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Edited by

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Editorial Notes.

An old number of the *Ceylon Miscellany* kindly placed at our diaposal by Mr. Adv. Tisseveresinghe of the Colombo Bar affords very interesting reading which, for the benefit of our readers, we reproduce in full on another page under the heading, "How the Judges came to Hultsdorf."

The result of the extraordinary general meeting of advocates held on the 14th instant under the presidency of the Honourable Mr. Walter Pereira, K. C., acting Attorney-General, appears to be, what newspaper correspondents would describe, an impasse. It is said that the Bar Council has resigned in a body as a protest against the resolutions of the advocates in general meeting assembled. We are not quite sure that what has happened is the natural sequence of the doings of the general meeting. We however feel confident we are not alone in expressing sincere regret that a constitutionally summoned meeting, exercising constitutional rights, should have led to the resignation of gentlemen who, it is unanimously admitted, have always striven to further nothing but the best interests of the Profession.

It may be that the way in which opinions were expressed at the general meeting had not been altogether in accord with what age had a right to expect at the hands of youth; we may even go the length of stating that the

proceedings might have been conducted with less warmth and more moderation ; but whatever force or emphasis employed was on the side of well-meaning sincerity insistent upon rights towards the assertion of which forcible speech was deemed necessary, although, under similar circumstances, seniors, grey in service and strong in experience, would not have allowed themselves to be swayed by the consciousness of a grievance into the lapses of impassioned rhetoric.

Were there no provocations ? One certainly there was. It was given by a newspaper holding forth, in the form of threats, arguments calculated to be dissuasive of the course of conduct proposed to be adopted by the vast majority of advocates at Hultsdorf. However successful the newspaper utterances may have proved to be from the point of view of prophecy, it must be said that the procedure adopted by the newspaper was not seemly. This lent considerable strength to the cause sought to be espoused at the general meeting. The paper was even insulting in its subdued menaces, in its allusions, in effect, to police supervision of professional suspects. It is very deplorable that information of any kind as to the intentions of the Bar Council should have been given to the Press, and it is more so that, in spite of a restraining resolution, of Oct. 14th, it should have been possible for the *Observer* of October 18th to be furnished with materials for a leading article on the Bar Council. We give the contribution in this number to show the extent to which the *Observer* had been informed.

Instead of setting at nought any rule or resolution of the Bar Council enjoining the keeping of fee-books, the general meeting has ratified and confirmed it, even to the extent of the explanatory proviso supplementarily furnished by the Bar Council. Only the explanation of the Council as to the immunity of fee-books from the taxing officer's inspection was placed in a clear light by a proposition couched in very vigorous language. The difference between the Council and the general meeting is after all one of words. A change, however, has been affected in the procedure of the Bar Council by a resolution as to one month's notice being given to all advocates of any important measure under the consideration of the Council. It has been urged on behalf of the Council that such a requirement may work considerable inconvenience and even cause delay in the despatch of

business. It is said that the resigning members of the Bar Council have taken grave objection to that resolution. In favour of the resolution it is urgeable that its principal object is to obviate the unpleasant necessity of an appeal to the general body of advocates. It is wrong to construe it as indicating want of confidence in the "accredited representatives of the advocates."

The suggestion is a good one, made to us by a senior Barrister that the Latin and Dutch citations in Judgments of the Supreme Court should be, in footnotes, given in English. We suppose the suggestion is made for the benefit of our law reporters.

We need not apologise to our readers for the thickness of this double number.

The Council of Advocates and Rules of Etiquette.

(*Ceylon Observer*, Oct. 18, 1910.)

The Bar Council, which is the accredited representative of the Advocates of Ceylon, came into existence ten years ago, and its constitution was framed exactly on the lines of the Bar Council in England. Its functions are to deal with all matters affecting the Profession and to take such action thereon as may be deemed expedient. The Council consists of the Attorney-General and Solicitor-General and twelve practising Advocates elected by the whole body of Advocates. Sir John Bonser was mainly instrumental in calling the Council into being. There were, of course, well recognised rules of etiquette which every member of the Bar is presumed to know, but they were unwritten ones. It also happened that questions arose on which doubts might reasonably be felt—and there was no recognised authority to which to appeal. In England all questions affecting the Profession are dealt with by the Profession itself: questions affecting Barristers by the Council and questions affecting Solicitors by the Incorporated Law Society. In India all such questions are dealt with by the Judges and by the Legislature. It is creditable to the Ceylon Bar that, so far, the intervention

of the Judges or the Legislature has not been found necessary. If the Council is strong enough to act, and if the body of Advocates loyally support the Council, such intervention will not be necessary and the undoubted privileges which the Inns of Court have granted the Ceylon Bar will never be in jeopardy.

