of a state of things which could not be productive of any good to anybody. At the same time, we hope the Conference which has been announced to be held at Khulna during the ensuing Easter holidays will be largely attended by Muktears from all parts of the Presidency. It is not enough that the grievances of the Muktears in a particular district should be removed through the intervention of the Divisional Commissioner. So long as the discretion is vested in Magistrates to permit the Muktears to perform certain functions or not as they please, grievances of this kind there must occasionally be. What is necessary, as we have said, is to change the law itself and to place the functions which the Muktears now exercise as a matter of general usage upon a statutory basis. We have no doubt they have only to agitate for the recognition of their claims for the Legislature to do the needful.

(Amrita Bazar Patrika, 8th. February, 1913.)

Our Khulna correspondent writes .—

"During his recent visit to Khulna on the occasion of the opening ceremony of the Exhibition, the Honourable Maharaja of Cossimbazar allowed a deputation of the Khulna Muktears to wait upon him. According to the arrangement made by the

popular District Magistrate Mr. S. G. Hart, (whose guest the Maharaja was), Babu Rash Behari Sen, the Secretary of the Muktears' Library at Khulna (who is the prime mover about the improvement of the status of the present day Muktears) with four other Muktears waited upon the Maharaja at 8-45 P. M. on Sunday last in the District Magistrate's Bungalow and laid their grievances before him regarding the restriction as laid down in section 4 clause (r) of the Criminal Procedure Code about taking permission of the court before allowing any Muktear to appear before it."

In several issues of the "Patrika", we ventilated the grievances of the Muktears alluded to above and brought them to the attention of the authorities with a view to their removal. We hope the Maharaja as a member of the Imperial Legislative Council would move for the desired amendment of the particular clause in the Imperial Council as he has consented to do. The members of the deputation promised to supply the Honourable Maharaja with the required materials and Muktears of other districts would do well to follow in the wake of the Khulna Muktears, and do all that is possible for them to strengthen the hands of the Maharaja.

(12)

(Bengalee, 18th. May, 1913.)

THE MUKTEARS' MEMORIAL.

According to the present Criminal Procedure Code, the appearance of a Muktear before a Magistrate depends on his permission which is as a matter of fact generally granted. There is also a High Court Circular authorising the grant of such permission ; but all the same, this permissive clause of the section IV of the present Criminal Procedure Code introduces an element of insecurity in the prospects of the profession,

which no doubt calls for remedy. The Muktear's desire to assimilate his position to that of the other sections of the legal profession is perfectly natural and legitimate. The President of the All-Bengal Muktears' Conference has memorialised the Viceroy and the Governor of Bengal to remove the permissive clause at the time of the next amendment of the Criminal Procedure Code. We have no doubt that this most reasonable prayer will be favourably considered by their Excellencies

CHAPTER IV.

Correspondence.

(1)

Powers of the Muktears.

TO THE EDITOR "AMRITA BAZAR PATRIKA".

Sir,—One of the prayers of the Muktears before the Hon'ble High Court was "that they may be allowed to practise in all Subordinate Criminal Courts by virtue of their license, and that no special permission of the court be deemed necessary in each particular case." To this Mr. A. P. Muddiman, the Registrar, replied "that as the request involves the judicial interpretation of an Act which can only be obtained if the matter should come before the Court judicially, the Court in its administrative capacity can express no opinion in the matter."

Now as the time is approaching for the usual decennial revision of the Criminal Procedure Code, will any Member of

the Imperial Legislative Council move for an amendment of section 4 clause (r) of the said Code in a manner as to relieve the Muktears of taking the required permission like "other person," having little or no legal knowledge? As under the present Rule comparatively more educated persons are allowed to appear in the Muktearship Examination I think there should be an amendment as suggested above.

Khulna.
19th. April, 1909.

Ras Vihari Sen,
Muktear.

(2)

Powers of the Muktears.

TO THE EDITOR OF THE "BENGALEE".

Sir,—It was held by Justice M. Melvill and Mr. Justice Pinhey, two of the Judges of the Bombay High Court, in *Imperatrix vs. Shiva Ram Gando*, reported in I. L. R. 6 Bomb 14, that an appellant in a Criminal case has a right to appear and be heard by a Muktear. The accused in this case was originally tried by Khan Bahadur Darasha Doshabhai, Magistrate (First Class) at Sholapur, of the offence of retaining stolen property and sentenced to suffer rigorous imprisonment for eighteen months. The accused preferred an appeal to the Joint Sessions Judge, Mr. Baker, and engaged Mr. Narayan Vishnu, a Muktear, to conduct the appeal on his behalf. The learned Judge refused to hear the Muktear and remarked "Narayan Vishnu, a Muktear, wished to appear on behalf of the appellant, but the Court declines to grant him permission to do so." In the opinion of the learned Judge the Legislature could not have intended to give unqualified practitioners privileges in an Appellate Court which are denied to them in a Court of Original Jurisdiction. He further observed that "to admit Muktears is to injure

qualified Pleaders and this particular Muktear has already been warned that he would not be permitted to appear in this Court." Mr. Baker then went into the merits of the case and confirmed the conviction and sentence.

The accused then moved the High Court which held that "the appellant in a criminal case has a right to appear and be heard by a Muktear" and ordered that the sentence be reversed and the Judge was ordered to re-try the appeal after giving notice to the Muktear and hearing him if he appears. This decision was arrived at in 1881 when men with a scanty knowledge of their own vernacular only were allowed to appear at the Muktearship examination.

The above decision of the Bombay High Court is also supported by (1) I. L. R. I. Mad. 334 (2) Reg. Bechar Pitamber Criminal Rulings of 22nd February 1870, (3) Emp. vs. Samaldas Becharlal (unreported) 13th. January 1881.

But the Allahabad High Court did not consider that comparatively more educated persons only are now allowed to appear at the Muktearship Examination when Mr. Justice Knox, Mr. Justice Banerjee and Mr. Justice Richards, three of the Judges of the said Court, held in Criminal Mis. No. 69 of 1907 (In re A Ananta Ram and others) that "a Muktear is not entitled to practise generally as of right in Criminal Courts, but can act only when he has received the permission of the Court, to act in any particular proceeding." In this case the Additional Sessions Judge of Meerut in an appeal pending before him made the following observations in his judgment :—"All accused persons are of right entitled to be defended by a Pleader and the definition of "Pleader" in the Criminal Procedure Code does not include Muktears, special permission of the Court has to be obtained for the representation of an accused person by other than a "Pleader." The Judge accordingly dismissed the appeal and ordered that a copy of his judgment be sent to the District Magistrate for information, which being done the District

Magistrate of Mozafferpur issued the following order :—Muk-tears can appear under section 4 (r) only with the Court's permission. Draw all court's permission to the section."

Against this order the High Court was moved where practically the above order was upheld but the remarks of the learned Government Advocate in that case seem to be important. He pointed out that "when Act V of 1898 (that is, the present Criminal Procedure Code) was still in the stage of a Bill and before the Legislative Council, the draft proposed to confer upon Muktears the very privileges which are contended for here. But when the Bill passed into law, the provisions which had prevailed under Act X 1882 were replaced in Act V of 1898 without any change." So there was a time when it struck the Legislature in 1898 that a change regarding Clause 4 (r) should be made ; but as there was none to move an amendment it remained as before. Thus I hope if any member of the Imperial Legislative Council kindly take up the matter now in right earnest and propose the required amendment, it may be fulfilled.

Khulna.
28th. April, 1909.

Ras Vihary Sen,
Muktear.

(3)

Powers of Muktears.

TO THE EDITOR OF THE "BENGALEE".

Sir,—It is now practically settled that the revision of the present Criminal Procedure Code will shortly be entrusted to a small Committee. I would most humbly request any member of the Imperial Legislative Council to move an amendment to clause (r) of section 4 of the Code regarding the restriction as laid down in that clause about taking permission of the Muk-

tears, considering their present standard of qualifications and for which the said restriction should be expunged. It was brought to light, as I said in my last letter which was published in your issue of the 29th. March last, that when the present Code was still in the stage of a Bill before the Legislative Council, the draft proposed to confer upon Muktears the very privileges now contended for. But when the Bill passed into law, the provisions which prevailed under Act X of 1882 were embodied in the present Code without any change. So the necessity of the required change of the particular clause mentioned above, was thought of long ago. Such a restriction was intended for old-day Muktears whose educational qualifications were low. But the standard of education of the present day Muktears is much higher and so the restriction as to their taking permission of the Courts, is unnecessary.

A proper representation was lately made to the Registrar of the Hon'ble High Court by the entire Muktear community on this subject and a reply from the former informed them that the High Court could not express any opinion regarding the prayer unless the matter went before it judicially. I therefore, make the above request and the entire Muktear community would consider it a great favour if the Hon'ble Babu Bhupendra Nath Bose or some other member of the Council would kindly take up this matter.

Khulna,
12th. June, 1910

Ras Vihari Sen,
Muktear.

(4)

Powers of Muktears.

TO THE EDITOR "AMRITA BAZAR PATRIKA".

Sir,—In Criminal Revision case No. 13 of 1911. Justices Holmwood and Sharfuddin held :—

(1) "An accused person having the right to be defended by the class of persons enumerated in section 4 clause (r) of the Criminal Procedure Code, it would rarely be a wise discretion on the part of a Sessions Judge or a Magistrate to refuse permission to a "Muktear" appearing for the defence."

(2) "A Magistrate or Sessions Judge must decide in every case whether he will permit a Muktear to appear. A Muktear should not be permitted to appear where there is no reason for his appearance."

(3) "In deciding whether permission should or should not be given, the character of the person appointed to plead must be taken into consideration."

According to clause (2) of the above decision, therefore, a Muktear should not be permitted to appear "where his appearance is unnecessary or where there is no reason for his appearance" and according to clause (3) "in deciding whether permission should or should not be given the character of the person appointed to plead must be taken into consideration."

But how to decide as to where a Muktear's appearance will be unnecessary and how to test his character are points not anywhere suggested in the above decision of the Hon'ble High Court. It is therefore, necessary that some rules should be framed and inserted in the provisions of the "Légál Practitioner's Act" to show which Muktears would be entitled to get permission to appear before a Magistrate or a Judge, as otherwise they will be disallowed everywhere at the whims of trying Magistrates, as the legal services of a Muktear, as it stands at present, like "other persons," entirely depends upon the sweet will of the court, although the Muktears have to pass a very severe examination to enrol themselves as Muktears. But is not Mr. Editor, the standard of education of the present-day

Muktears much higher than before and, therefore the taking permission of the courts quite unnecessary ?

Khulna.
31st. Oct. 1911.

Ras Vihary Sen,
Muktear.

(5)

Powers of Muktears.

TO THE EDITOR "AMRITA BAZAR PATRIKA".

Sir,—Some member of the Imperial Legislative Council should move for an amendment of clause (r) of section (4) of the present Code of Criminal Procedure regarding the restriction as laid down in that clause about taking permission of the Muktears, considering the qualifications now required of them.

When Act V of 1898 (the present Code) was still in the stage of a bill, the draft proposed to confer upon Muktears the very privileges now contended for. But when the bill passed into law, the provisions which had prevailed under Act X of 1882 were replaced in Act V of 1898 without any change. The entire Muktear community will consider it a boon if the Hon'ble Babu Bhupendra Nath Bose or some other member of the Council would kindly take up this matter in hand and move the Council for an amendment of the above clause to remove the restriction so far as the Muktears are concerned.

