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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 22nd August 1895 :—

Bill No. 15 of 1895.

A Bill to amend the Legal Practitioners Act, 1879.

XVIII of 1879. WHEREAS it is expedient to amend the Legal Practitioners Act, 1879; It is hereby enacted as follows :—

1. For section 13 of the said Act the following shall be substituted, namely :

Substitution of new section for section 13, Act XVIII, 1879.

“ 13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any Pleador or Mukhtár holding a certificate as aforesaid—

- (a) who takes instructions in any case except from the party on whose behalf he is retained or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or
- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention of any gratification for procuring or having procured the employment in

any legal business of himself or any other Pleador or Mukhtár holding a certificate as aforesaid, or

- (d) who accepts any employment in any legal business through a person whom he knows or has reason to believe not to be a Pleador or Mukhtár holding a certificate as aforesaid, and who is not offering the employment gratuitously, or through any person who habitually acts as a *dawal* or law-tout, or
- (e) for any other reasonable cause :
Provided that where the party is—
- (a) a *pardanashin* woman, or
- (b) unable for any sufficient cause to instruct the Pleador or Mukhtár in person,

nothing in this section shall make a Pleador or Mukhtár liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof.

Explanation.—For the purposes of this section a person may be proved by evidence of general repute or otherwise to be an habitual *dawal* or law-tout, and the burden of proof that a Pleador or Mukhtár who has accepted employment from any such person was not aware that he was an habitual *dawal* or law-tout shall lie upon such Pleador or Mukhtár.”

2. In section 14 of the said Act, for the portion from and including the Amendment of section 14, Act XVIII, 1879. words “and shall report the same to the High Court” down to the end of the section, the following shall be substituted, namely :

"and shall except when such officer is the District or Sessions Judge or the Commissioner of the Division, report the same to the Court or Authority hereafter specified in that behalf, and such Court or Authority shall, upon receipt of the said report, and after hearing the Pleader or Mukhtár or his recognised agent on his behalf, make an order acquitting, suspending from practice for a time to be specified in the order, or dismissing the Pleader or Mukhtár.

When such officer is the District or Sessions Judge or the Commissioner of the Division, he may of his own authority, after hearing the Pleader or Mukhtár or his recognised agent on his behalf, make such order as is mentioned in the last foregoing clause.

The Pleader or Mukhtár affected by any such order may within one month from the date thereof appeal therefrom to the High Court, and the High Court may, after hearing the appellant or his recognised agent on his behalf, confirm, reverse or vary the order appealed from, or make such other order instead thereof as may be just.

Every report made under this section shall be made—

- (a) by the Judge of any Civil Court subordinate to the District Judge, to such Judge;
- (b) by any Magistrate, including the District Magistrate, to the Sessions Judge;
- (c) by the presiding officer of any revenue office subordinate to the Commissioner of the Division or, where there is no such Commissioner, to the Chief Controlling Revenue-authority, to such Commissioner or Authority."

3. For section 22 of the said Act the following shall be substituted, namely :

Substitution of new section for section 22, Act XVIII, 1879.

"22. The Chief Controlling Revenue-authority may also, after making such inquiry as it thinks fit, suspend or dismiss any Revenue-Agent holding a certificate issued under this Act—

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives or consents to the retention of any gratification for procuring

or having procured the employment in any legal business of himself or any other Revenue-Agent holding a certificate as aforesaid, or

- (c) who accepts any employment in any legal business through a person whom he knows or has reason to believe not to be a Revenue-Agent holding a certificate as aforesaid, and who is not offering the employment gratuitously or through any person who habitually acts as a *dalal* or law-tout, or
- (d) for any other reasonable cause.

Explanation.—For the purposes of this section a person may be proved by evidence of general repute or otherwise to be an habitual *dalal* or law-tout, and the burden of proof that a Revenue-Agent who has accepted employment from any such person was not aware that he was an habitual *dalal* or law-tout shall lie upon such Revenue-Agent."

4. In section 23 of the said Act, for the portion from and including the words "and report the same to the Chief Controlling Revenue-authority," down to the end of the section the following shall be substituted, namely :

"and shall report the same, when such officer is subordinate to the Commissioner of the Division or is a Munsif, to such Commissioner, or where there is no such Commissioner, to the Chief Controlling Revenue-authority, and such Commissioner or Authority shall, upon receipt of such report, and after hearing the Revenue-Agent or his recognised agent on his behalf, make an order acquitting, suspending for a time to be named in the order, or dismissing the Revenue-Agent.

When such officer is the Commissioner of the Division, he may of his own authority, after hearing the Revenue-Agent or his recognised agent on his behalf, make such order as is mentioned in the last foregoing clause.

The Revenue-Agent affected by any such order of a Commissioner of a Division may, within one month from the date thereof, appeal therefrom to the Chief Controlling Revenue-authority, and such Authority may, after hearing the appellant or his recognised agent on his behalf, confirm, reverse or vary the order appealed from, or make such other order instead thereof as may be just."

STATEMENT OF OBJECTS AND REASONS.

UNDER section 36 of Act XVIII of 1879 it is an offence on the part of any person to solicit or receive commission from a legal practitioner in consideration for procuring him business, and equally an offence on the part of a legal practitioner to give or offer such commission. The object of this provision was to suppress the practice of touting, but the difficulty of proving the fact of the actual tender, receipt or payment of commission appears to have rendered it insufficient for the purpose, and the evil against which it was directed, instead of being suppressed, is believed to have increased to the detriment of the best interests alike of the public and of the legal profession.