At the beginning of this year there were certain irregularities, to use a euphemism, which were brought to the notice of the Council. A special committee of the Council with Attorney-General Lascelles at its head, went fully into the matter and as a consequence certain rules were drawn up and promulgated. These, of course, will be binding on the Profession unless they are rescinded by the whole Bar. The rules were passed after the fullest and most careful consideration. The main object of the rules was to prevent touting—which is the curse of the Profession all the world over. To the lay mind, it may seem unreasonable that an Advocate should not receive a fee direct from a client, but only through a proctor. It has been found, however, that cases have occurred where peons of courts, jailors, police officers, petition-drawers and other undesirables who come in contact with litigants induce them to retain certain people and are given a commission for their services. This is considered the most heinous offence of which an Advocate could be guilty. The evil is incalculable. It tends to degrade the Profession ; and in the most serious cases, where the accused comes most under the influence of a jail guard or a police sergeant, perhaps the most incompetent, certainly the least honourable, man in the Profession is chosen. Such conduct is attended with the gravest peril to the administration of justice. The Council quietly, but firmly, took the matter in hand and passed rule after rule, in spite of some reasonable clamour due mainly to gross misrepresentation as to the aims of the Council. A general meeting of the Bar was convened with the object of rescinding three of the rules; but the Council was firm, and in the end the rules were allowed to remain as they were. What will be the effect on the Council—of the resolution that, before any rule is passed by it, one month's prior publication of the draft rule to the whole body of Advocates should be made—has yet to be seen. This resolution clearly means that a majority of Advocates, though they did not desire to rsecind any of the rules, yet thought that some of them should not have been passed by the Council. The proviso to the rule, that every Advocate should keep a fee-book, sounds somewhat bombastic, and was objected to on behalf of the Council; but it was carried,

How the Judges came to Hultsdorf.

(*Ceylon Miscellany, 1854.*)

Every one has heard of the dispute which took place shortly after the English took this Colony between the Military authorities and the Supreme Court, though few perhaps are acquainted with all the details respecting it. A chapter embodying those details may not therefore prove uninteresting to our readers. Their correctness may be depended upon for they were furnished us by one who was an eye witness of the whole—Mr. Loos, the late much respected Deputy Registrar of the Supreme Court.

The Hoff van Justitie of the Dutch was held in the room now occupied as the Legislative Council. It was there that the members of the Court met from time to time to dispense justice. It was there also that the members met to witness the punishment of criminals under the sentence of the Court in the open space before the building now known as the Parade Ground. The execution of capital punishment in those days was not the unstately, unceremonial thing it now is, presided over by the Fiscal or his deputy with the gaoler and a few peons. There was an awe and a solemnity connected with it in the good 'old days' which was not unadapted to produce a striking impression on the minds of the multitude. The ponderous scaffold hung over in black with companies of soldiers surrounding it and the members of the Court in their full robes not far away to witness the scene and sign a certificate, which had to be duly enrolled, of the prisoner having undergone the fatal sentence—all these as we have frequently heard a fine old Dutch gentleman say in relating the whole from the march of the prisoner to the exit of the members, showed "how much superior the Dutch were" (in point of form) "to the English"!

The Supreme Court established by the Charter of 1801 continued its sittings in the same old Chamber, and for a time continued directing the execution of some of its punishments on the Parade Ground—particularly the sentences for contempt which used to be inflicted at once. This seemed to give offence to the Military authorities who looked upon the ground as theirs and which the Civil authorities had no right to use. On the...September 1804 a witness in the case of *The Queen* v. *Vary Armogan* was sentenced to corporal punishment which was inflicted on him at the disputed spot. After that punishment was inflicted, one of the Fiscal's lascoreens

was taken up by the sentry but shortly afterwards released. Next morning the Fiscal, Frederick, Baron Mylius received the following letter from Captain Alexander Barry, the Town Major of Colombo.

My dear Baron,

I do not know if I am not correct in reporting it to you, but the Commandant wishes it to be understood that no civil prisoner is to be flogged on the Garrison Parade, against which practice an order has I believe been long issued.

Believe me,
My dear Baron,
Very sincerely Yours,

A. BARRY,
Town Major.

P. S.—If I am correct in my note to you on the subject, will you be kind enough to say by a line to whom I can with most propriety make the circumstance known.

To this letter—as the after deposition of Baron Mylius shows—he returned an answer informing the Town Major that he would make known the contents of the letter to the Court, which he accordingly did. He was then directed by the Court to speak to the Town Major on the subject. Captain Barry said that none but the Military could enter the Ground without a passport from him, and that he had given out an order that morning to all the sentries to that effect. Baron Mylius asked whether it was not possible to withdraw the order as the Court thought itself authorised to order punishments to be inflicted there whenever it thought proper to do so.—He suggested also that the shortest way of settling the matter would be for him, the Town Major, to report it to the Commandant who might communicate with the Governor on the subject. The Town Major said that this was a matter for the Commandant, that he personally could not withdraw the order. Here the interview ended, the Fiscal informing him that he would report the conversation to the Court, and that if the Court wanted him to do so he would certainly endeavour to see punishment inflicted on the Parade Ground, notwithstanding what Captain Barry said.