Khulna.
25th. March, 1910.

Rash Behari Sen,
Muktear.

Hardships of the Muktears.

TO THE EDITOR "AMRITA BAZAR PATRIKA".

Sir,—Will you kindly take up the cause of the Muktears at this opportune time as we hear the Criminal Procedure Code is going soon to be amended.

Section 4 of the present Code defining a "Pleader" includes a Muktear or other persons authorised by the court and the Allahabad High Court explains that permission of the Court will be required in every case. This makes no difference between a passed Muktear and those that have not passed or illiterate strangers to law or touts.

The candidates for the Muktearship Examination require to be matriculated from any of the Universities ; they have to study the most difficult books of law, to undergo the same ordeal as the Pleaders ; they have to get "Sanad" every year like the Pleaders, but in practice in court, there is little difference between a Muktear and an outsider quite ignorant of law.

If the legal service of a Muktear like other persons entirely depends upon the sweet will of the court what is the necessity of undergoing the hardship of an examination which is not in any way less difficult than any of the University Examinations.

The law, as it now stands, if not amended, will make the Muktears a class of sycophants whose only function of duty will be to please the court.

The powers of a Muktear have been limited by the Hon'ble High Court and there is no dispute about it, but the law makes it a mere cypher, being solely dependent upon the gracious wish of the court.

[4]

If there be no difference of power between a Muktear and an outsider, the hardships of the examination and the annual "Sanad" and its revival and all other procedure become a farce.

We trust that those entrusted to amend the Code will be pleased to see the hardships to which the Muktears are put owing to this section, (which is quite vague and meaningless) and amend it accordingly.

Patuakhali.
9th. June, 1910.

Ambica Charan Sen,
Secretary, Muktear Society.

(7)

To The Editor, the "Calcutta Weekly Notes."

Sir,—No where in Criminal Procedure Code is the definition of "Muktear" to be found. The word finds mention in the definition of "Pleader" Sec. 4 clause (r) of the Criminal Procedure Code and the Legislature has laid down that "Pleader includes any Muktear or other person appointed with the permission of the Court, to act in such proceeding." It is not clear from the wording of the definition, whether the expression "with the permission of the Court, &c." qualifies other persons only or "any Muktear or other persons." What the intention of the Legislature was is not very clear. In re Anantram, I. L. R. 30 All. 66, the Allahabad High Court has held that a Muktear is not entitled to practise generally and as of right in criminal courts, but can act only when he has received the permission of the Court to act in any particular proceeding. In delivering judgment Knox, J., observes, "counsel wished us to read the words 'appointed by the permission of the court,' as qualifying the immediately preceding words 'other persons' and as not referring to or qualifying the words 'any

Muktear." In the first place, if that had been the intention of the Legislature, we should have expected to find the words 'any Muktear' placed in group (1), clause (r), and not as they are in group (2) of that clause. There is a still further difficulty that arises out of the provisions of Sec. 9 of Act XVIII of 1879. This section defines the power given to Muktears on enrolment and provides that a person so enrolled 'may practise as a Muktear in any such Civil Court and any Court subordinate thereto and may, subject to the provisions of the Code of Criminal Procedure, appear, plead and act in any such Criminal Court and any court subordinate thereto'. The language here used shews that the Legislature intended to draw and did draw a distinction between the privileges of a Muktear when practising in a Civil Court and his privileges when practising in a Criminal Court. As regards the first part of the observation it may be said that it does not logically follow that because the word "any Muktear" was not placed in group (1), therefore the expression "appointed with the permission, &c." must qualify the words "any Muktear". Besides if the view taken by their Lordships were correct then there would have been no necessity of mentioning the word "Muktear" since "Muktear" and "other persons" are on the same footing there, both being required to take permission. To the latter part of their Lordships' observation it may be said in answer, that it presupposes the answer to the proposition which is itself in question. It assumes that the expression "appointed with the permission of the Court, &c.," qualifies the words "any Muktear". This is arguing in a circle.

That the expression "appointed with the permission of the court, &c.," should qualify "other person" and not "any Muktear" finds support from the view taken in the case of Tarendra Nath Chatterjee, 7 C. W. N. 524. Further the license granted to Muktears by the High Court of Judicature at Fort William in Bengal authorises the guarantee to practise as a Muktear in the court of subordinate Judges, Munsiffs, Assistant

Commissioner, Extra Assistant Commissioner, in the courts of Small Causes established under Act XI of 1865 and in all Criminal Courts subordinate to the High Court; and this authority is given without any restriction or reservation.

The language of Sec. 4, clause (r), Criminal Procedure Code, is certainly not unambiguous and the ambiguity should be removed when the Code comes up for revision.

The Muktears of the present generation are far better qualified than Muktears of the old type. None but a matriculated student of the University is entitled to offer himself for the Muktearship Examination, which requires hard study to pass. So far as criminal law is concerned a Muktear has nearly as much to study as a Pleader to qualify himself for the examination. It is not always within the means of many people to engage the services of a Pleader for conducting cases in a Mofussil Criminal Court and so ordinarily Muktears are engaged for conducting the defence. If, therefore, permission to a Muktear can be withheld under clause (r) of Sec. 4, of Criminal Procedure Code, by courts at their discretion, it will press hard on poor people in making their defence.

Yours faithfully,

Biswa Nath Nandy,
Pleader, Khulna.

PART II.

How the All-Bengal Muktears' Conference Originated.

COPY OF THE PROCEEDINGS OF THE MEETING OF THE EXECUTIVE
COMMITTEE OF THE KHULNA MUKTEARS' ASSOCIATION HELD
ON THE 17TH. FEBRUARY 1913, AT THE ASSOCIATION HALL.

Present.

- Babu Ras Vihari Sen.
- „ Bimalananda Sen.
- „ Sarada Charan Bhattacharjee.
- „ Ambika Charan Ghosh.
- „ Jnanendra Nath Majumdar.
- „ Prasanna Kumar Mitra.
- „ Jagadis Chandra Biswas.
- Munshi Uzirali Shaikh.

Babu Ambika Charan Ghosh be elected as Chairman.

I. It being desirable to start a movement for the improvement of the status of the present day Muktears within the Presidency of Bengal, it is unanimously resolved that this meeting is of opinion that the Secretaries of Muktears' Associations of all the Districts and Sub-Divisions of Bengal be requested to send in their respective representatives to Khulna at a Conference to be held on the 22nd. and 23rd. March 1913 to consider the necessity of holding an "All-Bengal Muktears' Conference," and to find out means of raising necessary funds for the furtherance of the above object and also to consider the steps to be and already taken towards it.

II. Resolved further that this meeting is of opinion that the representatives to be sent from different places would be provided with free boarding and lodging.

III. Resolved further that the secretaries of different Muktears' Associations be requested to communicate with the undersigned on or before the 28th. February 1913, the number, names, and caste of the representatives they intend to send.

IV. Resolved further that the Secretary of this Association be requested to call an extraordinary general meeting of the members of this association to decide the matter finally.

—•—

COPY OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF THE MEMBERS OF THE KHULNA MUKTEARS' ASSOCIATION HELD ON THE 22ND. FEBRUARY 1913, AT THE ASSOCIATION HALL.

Present.

| | |
|----------------------------|--------------------------------|
| Babu Godadhar Ghosh. | Babu Ambica Charan Ghosh. |
| „ Ras Vihari Sen, | „ Sarada Charan Bhattacharji. |
| „ Jagadis Chandra Biswas. | „ Indu Blusan Ghosh. |
| „ Janardhan Ghosh. | „ Ram Lal Mukherjee. |
| „ Hemanta Kumar Ghosh. | „ Rajani Kant Chakravartty. |
| „ Kumud Nath Kar. | „ Amrita Lal Chakravartty. |
| „ Rajendra Lal Ghosh. | „ Haris Chandra Nandi. |
| „ Bimalananda Sen. | „ Prasanna Kumar Mitra. |
| „ Purna Chandra Ghosh. | „ Debi Prasanna Gupta. |
| „ Jogendra Nath Chatterji | „ Durgabar Ghosh. |
| „ Haris Chandra Sen. | „ Munshi Nazamal Haque. |
| „ Akshoy Kumar Dutt. | „ Uzirali Shaikh. |
| „ Manmatha Nath Bose. | „ Babu Nabin Chandra Majumdar. |
| „ Jnanendra Nath Majumdar. | |

Babu Godadhar Ghosh be elected Chairman of this meeting.

I. Resolved that this meeting is of opinion that a Conference of the Muktears of All-Bengal be called at Khulna during the ensuing Easter holidays as was resolved by the Executive Committee in its meeting held on the 17th. February last, as such a conference would conduce to the welfare of the Muktear community and will unite them together, and considering the disabilities that the Muktears are labouring under at present, it is now high time that they should congregate themselves in a conference to discuss them and to work together for the amelioration of those grievances.

II. Resolved further that this being a very great and onerous task to convene such a Conference, it is desirable that sympathy and co-operation of the Muktears of the sub-divisions of Bagerhat and Satkhira be sought for as without such sympathy and co-operation no success can be hoped for.

III. That a copy of the above resolutions be sent to each of the Secretaries of the Bagerhat and Satkhira Muktears' Associations and they be requested to come to Khulna to confer with the members there and to form a Reception Committee.

PROCEEDINGS OF THE SPECIAL MEETING OF THE MEMBERS OF
THE MUKTEARS' ASSOCIATIONS OF KHULNA AND THE SUB-
DIVISIONS OF BAGERHAT & SATKHIRA FOR THE PURPOSE
OF FORMING THE RECEPTION COMMITTEE. HELD ON
2nd. MARCH, 1913.

Resolutions.

I. Resolved that Babu Abani Mohan Ray of Bagerhat be voted to the chair.

II. Resolved that this meeting convey their hearty thanks to Hon'ble Baba Surendra Nath Banerjee, Editor of 'Bengalee'

and Babu Moti Lal Ghosh, Editor of 'Amrita Bazar Patrika' for their very kind, sympathetic and just comments in their Editorial columns about the grievances of the Muktears and for their kind encouragement for the proposed "All-Bengal Muktears' Conference" to be held at Khulna.

III. Resolved that a Reception Committee for the "All-Bengal Muktears' Conference" be formed from among the members of the Muktears' Associations of the three Sub-divisions of this District.