It is proposed by the present Bill, which follows the lines of certain suggestions obtained from the Calcutta High Court, to amend the Act so as to render every legal practitioner, whether he be a Pleader, a Mukhtár or a Revenue-Agent, who accepts any legal business through a *dalal* or law-tout, liable thereby to suspension and dismissal by the principal Civil or Revenue Judge of the District, as the case may be; and, to make the law the more efficacious, it is provided, by way of an *Explanation*, that a person may be shown by evidence of general repute or otherwise to be an habitual *dalal* or law-tout, while the burden of proving that he did not know that such a person was an habitual *dalal* or law-tout is thrown upon the legal practitioner charged with having obtained employment through him. The increased powers of suspension and dismissal are, however, to be subject to appeal to the High Court.

The 12th August 1895.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,
Officiating Secretary to the Government of India

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 22nd August 1895 :—

Bill No. 16 of 1895.

A Bill to amend the Code of Criminal Procedure, 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882 ; It is hereby enacted as follows :—

1. (1) In the first sentence of section 269 of the said Code, after the word "may" where it first occurs the words "with the previous sanction of the Governor General in Council," and after the word "may" where it next occurs the words "with the like sanction," shall respectively be inserted.

(2) After the first sentence of the same section the following shall be inserted, namely :

"The Local Government may also by like order declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offence shall, if the Judge, on application made to him or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order."

2. In section 276 of the said Code, before the word "thirdly" the word "and" shall be repealed, and to the same section the following shall be added, namely :

"and
fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325A."

3. For section 303 of the said Code the following shall be substituted, namely :

"303. (1) Save as otherwise in this section provided, the jury shall be at liberty to return a general verdict of 'guilty' or 'not guilty' on the charge, or, if there be more than one charge, on each of the charges, on which the accused is tried ; and the Judge shall so direct them.

(2) Instead of directing the jury generally to return a verdict on any charge, the Judge may require them to return a special verdict consisting of separate findings on any particular questions of fact which he may desire, and he shall thereupon determine whether, in accordance with such findings, the accused is to be recorded

as having been convicted or acquitted by the jury on that charge, or, if such findings affect more than one charge, on each of such charges.

(3) After a general verdict has been returned, if the Judge is in doubt whether it is one with which he should or not express disagreement, he may, notwithstanding such verdict, require the jury further to return a special verdict on any question or questions of fact on which he may desire their opinion, and shall, after the receipt of such special verdict, finally determine whether to agree or disagree with the general verdict of the jury.

(4) After a special verdict has been returned under the provisions of sub-section (2) of subsection (3), if the Judge requires any further information on any particular questions of fact to enable him to determine whether to express agreement or disagreement with such verdict or whether such verdict amounts to one of acquittal or conviction, he may require the jury to return a further special verdict as to such questions of fact, and after the receipt of such further verdict he shall finally determine whether to express agreement or disagreement with the jury or whether the verdict is to be recorded as a verdict of acquittal or conviction, as the case may be.

(5) In any of the foregoing cases, if the Judge is in doubt as to the meaning of the verdict returned by the jury, he may ask them such questions as may be necessary to ascertain what their verdict is, provided that he shall not in any case inquire of the jury their reasons for any verdict, or whether they have believed or disbelieved any particular witness.

Every such question and the answer thereto shall be recorded."

4. (1) In Section 307 of the said Code, for the words "so completely that he considers it" the words "and is clearly of opinion that it is" shall be substituted.

(2) In the same section, for the words "but it may" the words "and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury," shall be substituted.

5. To section 319 of the said Code the following words shall be added, namely :

"or, if the Local Government, on consideration of local circumstances, has fixed any other area in this behalf, within the area so fixed."

6. After Section 325 of the said Code the following section shall be inserted, namely :

"325A. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge, and the Collector of such district or

other officer as aforesaid, shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall

not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury."

7: In section 326 of the said Code, after the words "the said revised list" the words "or the said special list" shall be inserted, and the words "on the revised list" shall be omitted.

Amendment of section 326, Act X, 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to give effect to such of the recommendations made by the Jury Commission of 1894 as have been approved by the Government of India and Her Majesty's Secretary of State.

2. Section 1, sub-section (1), of the Bill purports to amend section 269 of the Code of Criminal Procedure, 1882, so as to require the previous sanction of the Governor General in Council when it is desired by a Local Government under that section to extend or restrict the system of trial by jury.

3. By section 1, sub-section (2), 2, 6 and 7 the necessary amendments in the Code are proposed in order to enable a Local Government to declare that in certain districts special jury lists shall be prepared and the services of special jurors utilized in any case triable by jury if the Sessions Judge, on application made to him or of his own motion, so directs. It is provided that the jurors borne on such special lists shall be persons selected from the ordinary jury lists on account of their superior qualifications, and also that service as a special juror shall be taken into account merely as service on a common jury and shall not entitle a juror to exemption from serving in his turn with common jurors.

4. Section 5 of the Bill makes an addition to section 319 of the Code with the object of empowering a Local Government, when necessary, to declare that jurors, or assessors may be summoned from an area other than the "district in which they reside."

5. In view of the difficulty experienced by Sessions Judges in bringing the minds of juries into contact with the various essential considerations on which in many cases depends the return of a proper verdict as to the offence (if any) committed, it is proposed by section 3 of the Bill to amend section 303 of the Code so as to empower the Judge to require from the jury, either before or after, or both before and after, the return of their verdict, separate findings on any issues of fact which he may consider material.

6. Section 307 of the Code it is desired to amend by section 4 of the Bill in order to define more precisely the duties of a Sessions Judge and of the High Court, respectively, in cases in which the former disagrees with the verdict of a jury.

The 12th August 1895.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,
Officiating Secretary to the Government of India.