This was accordingly reported to the Court, when the Fiscal having on the 18th September sworn to what had passed, and that the order to the sentries was not withdrawn, and that he verily believed he would be resisted if he attempted to enter the Ground, the Court issued a summons to the Town Major to appear before it and answer for his conduct. Capt. Barry appeared the same day and deposed that he acted under the orders of the Command-

ant, Colonel Charles Baillie, that the direction to the sentries was, "That the gates of the Parade should be "locked and that no person excepting a military man "should be allowed to go on that Parade"—that he conceived the sentries would endeavour accordingly to prevent any but the Military entering. Colonel Baillie was then summoned to appear forthwith to answer to the matter stated against him and "to be dealt with according to law." Colonel Baillie appeared the same day and was examined. He stated that the Ground was given by the Governor to General Macdowall for the purpose of a military parade—that after it was enclosed (2 years ago) orders were given to the sentinels, "That no person excepting the Military should be allowed to cross the Parade, excepting Mr. Boyd and one or two persons belonging to the Office"—that 7 or 8 months ago when he heard that a number of people had been inside the Parade he told Major Wilson who was then Town Major that it was very extraordinary that the sentinels had been admitting people in spite of their orders; that he had renewed the order to Capt. Barry in consequence of its having been reported to him that a punishment on the ground, by the orders of the Supreme Court had taken place; that he did so to prevent punishments being inflicted there; that, as the ground was given over by the Governor to General MacDowall and by the latter to him, Colonel Baillie, he conceived he had a right to issue any order he thought proper and that the existence of the order was known to General Wemyss the Commander of the Forces.

The Supreme Court then declared the order in question illegal, and having caused to be read the 95th clause of the Charter which directs the Governor, Lieutenant-Governor and all officers Civil and Military to aid and assist, and be obedient in all things, in the execution of the powers, jurisdictions and authorities vested in the Supreme Court, called upon Colonel Baillie to withdraw the said order. Colonel Baillie having declined to do so, his conduct was declared a contempt, and he was ordered to enter into recognizance to keep the peace and be of good behaviour, himself in Rds. 50,000 and two securities each in Rds. 20,000 for 6 months, his own recognizance to be entered into then, time being given him till next morning to produce his securities. The next day however the Judges received the following letter from the Governor.

To My Lords,

The Chief & Puisne Justices of the Supreme Court.

My Lords,—In consequence of your Lordships' representation I have given orders to the Town Major of this Fort to countermand the

order of which you complain, and the sentries have been accordingly removed.

At the same time I cannot help representing to your Lordships the very great inconvenience which must occur from the infliction of corporal punishments not military on the Military Parade, for the prevention of which from henceforth I have deemed it expedient to issue an order.

I have &ca.

(Signed) F. NORTH.

Colombo, 19th September, 1804.

PROCLAMATION.

At Colombo on Wednesday the 19th day of September 1804.

Present—His Excellency The Governor in Council, F. NORTH.

Whereas inconveniences may arise from the execution of corporal punishment in criminal cases (other than for military offences) on the piece of ground surrounded by an enclosure within the Town and Fort of Colombo, commonly called the Parade ground.

We do hereby direct that henceforth no such corporal punishment (other than as aforesaid) be ordered or allowed to be inflicted thereon, and further that no person be permitted to enter therein, without the express authority of [the Commandant of the Garrison: Provided always that (excepting with regard to the infliction of corporal punishment within the Parade ground aforesaid) nothing herein contained shall be construed to restrain or limit the jurisdictions and authorities vested by His Majesty in the Supreme Court of Judicature in this Island over all persons civil and military within and throughout the British settlements in the Island of Ceylon and the Territories and Dependencies thereof.

By His Excellency's Command.

(Signed) RICHD. PLASKET.

This letter and the proclamation were both read in open Court by the Registrar and filed. Colonel Baillie appeared with his securities, but the Court dispensed with them and discharged the Commandant on his own recognizances.

The Judges in acknowledging the Governor's letter addressed to them stated, that they were sincerely happy that the order of the Commandant of the Fort which they considered illegal, had been countermanded by His Excellency's authority, and without calling for further interference of the Supreme Court. Satisfied that it had been their uniform practice, as it was their earnest wish, to avoid all contest on the subject of jurisdiction, and in

no instance unnecessarily to violate the feelings or opinions of any order of persons whether civil or military, they should have paid the most respectful attention to any suggestion of His Excellency pointing out the probable inconvenience or disgust that might arise from the infliction of corporal punishment on the military Parade Ground, and should have felt it their duty to select some other spot for that purpose ; but the claim of a right on the part of the Commandant to exempt by his order that piece of ground from the jurisdiction of civil authority and the perseverance in that claim after private communication from the Fiscal and publication from the Court compelled the Judges to assert and support the powers vested in them by His Majesty. Nor could they. His Excellency must be sensible, without a criminal desertion of their own duty, have allowed the armed force of the Garrison to meet every day under directions to enforce an order which had been judicially delared illegal, and which directions must have led to consequences which could not be too anxiously deprecated or too cautiously avoided.

These proceedings occasioned great dissatisfaction amongst the Military who were annoyed at the Court having questioned their authority and the civil authorities having so far recognized the power of the Court as to set aside the order issued by the Commandant. The matter was accordingly referred to General Wemyss who was then at Chilaw on duty and the sequel will show the extraordinary steps taken by him.