IV. Resolved that the following gentlemen be elected as members of the Reception Committee with powers to add to their number :—

| | |
|----------------------------------|-----------|
| 1. Babu Tarak Nath Mukherjee, | Satkhira. |
| 2. „ Charu Chandra Chatterjee, | Do. |
| 3. „ Rakhai Das Bose, | Do. |
| 4. „ Ram Lal Mukherjee, | Do. |
| 5. Munshi Atiker Rahaman Khan, | Do. |
| 6. Kazi Saifuddin Ahmed, | Bagerhat. |
| 7. Munshi Nawabuddin Ahmed, | Do. |
| 8. Babu Beni Lal Dutt, | Do. |
| 9. „ Radha Charan Mukherjee, | Do. |
| 10. „ Abani Mohan Rai Choudhury, | Do. |
| 11. „ Gadadhor Ghosh, | Khulna. |
| 12. „ Ambika Charan Ghosh, | Do. |
| 13. „ Hemanta Kumar Ghosh, | Do. |
| 14. „ Debendra Nath Ghosh, | Do. |
| 15. „ Jnanendra Nath Majumder, | Do. |
| 16. „ Jagadis Chandra Biswas, | Do. |
| 17. Munshi Uzirali Shaik, | Do. |
| 18. „ Nazamal Haque, | Do. |
| 19. Babu Ram Lal Mukherjee, | Do. |
| 20. „ Daiba Chandra Mukherjee, | Do. |
| 21. „ Priya Nath Sen, | Do. |
| 22. „ Harish Chandra Nandi, | Do. |

| | | |
|-----|--------------------------------|---------|
| 23. | Babu Ras Vihari Sen, | Khulna. |
| 24. | „ Sarada Charan Bhattacharjee, | Do. |
| 25. | „ Bimalananda Sen, | Do. |
| 26. | „ Prosanna Kumar Mitra, | Do. |
| 27. | „ Indu Bhusan Ghosh, | Do. |

V. Resolved that Babu Ras Vihari Sen of Khulna be elected as Chairman of the Reception Committee.

VI. Resolved that Babu Bimalananda Sen of Khulna be elected as General Secretary of the Reception Committee.

VII. Resolved that Babu Hemanta Kumar Ghosh of Khulna be elected as Assistant Secretary of the said Committee.

VIII. Resolved that Babu Ras Vihari Sen and Babu Jnanendra Nath Majumdar of Khulna be elected as Treasurer and Accountant respectively of the Reception Committee.

IX. Resolved that Babus Ambika Charan Ghosh, Prosanna Kumar Mitra and Sarada Charan Bhattacharjee of Khulna be elected as General Superintendents of the Reception Committee.

X. Resolved that Babu Gadador Ghosh of Khulna, Kazi Saifuddin Ahmed of Bagerhat and Babu Tarak Nath Mukherjee of Satkhira be appointed as Special Officers to look to the comforts and conveniences of the delegates during the Conference.

XI. Resolved that one-third of the members of the Reception Committee should always form a quorum.

PROCEEDINGS OF THE FIRST MEETING OF THE RECEPTION
COMMITTEE HELD ON THE 4th. MARCH, 1913.

Resolutions.

I. Resolved :—That as majority of the districts voted for Alipore from where the President should be elected, let a telegraphic message be sent to the Secretary of the Alipur Muktears' Bar to elect one and wire his name immediately.

II. Resolved that the name of Babu Indu Bhusan Ghosh of Khulna be added to the list of the members of the Reception Committee.

III. Resolved :—That a copy of the proceedings of this meeting be sent to the Secretaries of the Muktears' Bar of each of the two Sub-divisions.

All-Bengal Muktears' Conference.

KHULNA.

1913.

The All-Bengal Muktears' Conference met in the local Coronation Hall of Khulna on the 22nd. and 23rd. of March last. About two hundred Delegates from almost all the District head quarters and subdivisions of Bengal attended it

Precisely at 2 P. M. on the 22nd. March, the Delegates assembled in the big Hall and Babu Ras Vihari Sen, Chairman of the Reception Committee in welcoming the Delegates read his address. Babu Bhuban Mohan Chatterjee of the Alipur Muktears' Association was then duly proposed and seconded as

President of the Conference. Babu Bhuban Mohan Chatterjee after taking his seat rose and read his address. Some of the Delegates present then addressed the gathering after which it dispersed at 5 P. M.

The subject Committee sat at 6 P. M. on this day and its discussions continued till 10 P. M. On the 23rd. March, the Conference met punctually at 1 P. M. Seven resolutions were then unanimously carried after being duly proposed, seconded and supported.

THE
All-Bengal Muktears' Conference,
KHULNA.
1913

CHAIRMAN'S ADDRESS.

Speech of Babu Bas Vihari Sen Muktear of Khulna and Chairman of the Reception Committee, delivered on the 22nd. March, 1913.

BROTHER DELEGATES,

On behalf of the members of the Reception Committee, I beg to accord you a most cordial and sincere welcome to our city.

This conference is unique in the annals of Bengal, nay, I may say it is unique in India. Never before did any section of the Legal Practitioners meet in conference to discuss measures likely to tend to the good of their community and to promote that sense of co-operation amongst themselves which is the passport to success.

While you have met here on this historic occasion, we are afraid that the reception which we will be able to accord you and the hospitality which we shall offer you, may be wholly inadequate to you in your position of life. No one is more conscious of our shortcomings than myself. But although we are poor in purse, we are rich in heart and bold in spirits. That is the main and inspiring fountain which has emboldened us to extend to you the invitation which the Reception Committee so proudly did.

Khulna is the youngest District in point of age in the whole of Bengal. The fact that you have accepted our invitation shows that you are ready to show that forgiveness and forbearance which a younger brother generally expects in his elder brothers. Conscious of this generosity and fraternal feelings in you all, the Reception Committee hope that you will be pleased to overlook our shortcomings, forgive our rashness and condone our faults. We do fervently hope that you brother delegates will look not to the form of the reception but to the spirit thereof—a reception which is warm and genuine, cordial and spontaneous and which though not voluble and emotional, is all the same real and natural.

We have no territorial magnates here in Khulna. Almost all our Zeminders are absentees, so that ours is a democracy, poor but noble. And it is in the very fitness of things that you have chosen this town as the place of your first Conference. But it has yet to be seen that the inhabitants of this small town are fit to discharge the very onerous duties that have been placed upon them. In this world of imperfections and of complex considerations, duty does not always fall on the fittest shoulders. In initiating this movement we have taken upon ourselves a task which with the help of your good wishes and the singleness and unselfishness of our purpose, we hope to carry to a noble and successful termination. It is to your indulgence, to your kindness and your sympathy that concerted

action is only possible; which will, I do fervently hope, lead us to a triumphant victory

The members of your profession here have for a long time been attempting to interest and educate public opinion regarding their status and they are actually very proud that their efforts have met with this responsiveness. Brother Delegates, the objects of the Conference are all well known to you and they will I hope, be fully treated in the speech of your President. Suffice it to outline here that no selfish motives have actuated us in holding this Conference. "The profession of law has always been regarded as learned and this profession," says Burke, "is the noblest of professions," and we belong to that profession, and so it is only natural that our motives can be in no way selfish.

The Hon'ble Babu Surendra Nath Banerji in his Presidential speech of the eleventh Indian National Congress at Poona referring to the proposal to invest Judges and Commissioners with the power to remove a Pleader or a Revenue Agent, said : —

"The question is not one that merely concerns lawyers. It has one important public bearing. The public are quite as interested as the lawyers. The independence of the mufsil Bar is a matter of public concern. To imperil their independence is to aim a blow at the beginnings of national life, and to sap the springs of constitutional agitation. The Bar constitutes the pillar of our public movements.

* * * *

With such a law as this, they dare not take part in public movements, especially of a political character, which might expose them to the displeasure of the local officials. It would be a public misfortune, it would throw back the cause of reform if a law were passed which would interfere with the independence of such a useful body of men."

If what the Hon'ble Mr. Banerjee said is true, is not the existing law restraining the powers of the Muktears doubly mischievous and a menace to the life and liberty of His Majesty's subjects? Our duty is to help in the administration of justice and it is this sense of duty which has inspired us to meet here and deliberate how best we can help that administration of justice for which alone the profession of law exists.

Gentlemen, in inviting you in this small town of ours, we have this supreme satisfaction that we are not labouring under any extraneous disadvantages. The local officials have shown us great sympathy and have helped us in all possible ways that lie in their power without transgressing official rules and canons. We have here a District Magistrate, whose sympathy for the people and devotion to their well being have endeared him uniformly to all. This beautiful hall in which we have assembled is under the direct control of our District Magistrate, and no sooner did we approach him than he readily accorded permission for the use of this hall. But for the kind loan of this hall the members of the Reception Committee would have found it extremely difficult to find a location for this big assembly within the very limited time at their disposal. Our sincerest thanks are, therefore, due to Mr. S. G. Hart, our popular District Magistrate. It behoves me to say that but for the kind co-operation of the district authorities, our failures and shortcomings would have been more numerous and glaring. Our District Magistrate and our S. D. O. Babu Monmohan Chakerbarty are both men of culture and refinement, of scholarship and urbanity and the anxiety which they have shewn for the success of this movement is only natural.

Brother Delegates, those of you, who have the misfortune to work under unsympathetic superiors, will all the more keenly feel the contrast. Let not this feeling be one of envy or jealousy. Pray, that every District Officer in Bengal may be of the stamp of S. G. Hart Esq., B. A.; I. C. S.

It has been very well said that one stroke of nature maketh the whole world akin ; is it any wonder that one stroke of the pen would make the whole body of Muktears akin ? Out of evil cometh good. Brother Delegates, although we have been for a long time ventilating our grievances in the public press, the idea of some sort of concerted action would not have arisen if the memorable circular of the Berhampur Magistrate had not been issued. That circular has been an Eyeopener and it is high time that we should examine our position and devise some measures for the amelioration of our condition. The time has come when we must not allow ourselves to sleep over our rights. We must arise, awake and be up and doing. The law of nature is one and uniform. There can be no stagnation. Either proceed or retard. Progress or retrogression is the universal law. One must always proceed onward. Sit still, and allow others to pass you, you will be left behind, but the others will go ahead. Woe be to him who forgets this golden rule of progress. Always move with progressive forces of nature if you want to assist yourself. Do'nt allow yourself to be relegated to a backward position simply through inaction. The struggle for existence has been hard at all times. It is becoming harder and harder still. The ultimate result is the survival of the fittest. If you can't prove your fitness for the situation, there is inglorious extinction awaiting you. That is surely inevitable.

Brother Delegates, I have already told you that we here in Khulna have no big landlords or princely merchants. Ours is essentially an agricultural district, and the main body of our population here are agriculturist, who live from hand to mouth. They have no accumulated wealth to fall back upon in times of necessity ; they eke out their bare necessities of life by each day's hard toil and these are by far the largest population of the litigating public. If perchance any member of this poor community have the necessity either to prosecute or defend in a Criminal case what are they likely to do !

Help to be of any real use must be adequate and certain. Help which is lacking in these two essential qualifications is treacherous ; it injures both the would-be-giver and the would-be-taker. It is no use if it is not available to the distressed in times of distress. On the contrary it creates suspicion in the public mind. It affords no relief to the afflicted, but it impairs the reputation of the other who happens to have professed his intention to help.

Adequate is a relative term. What is adequate in the case of one may be quite inadequate in the case of others, and may perchance be more than adequate in the case of many.

The High Court is the Supreme Court for the administration of justice ; and this highest court in the land has laid down certain rules defining the educational syllabus of the various grades of the legal profession. The High Court has thus laid down what are the adequate legal qualifications necessary for each and every particular grade of lawyers.

Brother Delegates, you all know that in the early days of the English administration of India, when every thing was in the rudimentary state of existence, any certificate from a Judge or a Magistrate was regarded as a sufficient passport for a Muktear. The possession of such a certificate was in those golden times conclusive evidence of the ability of the holder thereof ; and in that peculiar state of society such qualification was regarded as adequate for helping the administration of justice.

Society consists of conglomeration of individuals of all possible shades of opinion, education, culture and wealth.

In the early days of our Judicial system to demand a better qualification and better training would have been to deny justice altogether.