Very early in the morning of the 24th September an order was issued by the Commandant to prevent every person going out of or entering into the Fort, and the barrier gate was shut in consequence The Chief Justice who was residing at Colpetty came to the Court as usual through the south gate, but the Puisne Justice who was residing at Marandahn and several officers of the Court who lived in the Pettah, on coming to the Fort, were prevented entering it, the bridge having been raised and the gate shut. The Chief Justice took his seat on the Bench and remained long waiting for his Colleague and the Court Officers. Hearing of what had taken place he directed the Registrar (Mr. Rose) to proceed to Colonel Baillie's house and to enquire of him whether any order was given to prevent any person coming into the Fort. and, if so, to state by what authority such order was given. He was further to state that he was directed to proceed to the Governor with a message from the Chief Justice. The Registrar called, but Colonel Baillie was said not to be at home. He then proceeded towards the Delft gate leading to the residence of the Governor where he was stopped by the sentry who informed him

that he could not pass and that Colonel Baillie was outside the Fort. A Mandate was then issued calling upon Colonel Baillie forthwith to appear. In the meanwhile Mr. Justice Lushington had appealed to the Governor who then resided at the premises where the Colombo Academy is now held. His Excellency came at once with his suite, had the gates opened and took possession of the keys. The Judge and officers were thus able to enter at 12 o'clock and proceed to the Court house.*

Colonel Baillie appeared to the Mandate and put in a letter received by him from General Wemyss dated the day before, and one from Captain Mowbray the Adjutant-General to the Forces, under Authority of which he acted. Witnesses were examined as to the handwriting of the letters and Mr. Loos and Mr. De Silva the clerk and sword bearer as to their having been kept out of the Fort. A Mandate was then issued to General Wemyss to appear on the 29th September to answer for his conduct and to be dealt with according to law. To Mr. Tolfrey, the Fiscal for the Province of Colombo, was entrusted the service of the subpœna, and a clerk of his Mr. H. Cuylenburg, late of the Audit Office and now a pensioner, with Peons &c was sent to Chilaw for that purpose. A subpœna was issued to the Adjutant-General.

On the 28th September, Sir Alexander Johnstone, who was then Advocate-Fiscal, delivered into Court a letter sent to him that day by the Governor stating that it was of the utmost importance that General Wemyss should remain with the Head Quarters at Negombo during the then Campaign or elsewhere where his business might call him and requesting the Advocate-Fiscal to move the Court to defer his appearance until the return of the detachments then in the field, which was expected to take place on the 15th October. Mr. Johnstone accordingly moved for time till that day. The Court deferred considering the motion till the next day,—the day fixed for the General's appearance.

On the 29th the Mandate was returned verifying the service on General Wemyss who was absent. A Mandate was then directed to issue commanding him peremptorily to appear on the 3rd October.

On the 1st October Mr. Johnstone delivered in Court a letter received from Mr. Plasket the Secretary to the Council enclosing a Minute of Council with a letter addressed to him by the Governor and moved for a com-

* There was no carriage road then leading from Marandahn to Colpetty. Much of the space of ground between the two places was covered with jungle and the favourite resort of Europeans for deer hunting.

mission to take the affidavit of General Wemyss to the circumstances which would render his presence at Colombo on the 3rd October detrimental to His Majesty's Service; intimating on the return of the commission he would move for time till the 15th October for the General to appear. To quote from the Minute, "*It was declared by the Court that the Advocate Fiscal do take nothing by his motion.*"

On the 3rd October, the Court met and General Wemyss, the Commander of the Forces and Lieutenant-Governor of the Island, appeared. He was surrounded by the Officers of the Garrison, and the court house, the ground round it and the Parade Ground were filled with soldiers. From their loud talking and gestures a disturbance was apprehended, when the Chief Justice inquired of the General what was meant by so unusual an assemblage, adding that if it was intended to intimidate the Judges not all the guns of the Garrison levelled at their Lordships would have that effect. The Commander disclaimed any such intent and orders were forthwith given to the soldiers to disperse and keep the peace. The crier of the Court was directed to proclaim the order that no one was to remain in the Court premises with their swords or bayonets, on which order was forthwith enforced even in the case of the General and his suite.

Depositions were then taken of Mr. Plasket who produced the commission and Instructions of the Governor, which were read in Court—as also 41. Geo. 3 cap. 11. § 8, 9 & 10, section 11 of the Articles of War and sec. 73 and 95 of the Charter. The depositions were also read.

General Wemyss being called upon to *make* answer to the matters charged in the depositions produced his commissions as Lieutenant-Governor and as Commander of the Forces. He was then examined, when he admitted having issued the order and stated, among other matters, that spies were lurking in the precincts of the Fort and that the patroles were ordered to apprehend such as they could find. He was then called upon to shew cause why he should not enter into recognizance to keep the peace and be of good behaviour for one year and to appear to any libel that should be allowed against him and signed by the Advocate-Fiscal. General Wemyss with vehemence objected to give recognizances and protested against his being called upon to do so. The Chief Justice then informed him that it would be the duty of the Judges to enforce an order by charging the Fiscal upon a committal to take his body in custody until he should comply with the order of Court, requiring such recognizances, the amount named being Rds. 100,000. General Wemyss then entered into

and acknowledged the recognizances and was discharged.