Brother Delegates, you are all aware that Sec. 4 (r) of the Criminal Procedure Code is the weapon which an obstructive and despotic mufissil Magistrate sometimes would use to wreak his private vengeance upon a Muktear who might have offended him in his private or official capacity. I have deliberately used the word private vengeance. A Muktear has the same duties to perform with respect to a Criminal case which a Vakil has got to do if he alone were employed. The duties of both are to file petitions, examine and cross-examine witnesses, to offer arguments, and to expound the law. Both sets of lawyers do these things according to their own light and each tries to do his duty to the best of his ability. Now if any Muktear in the discharge of his professional duties in any Criminal case before any court misbehaves himself there are the Evidence Act and the Procedure Code which the Magistrate may readily apply just as he may do in the case of a lawyer belonging to a higher grade. In addition to these safeguards provided by the Evidence Act and the Procedure Code the disciplinary powers of the Courts are comprehensive enough.

The restraint upon the powers of Muktears found in section 4 (r) was first introduced by the Code of 1872. But during this long space of more than 40 years, there have been very great changes in the qualifications required of Muktears. But unfortunately though a higher standard of qualifications is required of Muktears now and they are required to pass a very stiff examination, there has been no statutory enactment repealing the restraint originally passed. We thus have a very strong case to present to the Government, the High Court and the public. We have justice on our side, and we may fairly claim the sympathies of the public in our struggles and endeavours. If we persevere, we are bound to win.

Brother Delegates, the statutory disqualification of the Muktears—attracted the attention of the High Court at a very early date. Recognising the mischief which a frequent exercise

of the discretionary powers by the subordinate mufissil Magistrates might cause, the Hon'ble High Court by their circular letter, dated 29th. August 1870, expressed the hope that the provisions of the law on this point would be seldom invoked to aid.

The High Court said "The terms of Section 340 C. P. C. do not warrant any general rule for the exclusion of Muktears in all cases, but only allow a discretion in each case as it arises. Magistrates are expected not to deprive parties of the legal aid, which they can obtain at a moderate cost, by the indiscriminate exclusion of persons who are invested by law with a distinct professional status in Criminal trials."

This memorable Circular letter conceived in true judicial spirit is the great charter of our rights. This circular recognises the fact that the Muktears have a distinct professional status, and also recognises the necessity of the existence of a body of professional men whose legal aid is obtainable at a moderate cost.

Brother Delegates, I have already told you that the term adequate is only a relative one. It is the lot of a few to be possessed of sufficient wealth to command the services of the best men in any profession. The circular letter of the High Court only embodies this general rule of conduct and does in no uncertain language recognise the valuable services rendered to the cause of administration of justice by the Muktears.

But unfortunately, to err is after all only human. It is, therefore, not at all strange that the possession of such despotic and absolute powers has sometimes the mischievous effect of demoralising the mufissil Judiciary. This matter has more than once been the subject of Judicial inquiry before the High Courts and those august tribunals have in each case upheld the cause of the true administration of justice, by vindicating

the rights and privileges of the Muktears. In the well-known Mymensing case where the Sessions Judge refused to entertain an appeal, because it was preferred through a Muktear, the High Court had to revise the orders of the Sessions Judge and ordered him to entertain the appeal and proceed according to law. The Hon'ble Judges proceeded to observe as follows :—

“It would rarely be a wise discretion on the part of a Sessions Judge or a Magistrate to refuse permission to a Muktear appearing for the defence. A Sessions Judge or a Magistrate must decide in each case whether he will permit a Muktear to appear.”

The Bombay High Court went a little further and held that an applicant in a criminal case has the right to appear and be heard by a Muktear.

Before proceeding to discuss this matter further, I would only like to draw your attention whether the terms of the certificate granted to a Muktear under the Legal Practitioners' Act of 1872 are not sufficiently broad to render nugatory the restraint placed upon the Muktears' right of audience in all Criminal cases. A Muktear's certificate in general terms authorises him to appear and practise in all Criminal Courts subordinate to the High Court. Does not this by implication clothe the certificate-holder with the requisite permission contemplated by Section 4 (r) ?

To return to the matter. Even such judicial pronouncements of the highest tribunals in the land couched in no unmistakable language have failed to induce some erratic Magistrates to use the discretion vested in them in a proper manner. They fail to understand that like all other discretionary matters the discretion to be exercised in such matters is not arbitrary or capricious, dependent upon the mere pleasure of the Judge, but it is sound and judicious.

Instead of caprice we want certainty. We want to know our precise position, our powers, privileges and duties.

The words "With the permission of the court" in Section 4 (r) run as follows :—

"Pleader used with reference to any proceeding in any court means a Pleader authorised under any law for the time being in force to practise in such courts, and includes (1) an Advocate, a Vakil and an Attorney of a High Court so authorised and (2) any Muktear or other person appointed with the permission of the court to act in such proceeding."—These words are a halter round our necks. They have proved a stumbling block in our forward march. They have been a dead-weight attached to us all these years. And all these years we have unnecessarily borne it. The question is whether the history of the Muktears justifies the retention in the statute book of this proviso in the definition of the Muktears' rights. The further question also arises that in spite of the pronounced opinions of the Hon'ble High Court, a Magistrate like Mr. Hamilton of Berhampur can effectively deprive the whole body of Muktears in the whole District of the right to appear in and conduct criminal cases in his court and in the court of the subordinate Magistrates, the time has not come when the administrative and the judicial orders of the High Court should be changed into statute law and once for all set at rest this vexed question. Are we quietly to submit to such magisterial whims? Or need we every time approach the Divisional Commissioner or any other high placed official and seek his good offices for his kind intervention, and to eat the humble pie if necessary? Such temporary makeshifts, even if they succeed in restoring the normal condition of things, do not succeed in restoring permanently the good feelings between the Bench and the Bar. These are ephemeral remedies and not a permanent and radical cure. The wound heals up superficially, but the sore remains hidden under the skin, ready to manifest itself at the smallest scratch.

Brother Delegates, you must have read the wise counsels of the veteran Editor of the "Bengalee". He says :— "It is not enough that the grievances of the Muktears of a particular district should be removed through the intervention of the Divisional Commissioner. So long as the discretion is vested in Magistrates to permit the Muktears to perform certain functions or not as they please, grievances of this kind there must occasionally be. What is necessary is to change the law itself, and to place the functions which the Muktears now exercise as a matter of general usage upon a statutory basis." This is exactly what we want. We want a statutory recognition of our powers, whatever they may be. Let this haziness, this suspicion of ours as regards our own rights be for once dispelled. Don't let us depend upon the sweet-will of the Magistrate, both superior and subordinate, stipendary or honorary. An absolute power to restrain any Muktear vested in the Magistrates would deal a heavy blow at the independence of the mossil Muktear Bar. The Muktears dare not hurt the susceptibilities of the Magistrates. They dare not show excess of zeal in any case in which local official opinion may have been elicited against their client. The client will suffer.

Unfortunately this exercise of power is not always subject to revision by any appeal. Even if there is the right of appeal sometime, it is one thing to contest to try to prevent a wrong being committed, and quite a different thing to seek to upset a verdict and that often when the mischief has already been done.

The Criminal Procedure Code will soon come under revision. We pray that our right to appear before the Criminal Courts which we now practically enjoy will be definitely recognized and its permissive character done away with.

It will be a matter of the greatest disappointment if during the forthcoming revision of the Criminal Procedure Code the proposed amendment does not find a place. It will be regarded

as the withdrawal of a concession which the High Court deliberately made in our favour.

Sir Douglas Straight who was an eminent Judge of the Allahabad High Court, and who was perhaps even better known in England than in India and who was a journalist of the highest distinction, once wrote :—

“I am firmly convinced of one thing and it is this, that while innovations and changes there should be gradually and cautiously introduced, a concession once made should never be withdrawn, except for reasons of the most paramount and pressing emergency.”

Now Brother Delegates, is it so much of a concession that we really contend for? Is it not a matter of right that we can legitimately demand? Are we not by our education, integrity and honesty able duly to discharge the functions and duties which can be justly demanded of a body of men clothed with the powers and privileges that we contend for and that should be ours? As the Editor of the “Bengalee” was pleased to observe “The Muktears are an educated body of men. They are all under-graduates. They have to pass a stiff legal Examination in which they must obtain 66 per cent of the marks awarded, and on the whole they are a body who command public confidence. Their status should be approximated to their qualifications.

There are undoubtedly some who will cavil at our attempts for reform and progress. Every good cause has had its foes. There may not be wanting some men ready with reasons to disparage our cause and efforts. It would be absurd to suppose that these self-styled critics and friends would not find a plausible case in support of their assertions. But the question to my mind is not as much whether the reform should be postponed as whether the mischief likely to result from the continued operation of the High Court circular promises to be

so great as to make it imperative that active intervention in the cause of positive retrogression must be made.

Ours has been sometimes a much malinged body. But here also no definite accusation has ever been brought against us. These accusations have been vague, uncertain and general. Our principal fault is, it is said, that we are not the possessors of a rich heritage. But even if the educational qualifications of the Muktears of the early English period in Indian History were not sufficiently high, the standard of qualifications, however, have gradually been raised so much of late as to silence any criticism on this score. Nevertheless the Muktears of old were a body of hard-worked and thorough going men upon whose sagacity and integrity generations of the landed aristocracy had delighted to depend. There is black sheep in every fold and I do not know what body is free from them. But the law reports and the records of our law courts do not furnish any sufficient proof to justify a wholesale condemnation of the whole body of Muktears. Authentic reports do not show a large proportion of cases against Muktears for professional misconduct, than any other body of professional men. Such imaginary faults and uncertain accusations are a convenient decoy to distract attention and to defer the day of reform. I do not wish to affirm that there is any antagonism between the Muktears and any other body of professional Legal Practitioners. Both have their respective spheres of actions and the duties and privileges of each need not clash. In this vast field of legal work there is enough work and ample room for those various grades of lawyers which now exist. The drawbacks of one class have been greatly exaggerated and we are wanted to be put down because we are not born with a silver spoon in our mouth. There had been sufficient experiment, the stage of experiment has long ago passed away, and the fractification of our efforts should no longer be delayed.

Gentlemen, I have not yet said any thing about our

powers in the Civil Courts. Here we are also always treated as so many "Dumb driven cattle." The High Court Rules have restricted our powers. "File", "tender" and "presentation" are the terms about which much difficulty arises with the Muktears there.

In this respect my humble submission is that more powers should be given to the Muktears practising in the Civil Courts by the Hon'ble High Court, and the powers prayed for in this respect will be put into proper resolutions and discussed hereafter.

Regarding the powers of the Revenue Agents there is one important fact which should attract the kind attention of the legislature. When formerly rent suits were tried by the Revenue officers, Revenue Agents were authorised to conduct them viz. to examine witnesses and forward arguments. But Revenue Agents of the present day are not entitled to do so before the Munsiffs, and are thus deprived of that privilege. Under section 10 of the "Legal Practitioners' Act" only those who have been admitted as Revenue Agents before the first day of January 1880, can plead and act in suits under the Bengal Tenancy Act or under any other Act for the time being in force regulating the procedure in suits between landlords and their tenants and agents. Who will deny that Revenue Agents of the present day are more qualified than they were before 1880? Yet they are deprived of this privilege.

We, therefore, desire the removal of all these curtailments of our powers. We have great faith in constitutional agitation and through constitutional agitation we mean to gain the desired end. If we only persevere, success is sure to come; for ours is no unrighteous cause. We don't work through any selfish motives. We may attain little progress only during our life time. But that is no reason why we should despair. There is ground for hope in what the poet says,

“For freedom's battle once begun
Though baffled oft, is ever won”

Our duty lies clear before us to go on with our work firmly and fearlessly but with moderation and above all with humanity. We all recognise the fact that human progress is largely made up of action and re-action, that the cause of reform never moves forward in straight line, but that it oscillates like the pendulum of a clock.

We, as the pioneers of this movement, may attain little more than the satisfaction of upholding what is right and protesting against what is wrong. But succeeding generations will reap the fruits of our labours, and will cherish with fond remembrance the names of those who had the courage and the humanity, the singleness of purpose and the self-sacrificing devotion to duty, to work for the benefit of posterity, inspite of calumny and persecution and great personal loss. I do not know whether we are doomed to failure or destined to succeed, but the blessing which rests upon all high and honest endeavour will surely rest upon a mission imposed by duty, sanctified by patriotism and guided by loyalty.

With these lofty and inspiring words Mr. Pherozsha (now Sir Pherozsha) Metha welcomed the delegates to the Fifth Session of the Indian National Congress at Bombay in 1887. With these prophetic words of his I welcome you in this city and invite you to begin your deliberations in right earnest. In the fullness of my heart I see as it were the glooming rays of hope looming in the distant horizon. I see in the younder sky the bright Sunshine of success dispel the hazy and uncertain clouds of suspicion. Let not reverses dishearten you.

“Work, work for the living present
Heart within and God over head.”

Now Brother Delegates, my work is practically done. I thank you again most sincerely for the trouble you have taken in coming here. I thank you for the most patient and indulgent hearing which you have lent me.

I shall now call upon you to proceed to the election of your President who will by his wise counsel, sagacity and tact guide your deliberations. I pray for your success, the ultimate success which will be yours through the grace of the Almighty. Let us in the noble words of Cardinal Newman, pray :—

“Lead kindly light, amid the encircling gloom
 Lead thou me on !
 The night is dark and I am far from home
 Lead thou me on !
 Keep thou my feet, I do not ask to see,
 The distant path, one step's enough for me.”

PRESIDENTIAL SPEECH.

Speech of Babu Bhuban Mohan Chatterjee, Muktear of Alipur and
 President of the All-Bengal Muktears' Conference, delivered
 on the 22nd. March, 1913.

BROTHER DELEGATES AND FRIENDS,

I thank you from the bottom of my heart for the great honour you have done me by electing me the President of this, the first All-Bengal Muktears' Conference. I am aware of my unworthiness to fill the post. Great as are its duties, higher are the responsibilities. There are many here assembled who

would fill the chair with credit to themselves and advantage to you all. But when your choice has fallen upon me I have no other alternative than to accept it, however much I feel diffidence in acting as your spokesman. Your vote is a mandate which I must obey. My task difficult as it is will be made much easy by the active co-operation and help which I will receive from your hands, and the thought that at this age of life—when I am going down the vale of years—I am about to be of some service to the profession to which I belong, will cheer me up to guide and control your deliberations with restraint and moderation.

Gentlemen, we have arrived at that critical time in the life of our profession when each one and all of us should unite and co-operate for the amelioration of our condition and the removal of the great grievances which are menacing us and are threatening to jeopardise our very existence. "We are fallen amongst evil days and evil tongues with darkness and danger compassed round." Our rights are being threatened, our privileges are being curtailed, our honour and dignity are at stake. We, who were appropriately described as "poor men's counsel" are sought to be improved out of existence by the whims and caprices of the powers that be—without heeding that in our ruin will be consummated the ruin of that vast body of litigant public who are too poor to seek the help of the legal luminaries of the other branches of the profession. At such a time as this you have not met a day too soon to compare notes, to exchange greetings, to unite and concert measures for your safety and well-being and the well-being of those who depend upon your help for remedying their wrongs and removal of their grievances. Gentlemen, I thank you all for coming down here without enjoying your well-earned holiday, at a great personal inconvenience and trouble at this season of the year from far-off places. All honour to those noble souls at this city of Khulna who dreamed this dream of uniting you all and then realised their dream. Our thanks, best and heartfelt thanks, to those patriotic beings whose hearts bled

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on reading the distresses of their brothers in distant places and who summoned us all to meet together to build the citadel of our future hope on the rock of unity, fraternity and progress. May the All-Merciful God shower His blessings upon us and guide our deliberations to a successful and triumphant termination.

Gentlemen, ten years ago who ever thought that one brother in our profession would have taken the least care to know, far less to feel for what another brother was doing elsewhere. Our grievances were looked upon as individual or local grievances. To-day, we are animated by one common purpose, one common aim, one common aspiration. We are resolved to have our rights declared and our privileges secured, above all to present one common united front in the presence of the enemy. Whether our rights are menaced at Berhampur, Alipur, Rungpur, Comilla, Dacca or Chittagong, not to speak of the many little Sub-Divisions and out of the way places, we are resolved so to unite, so to form one corporate body that we would make common cause for the redress of common grievances. As a step, a most important step, in that direction we are resolved so to have our rights declared by statute that nothing would in future be relegated to the region of vague doubts and uncertainties, of favours and discretions, of whims, bunglings and sometimes downright perversity; but of that more hereafter.

Gentlemen, the existence of the class known as Muktears is co-extensive with the rise of the class known as the Legal Profession in this country. In India as in England the legal profession owed its genesis to energetic persons who made it their business to appear and plead on behalf of the litigants. The term Muktear is of Persian origin and means an agent authorised to plead and act for another. That crude system of pleading was the precursor of the present Canonical system. From the very beginning our privileges were widely comprehensive.

We performed the double function of attorney and advocate, though on a small scale and for a small remuneration. Originally, there was no examination either for Muktears or for Pleaders. During the administration of the East India Company it was enacted by Act 1 of 1846 that any person might act as a Pleader when certified by the Sadar Court to be of a good moral character and competent enough to act for his clients. As regards the Muktears, they had to secure a certificate of a similar nature from the presiding officer of the Court in which he intended to practise as such. In the year 1865, a system of examination for Pleaders and Muktears was introduced. In those days there were two grades of Pleaders, the higher and the lower. The former had to attend a course of law lectures for two years in order to be qualified for the examination, whereas the latter unlike the former, were not required to undergo this training in a college. The subject for examination in criminal laws were the same for Muktears and Pleaders of both the grades. Formerly a candidate for Muktearship or Pleadership examination of the second grade, was considered eligible if he had passed the Middle Vernacular or Minor Scholarship Examination. After a few years it was made the rule that no one who had not passed the Entrance Examination in the first or the second division would be allowed to appear at the second grade Pleadership Examination. In case of a candidate for Muktearship Examination the standard was raised to the passing of the Entrance Examination. Since 1898, the second grade Pleadership has been abolished. The codes of Criminal Procedure Act XXV of 1861 and Act X of 1872 did not contain any definition of the term "Pleader." Act X of 1832, for the first time defines the word pleader thus:—"Pleader," used with reference to any proceeding in any Court, means a Pleader authorised under any law for the time being in force to practise in such Court, and includes (1) an Advocate, a Vakil and an Attorney of a High Court so authorised, and (2) any Muktear or other person appointed with the permission of the Court to act in such proceeding.

Thus, Gentlemen, you would see by this definition a Muktear is classed with "other person" who requires permission of the Court to appear and act. He is no better than other persons depending upon the mercy of the Court for the sake of permission. If this be the meaning of the section then is it proper on the part of the authorities to require the Muktears to pore over their books consuming night oil in order to pass the ordeal of an examination as stiff as the other law examinations; is it good policy to require them to renew their licenses, every year, to pay trade licenses just as the members of the other branches of the profession have to pay. I am happy to say gentlemen that the Muktears' Bar now-a-days are in no way inferior to Pleaders' Bar. They are now filled with men, who in the field of cross-examination and other requirements requisite for the discharge of duties towards clients, can hold their own against the members of the other branch of the profession. We have to read the same books, keep 66 per cent., marks to pass the examination—and then when we want to practise would it lie in the mouth of the authorities to say that you are dependent upon our sweet will and pleasure whether you would be permitted to appear in Courts or not—you must regularly pay your licenses and taxes and fatten the exchequer and we would allow you or not to enjoy the rights which theoretically every citizen possesses but which the Indian Beurocracy as your best friend and protector would see as occasion arises whether you would be allowed to enjoy or not. Gentlemen, was it ever the intention of the Indian Legislature and the learned judges who administer the law, that the Muktears should have such a precarious existence—that the "sword of Damocles" should ever be hanging over their heads that if there be Hamiltons over all the districts of Bengal, one fine morning they would find their occupation gone, their field of activity closed, the Courts shut against them and they would go forth into the world to swell the ranks of the discontent, for, after all, all discontent grows from economic causes. Such was never the intention of the Legislature neither does the trend of judicial decisions, disclose any

such sinister meaning. In the draft code, which afterwards became Act V of 1898, it was rightly and judiciously put that the word 'Pleader' includes Muktear without any restriction or qualifying clause. The Hon'ble Mr. Chalmers, in presenting it observed that the Code was administered by busy men and everything that would help them to make their task, in mastering the law, as light as possible, should not be left undone. To our misfortune as grave as unaccountable—the reservation was subsequently introduced. But in actual operation what do we find. Was the reservation—the permission spoken of—in actual practice ever insisted upon? No doubt some overzealous officer sometimes insisted upon it. In a very few cases such permission was arbitrarily refused. And the highest Court in the land—the High Courts—those great bulwarks of our rights and liberties, those palladium of justice from whence pour forth streams of interpretation of law, pure and undefiled—those temples of peace in whose *Sanctum Sanctorum* there is no difference between man and man—always came to our rescue and deprecated any attempt at the curtailment of our privileges. You will find, Gentlemen, in Madras their Lordships held in Indian Law Report, 1 Madras 304, "a petition of appeal in a Criminal Case may be presented to the Appellate Court by any person authorised by the appellant to present it." In Indian law Report 6 Madras 100, "The words 'Pleader and practising Vakil are not restricted to persons who have obtained *Sanads* from the District or High Court but include all practitioners in Courts of Criminal jurisdiction." In Indian Law Report, 6 Bombay 14 "An appellant in a Criminal Case has a right to appear and be heard by a Muktear." Turn we now to our own High Court in Bengal. In 2 C. W. N. 484 their Lordships say "Section 126 Evidence Act must be construed as applying to all persons who came within the category of pleader as defined in Section 4 clause (r) of the Code and includes therefore Muktears." More recently, in 15 C. W. N., 406 "No general rule of practice can be laid down between the Pleaders and Muktears as to the

right of the latter to appear in Criminal Cases. The law is contained in Section 340 Criminal Procedure Code read with Section 4 clause (r) and the practice is regulated by High Court rules. Magistrates and Sessions Judges are not to deprive parties of legal aid which they may obtain at a moderate cost and they would not be exercising a wise discretion by an indiscriminate refusal of such permission to Muktears who have a distinct professional status. The defence of an accused person should not be shut out merely by the fact that he is represented by a Muktear."