The minutes of the Court shew some further proceedings in which General Wemyss' name appears but from not having the original papers we are unable to give particulars: they refer however to an interference on his part with the proceedings of the Court of Justices of the Peace at Jaffnapatam, the Members of which (James Dunkin, George Luisgnan, H. Layard and George Turnour,) addressed a letter to Mr. Arbuthnot Chief Secretary to Government which letter having been produced in Court a mandamus was directed to the Justices commanding the Court to proceed in the exercise of its criminal jurisdiction, and a writ of certiorari to transmit certain proceedings to the Court. General Wemyss was brought into the Court on this matter and examined on the 15th December.

On the 17th December Sir Alexander Johnstone stated to the Court that he was that morning informed by Mr. Farrell, magistrate, that General Wemyss had lodged a complaint against Sir Alexander. The Supreme Court obtained the deposition from Mr. Farrell by certiorari and took evidence thereon. General Wemyss appeared and swore that he had received a challenge from Mr. Johnstone to fight a duel with him, and prayed that he might be bound over in surety to keep the peace. Mr. Rose, Mr. Herbert Beaven, and Mr Alexander Wood were examined as witnesses when the Supreme Court found that no "challenge was sent and that there was no sufficient cause why the said Alexander Johnstone should be bound by recognizance to keep the peace."

Two days after the closing of the Fort gates, the Governor wrote to the Judges intimating his intention to remove the Court House to its present place, which was formerly the residence of Mr. Andrew the Collector and for a time of the Governor himself. We are glad to have permission to publish the interesting correspondence on this subject.

To My Lords

The Chief and Puisne Justices of the Supreme Court.

My Lords—In addition to the various inconveniences which must attend your Lordships' permanent residence in this crowded garrison, I have the honor to inform you that I expect in a very short time the arrival of a regiment of Negroes from the West Indies, whose habits of life are so little known, and probably so little analogous to that of the natives of this Island, that it is equally desirable for the department over which you so worthily preside, as for their own discipline, that they should be quartered within the fort.

And as the Government house which I have offered for that purpose cannot be rendered habitable, I am compelled to request

your Lordships to give up the buildings you now occupy as soon as you can conveniently remove.

In fixing your new residence without the Fort, your Lordships may be assured that I shall be happy to comply with your wishes, and to prove the high esteem with which I have the honor to be, My Lords,

Your Lordships' most
Obdt. faithful Servant,
(Signed) FREDERIC NORTH.

Colombo, September 26th 1804.

To His Excellency
The Hon'ble Frederic North
Governor & Commander in Chief
&c. &c. &c.
Ceylon.

Sir,—Your Excellency having been pleased to signify to us your intention to remove the Supreme Court of Judicature from the Fort of Colombo, we think it a duty to your Excellency, and to the public, to submit to your consideration the reasons that lead us to hope that your Excellency may be induced to permit the Court to remain in its present station.

Your Excellency has, in general terms, alluded to the various inconveniences produced by the present residence of the Court within the Fort of Colombo; we trust we may be permitted on the one hand to obviate the apprehension of inconvenience from its stay, and on the other to point out the extensive injuries that may attend its removal.

That the Fort of Colombo is not merely a garrison or fortress, but the principal town of our settlements in Ceylon, the centre of the British population, of commerce and of business, is obvious; the public wharf, the custom house, the offices of Government are situated there, and public convenience should appear therefore to suggest the propriety of making that the station of the Supreme Court.

But there is another reason equally cogent with public convenience, the necessity of public control. In this isolated spot, at this distance from Great Britain, in a society of which the military must form a very large proportion, the presence of a Court of Law appointed by the Sovereign is the best and most constitutional protection that can be afforded to the inhabitants.

Its active powers are seen and acknowledged; for they cannot be overlooked: and even the tacit influence of its presence is of considerable service in checking the turbulence of passion and preventing the commission of crimes.

On general principles the presence of such a Court, must be admitted to be beneficial, but in this instance the inconveniences are, as we must presume, supposed by your Excellency to form an exception.

What are the inconveniences to which your Excellency is pleased to refer?

After what has past, and adverting to what is now in agitation, we cannot but conclude that your Excellency conceives the conflict of civil jurisdiction with the jurisdictions, opinions and prejudices of the Military to be the principal inconvenience.

With the military jurisdiction, legally exercised, the Supreme

Court has never interfered; but it has exercised the power of compelling the Military to keep within those bounds of jurisdiction prescribed to them by the Mutiny Act and the Articles of War.

With their prejudices it is conceived to have interferred by the infliction of corporal punishments on a piece of ground used by them as a parade.