After this recent observation of the highest Court in the land one would have thought there would no longer be any trouble so far as our status was concerned. Hitherto in stray cases permission was here and there refused to particular individuals. But it was reserved for the Magistrate and Collector of Berhampur to pass an order of a sweeping nature debaring Muktears in general from practising in the Court. That order runs thus—"According to law as interpreted by higher authorities a Muktear can only be allowed to engage and instruct a Pleader or Vakil in Criminal Cases if the accused so desires. He can not offer any legal argument or address the Court or examine witnesses or apply for summons or process for witnesses; nor he can file any process fees" According to this 20th century Daniel, we are only to play a second fiddle to remain as ornamental appendages, to hover about like disembodied spirits round the Courts of Magistrates supposed to administer law in the land. Supposing, Gentlemen, the pleaders get themselves engaged and receive direct instructions from clients—what remains for the Muktears to do. To sit in sackcloth and ashes and bewail the day when they passed their examinations with the hope of earning their bread by honest industry. Can such a state of things be tolerated for one moment? Are we to suffer our status to be lowered, our rights to be thus taken away? We in this conference assembled say an emphatic 'No' and we are resolved with all the aid which constitutional agitation

affords to remove our grievances by constitutional means. No doubt, Gentlemen, the Government, which is now presided over by one of the noblest sons that England ever sent to preside over the destinies of millions in Bengal, came to our rescue and through the noble-hearted and sympathetic Commissioner of the Division, Mr. J. G. Cumming I. C. S. caused oil to be thrown over the troubled waters at Berhampur and restored our brothers there to their original position. But we understand that after the departure of Mr. Cumming from Berhampur, the District Magistrate while relaxing in other respects, did not allow Muktears to appear before him to argue appeals. It seems that it is not given to Mr. Hamilton to show the whole of his generosity but he takes pleasure in yielding bit by bit stage after stage, so that others may not think that he yielded all at once at the approach of his superior. Gentlemen, you must take steps to see that Mr. Hamilton may not be left to play pranks any more. The principal point at issue then is, having got a foot-hold with a distinct status, in the profession from time immemorial are we to be thrown over board, to be driven from it to depend ever afterwards upon the will and pleasure of particular officers who choose to shut us from practising in the Courts? What then is the remedy? In our distress, in this season of despair and despondency, turn we now to that highminded, noble, generous and gifted Viceroy—recent dastardly attempt at whose life we in common with the country greatly deplore—to come to our rescue, to extend his helping hand and for ever to place our status on a distinct and satisfactory basis. The Criminal Procedure Code is about to be amended. The object of an amendment is always to remove anomalies, to bring the law in conformity with prevailing opinions, decisions and usages as obtained in the country. Our demand is modest, our request is legitimate, and our grievances are great. We pray that Section 4 clause (r) may be so amended that the permission required in the case of Muktears be done away with and they be given to practise as members of the other branches of the profession are allowed to practise and the permission

required be necessary or optional in the case of the "other persons" as mentioned in the clause should the words 'other person' remain. Our illustrious Law Member knows the country and his countrymen. He knows how necessary it is in the case of the vast majority of the poor litigants to get legal aid at cheap cost. We appeal to him to come to our rescue and from the pinnacle of his position to extend his long arms to rescue us from the depth to which we may be thrown by the capricious wishes of particular Magistrates. Before the august personality of the illustrious Viceroy and in the presence of the high-minded Law Member we fervently pray on bended knees and earnestly solicit their help in this the supreme moment in our corporate existence. Now or never. In the Supreme Legislative Council there are His Excellency's Councillors who form a galaxy of brilliant meteors to whom we must approach to shed the effulgence of their lustre and illumine the dark recess to which we are thrown, and for ever to place us upon that bed-rock of security and hope which knows no decay and which no adverse element would ever disrupt and smoulder. The Hon'ble Maharajah of Cassimbazar—the scion of a princely house far famed for its generosity and benefactions—was gracious enough to receive a deputation and promise his support. Gentlemen, catch time by the forelock, be up and doing, sacrifice your time and energy for such a good cause so that you may bequeath to your successors a heritage of peace and prosperity which would know no withering. No cause ever became successful unless through the persistent effort of those who are determined to lead their forlorn cause to a triumphant victory. Read the lessons of history and history will repeat itself. Not to speak of the great movements such as the Catholic Emancipation, the Slave Trade Abolition, the Home Rule controversy, nearer home we find in the Congress agitation the fruition of many of the cherished wishes of the people after years of persistent agitation through good report and evil report. Ours is a cause more limited, more circumscribed by circumstances, yet, as important as pressing as any I could conceive of. It is wrapped up with the instinct of self

preservation based on reason and common-sense, drawing its inspiration from immemorial traditions which are engrafted with the constitution.

Gentlemen, hitherto I have confined my observations to the discussion of those grievances which affect us in relation to our practice in the Criminal Courts. You all know by Rule No. 5 of the 6th. February 1882, of the High Court Rules made under Section 11 of the Legal Practitioners Act you have certain powers which you can exercise in the Civil Courts. Those powers, however comprehensive, however all-embracing came to nothing in the field of practical operation because of the denial of certain other powers without the possession of which your help is not sought by litigants. You are not permitted to examine witnesses or to advance legal arguments in support of the suit under your management and care. You are empowered by the Rule to do all such things which are now being done by the clerks of the pleaders who practise in the Civil Courts. In my humble opinion you ought to move the Hon'ble High Court to grant to you such powers that you may also practise in the Civil Courts. Instead of being mere instruments for the filing of plaints and procees-*fees* something more tangible should be done by Muktears before Civil Courts to ensure their status being recognised by the authorities to the advantage of the clients. As you have no powers there to act in the Court in the conducting of suits, you are driven out now altogether from the Civil Courts.

Gentlemen, I do not want to detain you any further. The principal grievance—the main plank in our platform—is the removal of the restriction in the Code and to unfetter us from the chain which sits tightly in our necks. Our parental Government can do so by a single stroke of pen. We therefore must approach the Government with that prayer and agitate till it is heard. You must, in consideration of my old age and poor attainments, excuse my failings and deficiencies. Once again

I thank you for the great honour you have done me and the indulgent hearing you have given me.

SECOND DAY'S SITTING.

23rd. March, 1913:

The Conference met at 1 P. M.

RESOLUTIONS PASSED IN THE CONFERENCE.

I

Put from the Chair :—That this Conference resolves that it deplors the recent dastardly attack upon the life of our beloved Viceroy at Delhi, and expresses its entire satisfaction at his Excellency's recovery.

II

That in view of the fact that the Criminal Procedure Code will soon be recast and modified, this Conference resolves, that urgent steps be taken to memorialise Government so to amend Section 4 clause (r) of the present Code, as to enable Muktears, as of right to appear, act and plead in all Criminal Proceedings before Magistrates and Judges; and that this Conference authorises its President to submit under his signature two memorials to both the Government of India and of Bengal, praying to the above effect.

Proposed by

Babu Jogendra Nath Roy of Burdwan.

Seconded by

Safiuddin Ahmed of Bagerhat.

Supported by—

- (1) Babu Brojo Gopal Bose of Mymensingh.
- (2) „ Parvati Charan Bose of Dacca.
- (3) „ Kailash Chandra Sen of Barisal.
- (4) „ Satish Chandra Banarjee of Rajshahi.
- (5) „ Dwijendra Nath Bose of Alipur.
- (6) „ Rai Kishore Pramanick of Maldah.

III

That this Conference resolves that in the Civil Courts of the 1st. instance, Revenue Agents who passed the examination after 1880, may be allowed to act and plead for their clients in all rent suits.

Proposed by

Babu Suresh Chandra Chatterji of Jangipur.

Seconded by

Syed Khairat Ali of Hugli.

Supported by—

- (1) Babu Nibaran Chandra Chatterji of Ulubaria.
- (2) „ Bireswar Roy Chaudhury of Magura.
- (3) „ Satish Chandra Banerji of Bongong.
- (4) „ Janaki Nath Chaudhury of Noakhali.
- (5) „ Jatindra Mohan Das of Pabna.
- (6) „ Hridoy Nath Majumdar of Kustia.

IV

That this Conference resolves to express its deep regret at the unhappy incident that has lately taken place at Berhampur between the District Magistrate and the Muktears, and heartily thanks the Hon'ble Mr. J. G. Cumming, Commissioner of the Presidency Division for his kind and timely intervention to bring about a reconciliation between the Bench and the Bar.

Proposed by

Mr. T. N. Chatterji of Tamluk.

Seconded by

Babu Bhawanidas Majumdar of Burdwan.

Supported by—

- (1) Maulavi Abdul Goni of Malda.
- (2) Babu Kedareshwar Ray of Gopalganj.
- (3) „ Nibaran Chandra Sai of Balurghat.

V

That this Conference resolves that to promote and safeguard the interests of the Muktears it is desirable that a Conference attended by delegates from all parts of Bengal should meet each year at such places as may be resolved upon.

Proposed by

Babu Purna Chandra Chatterji of Berhampur.

Seconded by

Maulavi Mohomed Ebrahim of Bogra.

Supported by—

- (1) Babu Bireswar Lahiri of Rajbari.
- (2) „ Lalit Kumar Chakravarty of Comilla.
- (3) „ Prosad Das Chatterji of Dinajpur.
- (4) „ Ashutosh Bose of Jessore.

VI

That this Conference resolves, that an Executive Committee with one member from each District and five from Khulna (of whom seven will form a quorum) with powers to add to their number, be established at Khulnā, to carry on the works and resolutions of this Conference ; and that every Muktear and Revenue Agent be required to pay at least Re. 1/- annually for the maintenance of the Conference and that out of the amount realised annually half the amount would go for the maintenance of the annual Conference and the balance will remain in the hands of the Executive Committee for necessary expenses.

Proposed by

Babu Purna Chandra Chaudhury of Berhampur.

Seconded by

Babu N. K. Chowdhury of Jessore.

Supported by—

Babu D. N. Acharya of Contai.

VII

Put from the Chair :—That this Conference resolves that a deputation consisting of five members selected by the Executive Committee do wait upon the Honourable Law Member with a copy of the memorial to be drawn up by the Executive Committee.

MEMORIALS.

COPY OF THE MEMORIAL.

(No. 1.)

Submitted to the Hon'ble High Court of Calcutta by the entire Muktears' Bar of Bengal, Eastern Bengal and Assam through the Secretary of the Muktears' Bar Association of Manickgunj.

To

The Hon'ble B. F. Rampini, I. C. S. M. A., LL. D. Offg. Chief-Justice and his companion Justices of the Hon'ble High Court of Judicature at Fort William in Bengal.

The humble petition of the undersigned Muktears on behalf of the entire Muktear Bar within the Jurisdiction of the said Hon'ble High Court.

MOST RESPECTFULLY SHOWETH :—

That the above mentioned Muktear Bar labours under several serious disadvantages statutory and otherwise:

2. That although the standard prescribed for the Pleadership and Muktearship Examinations is practically the same with the exception of laws relating to Torts and Transfer of properties and although both the Examinations are held under the direct supervision of the Hon'ble High Court and the same test is applied to both yet the privileges enjoyed by the Pleaders are much greater than those that have fallen to the lot of your humble petitioners.

3. That unlike the Act XIV of 1882, the new Code of Civil Procedure of 1908 does not even mention Certificated Muktears and thus ignores an important branch of the legal profession.

4. That your Petitioners view with alarm the prospect of their existence being equally ignored in the rules that may be framed in near future under the said Code of Civil Procedure.

5. That the present day Muktears are all well-educated people and that up to now they have always discharged their duties to the entire satisfaction of the courts in which they were allowed to practise, and no case could be made out against them to curtail their powers and privileges.

6. That this being a very poor country the services of the Muktear Bar at a moderate expense are much in demand by the litigant public, and that if the usefulness of the said Bar, which has been in existence ever since the foundation of the British Administration of justice in this country be in any way impaired the public is bound to suffer quite as much as the profession itself, specially as the second grade Pleaders have recently been wiped out of existence.

7. That your Petitioners learn with consternation and alarm the opinion recently expressed by the Hon'ble High Court of Allahabad that even in Criminal Courts, a Muktear must obtain special permission of the court in every particular case, and they submit that whatever may be the interpretations of clause (r) Section (4) of the Criminal Procedure Code in practice the Muktears up to now have always been allowed in subordinate Criminal Courts as a matter of course, and they therefore, seek the protection of this Hon'ble Court against any encroachment upon their existing rights and privileges.

8. That although under the Legal Practitioners' Act of 1879, Second Schedule, there is gradation in the license according to the value of stamps, yet no definite functions seem to attach to these licenses.

Under the above circumstances your humble Petitioners respectfully pray:—

- (a) that Muktears may be allowed to practise in all subordinate Criminal Courts by virtue of their professional License and that no special permission of the court be deemed necessary in each particular case.
- (b) That Muktears may be allowed to act in subordinate Civil Courts just as Attorneys act on the original side of the Hon'ble High Court of Calcutta.
- (c) That definite functions be assigned to duly qualified certificated Muktears by framing rules under the Code of Civil Procedure, and their status be definitely declared.
- (d) The Muktears of at least five years standing be allowed to appear at the Pleadership Examination without the necessity of further attending law lectures.
- (e) That Muktears may be allowed to appear in Survey Examinations and qualify themselves for Civil Court Commissions.

And your petitioners shall in duty bound ever pray.

REPLY.

NO. 481.

From

R. E. Muddiman Esq.

*Registrar of the High Court of
Judicature at Fort William
in Bengal, Appellate side.*

To

The Secretary Muktears' Library,
Manikganje, Dacca.

Dated Calcutta, the 9th. Feb. 1909.

SIR,

In continuation of my letter No. 2751, dated the 19th August 1908, I am directed to inform you that the 42 petitions from the Muktears of various places in the Provinces of Bengal and Eastern Bengal and Assam which were forwarded by you, have been laid before the Court. The court notice these petitions contain the following identical requests :—

(1) That Muktears may be allowed to practise in all subordinate Criminal Courts by virtue of their professional license and that no special permission of the court be deemed necessary in each particular case.

(2) That Muktears may be allowed to act in subordinate Civil Courts just as Attorneys act in the original side of the High Court.

(3) That certain definite functions be assigned to the duly qualified certificated Muktears by framing rules under the Code of Civil Procedure and their status be definitely declared.

(4) That Muktears of at least five years standing be allowed to appear at the Pleadership Examination without the necessity of further attending the lectures.

(5) That Muktears may be allowed to appear at Survey Examination and to qualify themselves for Civil Court Commissions.

2. In reply I am to say that as the first request involves the judicial interpretation of an Act which can only be obtained if the matter should come before the court judicially, the court in its administrative capacity can express no opinion in the matter.

3. As regards the third request I am to point out that the court have already issued rules under Sec. 11 of the L. P. Act, which are contained in Chapter XI, Pages 284-288 of the Courts General Rules and circular orders, Civil Vol. I, laying down the functions of the certificated Muktears and that they do not consider that further rules are necessary. If, however, the intention of the Petitioners was to invite the attention to the wording of order III Rule 2 of the Code of Civil Procedure, 1908 and to suggest its amendment the court are not satisfied that any change is at present required.

4. The Chief Justice and the Judges regret that they are unable to accede to the remaining requests (2, 4 & 5) set out above, as to do so would infringe the prerogatives of the other branches of the Legal Profession.

5. I am to request that you will be so good as to communicate the foregoing observations to the memorialists.

I have the honour to be,

Sir,

Your most obedient servant

(Sd.) R. E. Muddiman,

Registrar.

COPY OF THE MEMORIAL.

(No. 11.)

Submitted to Their Excellencies The Viceroy and the Governor of Bengal in accordance with the resolutions passed by the All-Bengal Muktears' Conference held at Khulna on the 22nd. and 23rd. March, 1913.

To

**His Excellency The Right honourable
Charles Baron Hardinge of Penshurst,**
P.C., G.C.B., G.M.S.I., G.C.M.G., G.M.I.E., G.C.V.O., I.S.O.,
Viceroy and Governor-General of India.

THE HUMBLE MEMORIAL OF THE
MUKTEARS OF BENGAL ASSEMBLED
AT A CONFERENCE HELD AT KHULNA
ON THE 22ND & 23RD MARCH, 1913.

Most respectfully sheweth,

1. That Your Excellency's Memorialists are Muktears practising in the Subordinate Criminal Courts of the Province of Bengal.

2. That your Memorialists crave leave to approach Your Excellency with this humble representation concerning their status as legal practitioners, now that the Code of Criminal Procedure is going to be amended.

3. That under the existing rules a person has to pass the University Matriculation Examination and then a stiff Law Examination with a minimum aggregate of 66 per cent. before he can be enrolled as a Muktear and allowed to practise as such.

4. That the rules relating to enrolment and certificate of admission and the renewal of the certificate year after year, as laid down by the Hon'ble High Court, are precisely the same in the case of Muktears as in the case of Pleaders.

5. That it would thus appear that a Muktear has to put in qualifications which are a sufficient guarantee of efficiency and good conduct for the kind of work he has ordinarily to perform,

6. That it ought to follow as a matter of course that the law should permit a Muktear to appear and act on behalf of his client as a matter of right just as a Pleader does on behalf of his.

7. That instead, the law as embodied in Section 4 clause (c) of the Code of Criminal Procedure, makes the appearance of a Muktear a matter of favour and grace with the Court.

8. Your Memorialists venture to submit that the law as it stands is invidious and harsh and unnecessarily cripples the self-esteem of a body of legal practitioners who with all their shortcomings have always been recognised as the "poor man's counsel."

9. That instances have not been rare in which a Muktear has been disallowed to appear and act under circumstances which can only be explained on the supposition that the Courts think that the Muktears as a class exist only by sufferance. Your Memorialists refrain from mentioning any particular

instance but a little enquiry will show that the allegation is not unfounded.

10. That apart from the pain and humiliation which such treatment is bound to cause, your Memorialists submit that it also tends to injuriously affect the quality of the work done by a Muktear by impairing in him that free sense of duty without which no man can do his work well.

11. That the disciplinary powers possessed by Courts in dealing with Pleaders are quite adequate for dealing with Muktears as well and there exists no reason for treating the latter with special rigour in this respect.

12. That your Memorialists beg to point out that the High Courts have recognised by their circulars that the Muktears have a distinct professional status and that they form a useful body of professional men whose legal aid is obtainable at a moderate cost. What is needed is that your Memorialists' right to appear before the Courts, such as they now enjoy, should be placed on a statutory basis and that its permissive character should be done away with. Usually in practice, the right is recognised; the High Courts have supported it with their high authority. Your Memorialists pray that in the approaching revision of the Criminal Procedure Code it may be definitely embodied in the law of the land.

13. That no unsatisfactory result of any kind is likely to follow if a defined status is granted to Muktears placing them in their humble sphere on a footing that would secure them immunity from unnecessarily severe and humiliating treatment and inspire them with a due sense of self-respect.

Your Excellency's humble Memorialists
therefore pray that Your Excellency in Council

will be graciously pleased to remove the disability imposed upon Muktears by Section 4, Clause (r) of the Code of Criminal Procedure by introducing in it the necessary amendment or otherwise recasting it.

And your Memorialists as in duty bound shall ever pray.

Dhuban Mohan Chatterji,

President.

All-Bengal Muktears' Conference.

Names of Delegates who attended the Conference :—

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Alipur (24 Parganas).

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|-----|-----|------|-------------------------------|
| 1. | 1. | Babu | Bhuban Mohan Chatterjee. |
| 2. | 2. | " | Joy Gopal Ray. |
| 3. | 3. | " | Dwijendra Nath Bose. |
| 4. | 4. | " | Kshetra Nath Sen Mandal. |
| 5. | 5. | " | Charu Chandra Bose. |
| 6. | 6. | " | Bepin Vehari Banerjee. |
| 7. | 7. | " | Priya Nath Bose. |
| 8. | 8. | " | Makhan Lal Bhattacharjee. |
| 9. | 9. | " | Lalit Mohan Sircar. |
| 10. | 10. | " | Barada Prosad Bose Chowdhury. |
| 11. | 11. | " | Janaki Nath Chakravarty. |
| 12. | 12. | " | Gauri Nath Bhattacharjee. |
| 13. | 13. | " | Akshoy Kumar Mukherjee. |

Bagerhat (Khulna).

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| 14. | 1. | " | Abani Mohan Ray. |
| 15. | 2. | " | Beni Lal Dutta, |
| 16. | 3. | " | Sashadhar Ghose. |
| 17. | 4. | " | Lalit Mohan Guha, |
| 18. | 5. | " | Ram Lal Swar, |
| 19. | 6. | Kazi | Saffiuddin Ahamed. |

Balurghat (Dinajpur).

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| 20. | 1. | Babu | Hemanta Kumar Das Gupta. |
| 21. | 2. | " | Nibaran Chandra Sai. |

BANKURA.

22. 1. „ Girija Shekhar Banerjee.
23. 2. „ Haradhan Ghose.

Barakpur (24 Parganas).

24. 1. Babu Akshoy Kumar Banerjee.

Bashirhat (24 Parganas).

25. 1. Babu Ras Vihari Sen Gupta.

Bhanga (Faridpur).

26. 1. Babu Jogesh Chandra Biswas.

Bhola (Barisal).

27. 1. Babu Jojneswar Ray.

BIRBHUM,

28. 1. Babu Monindra Narayan Khandait.
29. 2. „ Bhola Nath Mukherjee.

BOGRA,

30. 1. Babu Bilash Chandra Gupta.
31. 2. „ Pitamber Sircar.
32. 3. Munshi Mahamad Evrahim.

Bongong (Jessore),

33. 1. Babu Satish Chandra Banerjee.
34. 2. „ Charu Chandra Ray.

BARISAL.

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|-----|-----|------|---------------------------|
| 35. | 1. | Babu | Kailash Chandra Sen. |
| 36. | 2. | .. | Ram Charan Chatterjee. |
| 37. | 3. | .. | Shoshi Kumar Bose. |
| 38. | 4. | .. | Kamini Kumar Chatterjee. |
| 39. | 5. | .. | Harihar Bhattacharjee. |
| 40. | 6. | .. | Chintaharan Bose. |
| 41. | 7. | .. | Kunja Vihari Das Gupta. |
| 42. | 8. | .. | Hira Lal Ghose. |
| 43. | 9. | .. | Nripendra Mohan Banerjee. |
| 44. | 10. | .. | Niranjan Mukherjee. |
| 45. | 11. | .. | Trilochan Sen. |

Brahmanbaria (*Tippera*).

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| 46. | 1. | Babu | Krishna Kumar Bhattacharjee. |
| 47. | 2. | .. | Surendra Nath Gupta. |
| 48. | 3. | .. | Kumud Chandra Nandi. |

BURDWAN.