On this head we beg leave to observe that the spot of ground in question was formerly the ordinary place of execution, even of capital punishment; it is placed within a few paces of the Court and immediately in front of it.

The punishments that have been inflicted there by order of the Court, have been very few in number (about four or five) and only in cases of the prevarication and contempt of witnesses, where the influence of immediate example was instantly called for.

Had any intimation been afforded to us that this was a circumstance unpleasant to the Military, it would not have again occurred, from the comity and attention to the feelings of every department of men which we have uniformly observed.

But although these instances have occurred at various times during a whole year, no such intimation was conveyed until an illegal order had been received by the Commandant of the Garrison tending directly to a resistance of our sentences.

For this offence, the commission of which was unnecessarily courted, and which after the fullest and most mild expostulation from us was still maintained, the Court thought proper to bind him in his own recognizance to keep the peace and be of good behaviour.

A more moderate exercise of jurisdiction in the preservation of the peace can scarcely be conceived.

That question has however been set at rest by the authority of your Excellency exerted in a legislative act.

The transactions of the 24th instant are notorious, they form at present the ground of judicial inquiry.

We should not mention them therefore in this place, but as having directly tended, as we apprehend, to induce your Excellency to adopt the intention of removing the Court.

While Your Excellency, the Governor and Commander in Chief of the Settlements, and of all forts and garrisons erected within them, was present, resident at Colombo, an Order was issued by the Lieutenant Governor and Commander of the Forces from Chilaw, a station nearly forty miles distant, directing the Commander of Colombo, "to shut every entrance into the Fort from 8 in the morning "until 12 or 1 at noon, to admit no person whatever within the fort "during these hours, except His Excellency the Governor and his "suite, and officers and men on duty."

In consequence of this illegal command given and carried into execution without any communication with your Excellency, the ordinary course of civil communication, of commerce, of Justice, and of Government, were impeded.

The Chief Justice was imprisoned within the Fort, the Puisne Justice and the advocate Fiscal were repelled from its Gates, although afterwards admitted by the particular and personal interference of your Excellency.

During the session of the King's Supreme Court, by the mere order of a military officer the whole course of justice was suspended.

At 12 Your Excellency thought proper to rescue this place and its inhabitants from this illegal coercion, and to vindicate your own authority, and crush its further violation, by taking possession of the

keys and throwing open the gates of the Fort.

With us the obligation remains of inquiring into the cause and circumstances of this illegal order, and we are responsible to His Majesty for the due exercise of the power of this Court, and for the correction of this military usurpation of authority, and contempt of the law.

The Lieutenant-Governor and Commander of the Forces has therefore been summoned to appear before the Supreme Court there to answer for his conduct.

We have proceeded both in the form of our process, it being by a summons (and not by a warrant) and in the period of time allowed that officer for his appearance, with a respect due to his functions and a regard to the public service.

In the meantime and during the pendency of this inquiry your Excellency has been pleased to signify your intention to remove us from the Fort.

In the ferment of the minds of the military, heated by the agitation of questions they themselves have raised, we cannot but submit to your Excellency the pressing necessity of civil control.

The Military neither can claim, nor ought they to affect, a jurisdiction within the Fort exempt from the civil authority. Our process must run throughout the Fort, and it must be obeyed.

The instances of obstruction to the King's writs have hitherto been very few and have proceeded from the ignorance or error of individuals who have on admonition conformed to their duty. Yet we are sensible that misunderstandings might arise.

To obviate these, even before the receipt of your Excellency's letter, we had resolved that on all occasions, when it was necessary to execute the process of this Court within the Fort, and there might be any reason to apprehend mistake or opposition, the name of the Town Major (he being a Magistrate) should be inserted in the writ together with that of the Fiscal.

At the same time we feel it our duty to state to your Excellency our conviction, that the removal of the Supreme Court under the present circumstances, as it will sanction the mistaken opinion that the Fort is exempt from its jurisdiction, will excite a dangerous spirit of contempt and insubordination to civil authority. That its process will be opposed, its officers meet with resistance, which in the common course of events must lead to riot and probably, amongst ignorant and armed men, terminate in some fatal accident.

Weighing all these circumstances, the late example of illegal violence from the highest military authority under your Excellency, the dangerous influence of that example, and the consequence and urgent necessity of civil control, we have felt it our duty respectfully to submit these reasons to your Excellency's judgment.

We have the honor to be with great respect.

Sir,

Your Excellency's Most

Obedient and very humble Seevants,

(Signed) C.E. CARRINGTON,

,, E. H. LUSHINGTON.

Court House, Sept. 30th 1804.

To My Lords

The Chief and Puisne Judges of the Supreme Court of Judicature in Ceylon, Colombo.

My Lords—I have received the letter which your Lordships did me the honor to write to me on the 30th, in answer to my notification to

you, of my wish for the removal of your Court House from the Fort.

I have duly weighed the objections which your Lordships suggest to that measure, and would certainly feel myself unwilling to persist in it, (however necessary for the public service) did my knowledge of the state of the public opinion, which you must suppose I have most anxiously consulted on this occasion, lead me to imagine that your supreme judicial authority over all persons civil and military (myself excepted) was in any manner called in question, or could I coincide in opinion with your Lordships that your absence from the Fort would occasion any opposition to the currency of your orders or the execution of your decrees.

I am equally sensible with your Lordships that the military power ought to be kept within due bounds. All that has lately taken place here tends to prove that no attempt to exceed it can pass unnoticed, and as the whole garrison has seen their Commandant under recognizance and will shortly see the Commander of the Forces at your Bar, I certainly cannot suppose they will entertain any higher ideas than they hitherto have of the lawful extent of military authority.

That the exertion of that authority within the walls of a fortified town must be more frequent and more public than elsewhere, is an opinion in which I am convinced your Lordships must agree with me And that the necessity of its frequent and public exertion renders a fortified town a most inconvenient and unsatisfactory residence for Supreme Judicial atuhority, is an opinion, which, however erroneous, I have not newly adopted, as is well known to My Lord the Chief Justice. with whom I have had many amicable discussions on the subject

As Your Lordships advert particularly to the two instances which have lately happened, and which you suppose, I do not say unjustly, to have increased my anxiety for the establishment of your Court house without the Fort, I will take the liberty of saying a few words on both those subjects.

The first originated in my having given over to Major General Macdowall, for the use of the troops, the interior part of the square, opposite the house which your Lordships have since inhabited, to bet inclosed within a hedge and gates, and to serve as a military parade.,

The appropriation had remained unquestioned for more than a year before circumstances drove your Lordships into the Fort, and for a full year afterwards.

The corporal punishments executed on that ground by your order met with no resistance whatever, but occasioned a remonstrance to your Fiscal from the Town Major The Advocate Fiscal, I believe by your direction, enquired of me the circumstances of the case, which I related to him as above, with the addition that I did not believe that any regular grant had been made out, but that my instruction was that it should be considered as exclusively appropriated to the Military in the same manner as a barrack or a storehouse. This in his opinion was sufficient for the purpose. Your Lordships decided otherwise. But when that decision was made, I might perhaps have expected that my erroneous opinion should have been rectified by some communication in return to that which I had made in the morning, as the garrison Standing Order which proceeded from it would have been cancelled with it, and been renewed on a more legal appropriation of the ground being made.

Your Lordships then examined the Commandant, who declared his immediate readiness to obey me if I should order him to remove his sentries; had your Lordships then sent him to require that order of me, it would have been given with as much readiness and a far

better effect than it was on the following day after my unsolicited interference in the business.

In the whole course of that transaction I confess that I am unable to discover any circumstance which can make your Lordships' residence in the Fort more desirable than I thought it before.

On the other business it is unnecessary and would be unbecoming in me to speak at any length, since it has been made an object of judicial enquiry instead of political animadversion, as I at first considered it

I can only assure your Lordships that I should not have resented it so publicly or so instantaneously as I did, had I not conceived that the identical disrespect to your Lordships was involved in the direct contempt of my authority, and that by the same measure I asserted and restored the dignity of both.

Your Lordships have judged otherwise and the conduct of the Lieutenant-Governor will be brought under your immediate examination.

That you have proceeded and will proceed against so high an officer with all due comity and mildness I cannot doubt.

In the time which you have granted for his appearance I must needs imagine that you have shown a great indulgence; since the mischiefs of delaying it twelve days, (after every security given and every submission made,) have outweighed in your Lordships' considerations those which the Governor in Council apprehended from pressing it.

I am perfectly aware of the high responsibility with which your Lordships are invested by His Majesty. But I cannot consider as entirely tirfling that with which it has pleased him to intrust me for the preservation of the general safety and tranquillity of the Settlements. And I conceive myself bound to exercise my own powers firmly and conscientiously in discharge of that primary duty.

The removing all occasions of dispute among the higher authorities I consider as a most essential part of that duty in this insulated spot at such a distance from Great Britain. Your Lordships have experienced (as I am happy to hear from yourselves) few instances of obstruction to the King's writs, nor has the number of those instances been increased by any of the late transactions. You are sensible that misunderstandings may arise; I confess myself astonished that more have not arisen. The remedy which you propose, I own, does not appear at all equal in efficacy or convenience to that which I am taking.

The Town Major has been named a Magistrate to give him certain authorities which are supposed necessary for the due exercise of his official functions: In both capacities his concurrence with your officers, when called upon, will be useful, and it is his duty to give it. But I cannot help thinking that the making him your direct officer, on a specified spot, would be in every respect inconvenient and indecorous, and calculated rather to produce differences than to allay them.

But why in your Lordships' letter should you have passed unnoticed the very substantial and material reason which I gave you, of a positive want of space in the Government buildings within the Fort against the arrival of a regiment, which I have reason to expect within this month, and for the reception of which I have destined, not only the apartments now occupied by your Lordships, but the whole range of Civil Offices in the same line, with the single exception of the Chief Secretary's?