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|-----|----|------|-------------------------|
| 49. | 1. | Babu | Jogendra Nath Ray. |
| 50. | 2. | .. | Ramapati Bhattacharjee. |
| 51. | 3. | .. | Hrishikesh Chatterjee. |
| 52. | 4. | .. | Jagabandhu Hazra. |
| 53. | 5. | .. | Bhabani Das Majumdar. |

Chandpur (*Tippera*).

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|-----|----|------|---------------------|
| 54. | 1. | Babu | Durga Prasad Datta. |
| 55. | 2. | .. | Monmohan Majumdar. |

CHITTAGONG

- | | | | |
|-----|----|------|----------------------|
| 56. | 1. | Babu | Umesh Chandra Datta. |
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57. 2. Babu Rashik Chandra Das Jaddadar.
 58. 3. „ Nalini Kanta Sen.
 59. 4. „ Mahendra Lal Chowdhury.

Comilla (Tippera).

60. 1. Babu Lalit Kumar Chakravarty.
 61. 2. „ Ras Vihari Chatterjee.
 62. 3. „ Madan Mohan Chanda.

Contai (Midnapur).

63. 1. Babu Hem Lal Bhattacharjee.
 64. 2. „ Nitya Lal Mukherjee.
 65. 3. „ Dwarika Nath Dhar.

Cox's Bazar (Chittagong).

66. 1. Babu Satish Chandra Nandi.
 67. 2. „ Ambika Charan Das.

Chuadanga (Nadia).

68. 1. Munshi Abdul Rahaman Mallik.

DACCA.

69. 1. Babu Parbati Charan Bose.
 70. 2. „ Nishi Kanta Sirkar.
 71. 3. „ Dwijendra Kumar Chanda.
 72. 4. „ Monmatha Nath Ghose.
 73. 5. „ Amrita Lal Sen.
 74. 6. „ Jadu Nath Chatterjee.

Diamond Harbour (24 Paraganas).

75. 1. Babu Keshab Chandra Chakravarty.

76. 2. Babu Kshirode Chandra Ray.
 77. 3. " Naba Gopal Ghosh.
 78. 4. " Kedar Chandra Chakravarty.

DINAJPUR

79. 1. Babu Prasad Das Chatterjee.
 80. 2. " Dimesh Chandra Ray.
 81. 3. Munshi Abdul Oahed Khandaker.

FARIDPUR

82. 1. Babu Raj Kumar Chowdhury.
 83. 2. " Monoranjan Chatterjee.
 84. 3. " Basanta Kumar Banerjee.
 85. 4. " Saradindu Mukherjee.
 86. 5. " Har Lal Majumdar.

Gaibandha (*Rangpur*).

87. 1. Babu Ambika Charan Ghose.

Gopalganja (*Faridpur*).

88. 1. Babu Kedareswar Ray Chowdhury.
 89. 2. " Kailash Chandra Karmakar.
 90. 3. " Jojneswar Chakravarty.
 91. 4. " Priya Nath Mitra.

HOWRAH

92. 1. Babu Nriya Dhan Mukherjee.

HUGLY

93. 1. M. S. Khairatali Shaikh.
 94. 2. Babu Paresh Nath Ghose.

JALPAIGURI

95. 1. Babu Jnanendra Nath Majumdar.
96. 2. „ Jyotish Chandra Sanyal.

Jamalpur (*Mymensingh*)

97. 1. Babu Sarat Chandra Ray.

Jangipur (*Murshidabad*).

98. 1. Babu Basanta Kumar Ghose.
99. 2. „ Suresh Chandra Chatterjee.

JESSORE

100. 1. Babu Naba Kumar Chowdhury.
101. 2. „ Ashutosh Bose. (1)
102. 3. „ Sisir Kumar Bose.
103. 4. „ Hem Chandra Ghose.

Jhenaidah (*Jessore*).

104. 1. Babu Ram Gopal Mukherjee.
105. 2. „ Birendra Nath Ray.
106. 3. Munshi Sitabuddin.

Katwa (*Burdwan*).

107. 1. Babu Radhika Prasad Mitra.
108. 2. „ Benwari Lal Ghose.
109. 3. „ Gebinda Prasad Ray.

KHULNA

110. 1. Baba Gadadhar Ghose.

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|------|-----|------|------------------------------|
| 111. | 2. | Babu | Hari Prasanna Gupta. |
| 112. | 3. | " | Krishnadhan Dutt. |
| 113. | 4. | " | Daiba Chandra Mukherjee, |
| 114. | 5. | " | Jogendra Nath Chatterjee. |
| 175. | 6. | " | Debendra Nath Ghose. |
| 116. | 7. | " | Harish Chandra Sen. |
| 117. | 8. | " | Durgabar Ghose. |
| 118. | 9. | " | Rajani Kanta Chakravarty. |
| 119. | 10. | " | Sarada Charan Bhattacharjee. |
| 120. | 11. | " | Rajendra Lal Ghose. |
| 121. | 12. | " | Janardhan Ghose. |
| 122. | 13. | " | Sashi Bhusan Mitra. |
| 123. | 14. | " | Indu Bhusan Ghose. |
| 124. | 15. | " | Bipra Das Khashnabis. |
| 125. | 16. | " | Nabin Chandra Majumdar. |
| 126. | 17. | " | Priya Nath Sen. |
| 127. | 18. | " | Ras Vihari Sen. |
| 128. | 19. | " | Jnanendra Nath Majumdar. |
| 129. | 20. | " | Priya Nath Chatterjee. |
| 130. | 21. | " | Ambika Charan Ghose. |
| 131. | 22. | " | Jogadish Chandra Biswas. |
| 132. | 23. | " | Syama Charan Mukherjee. |
| 133. | 24. | " | Sasi Bhusan Ray. |
| 134. | 25. | " | Ram Lal Mukherjee. |
| 135. | 26. | " | Amrita Lal Chatterjee. |
| 136. | 27. | " | Sasadhar Ghose. |
| 137. | 28. | " | Judhisthir Swar. |
| 138. | 29. | " | Harish Chandra Nandi. |
| 139. | 30. | " | Monmotha Nath Bose. |
| 140. | 31. | " | Prasanna Kumar Mitra. |
| 141. | 32. | " | Kumud Nath Kar. |
| 142. | 33. | " | Purna Chandra Ghose. |
| 143. | 34. | " | Debi Prasanna Gupta. |
| 144. | 35. | " | Bisweswar Ray. |
| 145. | 36. | " | Akshoy Kumar Dutta. |
| 146. | 37. | " | Bimalananda Sen. |

147. 38. Babu Ram Lal Ghose.
 148. 39. „ Behari Lal Chatterjee.
 149. 40. „ Hemanta Kumar Ghose.
 150. 41. „ Rajendra Nath Bose.
 151. 42. Munshi Najamal Haque Khan.
 152. 43. „ Ezeladdi.
 153. 44. Samatulla Molla.
 154. 45. Uzirali Shaikh.

Keshoreganja (Mymensingh).

155. 1. Babu Mahananda Dutta.
 156. 2. „ Iswar Chandra Das.

Kurigram (Rangpur).

157. 1. Babu Barada Kanta Chatterjee.

Kustia (Nadia).

158. 1. Babu Purna Chandra Ray.
 159. 2. „ Hridoy Nath Majumdar.
 160. 3. „ Aghore Nath Maitra.
 161. 5. Munshi Khodadad Khan.

Lakshmipur (Noakhali).

162. 1. Babu Rajani Kanta Deb.

Lalbag (Murshidabad).

163. 1. Babu Rama Nath Majumdar.
 164. 2. „ Janardan Bhattacharjee.

Madaripur (Faridpur).

165. 1. Babu Syama Kanta Banerjee.
 166. 2. „ Nalini Ranjan Ray Chowdhury.

Magura (*Jessore*).

167. 1. Babu Bisweswar Ray Chowdhury.

MALDAH.

168. 1. Babu Basanta Sasi Gupta.
 169. 2. „ Rai Kishore Pramanik.
 170. 3. Maulvi Abdul Goni.

Manikganja (*Dacca*).

171. 1. Babu Trailakhya Nath Ray.

MIDNAPUR.

172. 1. Babu Adhar Chandra Ray.
 173. 2. Munshi Khoda Newaj.

Munshiganja (*Dacca*).

174. 1. Babu Narendra Chander Banerjee.
 175. 2. „ Abani Mohan Chowdhury.

MURSHIDABAD.

176. 1. Babu Purna Chandra Chatterjee.
 177. 2. „ Kulada Prasad Ray.
 178. 3. „ Jnanendra Mohan Sircar.
 179. 4. „ Hari Das Nandi.

MYMENSINGH

180. 1. Babu Brojo Gopal Bose.
 181. 2. „ Nriya Ranjan Biswas.
 182. 3. „ Jamini Krisore Majumdar.

183. 4. Babu Mahendra Chandra Ganguly.
 184. 5. „ Debendra Chandra Ray.

Narail (*Jessore*),

185. 1. Babu Annada Kanta Das Gupta.
 186. 2. „ Aswini Kumar Ray.

Narayanganja (*Dacca*),

187. 1. Babu Lalit Mohan Dutta.
 188. 2. „ Jogendra Chandra Das.
 189. 3. „ Dharani Kumar Chatterjee.
 190. 4. „ Sarat Chandra De.

Nilphamari (*Rangpur*).

191. 1. Babu Monmohan Mukherjee.
 192. 2. „ Abani Kanta Adhikari.

NOAKHALI.

193. 1. Babu Ramesh Chandra Sen Gupta.
 194. 2. „ Janaki Nath Chowdhury.

Nowgaon (*Rajshahi*).

195. 1. Babu Satish Chandra Goswami.
 196. 2. „ Trailakya Nath Das.
 197. 3. „ Kamoda Prasanna Chowdhury
 198. 4. Maulavi Tarip Mahamhad.

PABNA

199. 1. Babu Dwijendra Narayan Acharjya

Patia (Chittagong).

200. 1. Babu Rajani Kumar Biswas.

Potuakhali (Barisal).

201. 1. Babu Annada Charan Mukherjee.
 202. 2. „ Ambika Charan Sen.
 203. 3. „ Kamini Kumar Das Gupta.

Perojepur (Barisal).

204. 1. Babu Radha Charan Chakravarty.
 205. 2. „ Jnanendra Chandra Bose.
 206. 3. „ Basanta Kumar Gupta.
 207. 4. „ Purna Chandra Mukherjee.
 208. 5. „ Trailakya Nath Ghose.

Rajbari (Faridpur).

209. 1. Babu Satish Mohan Bhaduri.
 210. 2. „ Bireswar Lahiri.

RAJSHAHI

211. 1. Babu Satish Chandra Banerjee.

RANGPUR

212. 1. Babu Satish Chandra Das Gupta.
 113. 2. Munshi Sobanuddin Ahamhad.

Sealdah (24 Parganas).

114. 1. Babu Hari Das Mukherjee.
 115. 2. „ Probodh Chandra Bose.

Serajganja (*Pabna*).

116. 1. Babu Jotindra Mohan Das Gupta.

Tamluk (*Midnapur*).

217. 1. Mr. Tarindra Nath Chatterjee.

Thakurgoan (*Dinajpur*).

118. 1. Babu Hem Chandra Ray.

Ulubreia (*Howrah*).

119. 1. Babu Nibaran Chandra Chatterjee.
220. 2. „ Kishori Mohan Rose.

Tangail (*Mymensingh*).

221. 1. Babu Bepin Vihari Chatterjee.
222. 2. „ Nalini Nath Maitra.
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