I have purchased for your accommodation the spacious and airy house of Mr. Bertolacci, with a sufficient demesne around it, and will take immediate measures to improve the approaches to it on both sides (the only point in which it is deficient) so that I hope by the middle of the month to see your Lordships stationed there, and am perfectly convinced that your removal to it will neither be derogatory from your dignity, obstructive to your authority, nor in any manner inconvenient to the people whose rights are intrusted to your care.

I have the honor to be
My Lords
Your Lordships' Most Obedient, Humble Servant,

(Signed) FREDERIC NORTH.

St. Sebastian's 2d October, 1804.

Boom, boom, boom!

When Homer first set out to write,
His modesty was such,
That, though his stuff was pretty good,
It never caught on much.
Until one day a friend remarked:
"Old man, if you are wise,
You'll drop this Shrinking Violet style
And start to advertise."

He took the tip. . . . The "Argus Mail"
Next week came out with this :—
OLYMPIC GAMES.
WHAT HOMER THINKS.
EXCLUSIVE CHAT. (DON'T MISS.)
He gave his views on every point
That vexed the Grecian mind :
His name each morning in the Press
You never failed to find.

So when the Odyssey appeared,
It sold like anything,
The Spartan serial rights brought in
The ransom of a king. . . .
And Homer, fingering his cheques,
Went out and slew, it's said,
Two oxen to the god of Booms
Before he went to bed.

—*Globe.*

The Bar Council,

The Press and the General Body of Advocates.

Since writing the editorial note in this number circumstances have occurred rendering it necessary to deal with the above subject at some length. On October 14, at the general meeting of advocates, a private one to which representatives of the Press were not given admittance, it was unanimously resolved that the proceedings were not to be communicated to the newspapers. In spite of the resolution, in deliberate defiance of it, the four dailies appear to have been supplied with information sufficient to furnish material for leading articles. There can be no doubt whatever that a person present at the meeting, and privileged to be so present, has been guilty of gross breach of trust. His betrayal of confidence is not even relieved by the courageous affixing of his signature. He has chosen to skulk in cowardly anonymity behind the editorial We. We are glad we have no means of knowing who this Press informant may be, for such knowledge would render this painful duty of criticising his conduct altogether an agony. There can be no doubt as to the intrinsic impropriety of making public what are strictly matters of internal management and the domestic policy of the body of advocates in Ceylon. A person capable of what is more than a mere impropriety, an inexcusable breach of faith, in a matter not needing the requisition of an inordinate amount of self-restraint and self-respect, cannot be taken too seriously in whatever he may think of the weightier matters of the law. He that is faithful in that which is least is faithful also in much, and he that is unjust in that which is least is unjust also in much.

The leading article in the *Times* of October 19 does the Bar very grave injustice. It would seem to suggest that there are many, if there be any, who would rather that there were no rules of professional etiquette, and who do their best to prevent the restless energy of the Bar Council. There has been, says the *Times*, keen resentment that rules had ever been passed. These statements are not sufficiently accurate. A more correct statement would have been that all advocates, not in the Bar Council, had, from time to time, as they lawfully might, expressed views of criticism or comment. To speak of such expressions of opinion as signs of disaffection, perversion or resentment, and to suggest that there was anybody at Hultsdorf desirous of breaking loose of the restraints of

professional propriety and forensic morality is an unwarranted misrepresentation.

As to the object of the general meeting of October 14 the *Times* informant is guilty of *suppresio veri* and the consequent *suggestio falsi*. It is said that

> certain members of the Bar, as they were entitled to, requested the secretary *to call a meeting* of the members of the Bar *to rescind three of the latest resolutions*, one of which was that no advocate shall take a less fee than ten rupees and cents fifty.

In our issue of October 3,1910, (Volume vii. p. 216) is given the notice convening the meeting which sets out in unmistakeable terms that *the special meeting was for the consideration of the rule as to fee books*. Messrs R.L. Pereira and E. S. Dassanayeke availed themselves of the opportunity to give notice of certain motions one of which, standing against Mr. Dassanayeke's name, was that the rule asto the minimum fee be deleted. Far from any credit being given to the Bar for Mr. Dassanayeke's motion being dropped, unmoved and unsupported, it is made the occasion for a vast amount of frothy sentimentality.

The resolution as to one month's notice is viewed in the light of a huge obstructionist scheme engineered by irrepressible malcontents whose aim is to arrest the power of the Council. This is nonsense. If the general body of advocates has, according to the rules of the Council, the power to rescind a rule of the Council, why should it be deemed a menace to the Council's rights and prerogatives to provide against the unpleasantness of constitutional rescission of a rule by having the proposed rule, regulation or measure notified for timely consideration? Mr. A. St V. Jayawerdene (we trust we do not break faith in being compelled to allude to the proceedings of the meeting), a member of the Council, himself openly desired a fortnight's notice to the Councillors themselves of every proposal of importance. Surely no disrespect to the personnel of the Council or distrust in its corporate discretion can be inferred from a request for early information on the analogy of the precedents and procedure adopted in respect to other legislating bodies. It is very much to be deplored that the resolution has been misunderstood and been considered offensive. We sincerely hope that a way of peace may speedily be found to get over the present situation in a manner calculated to ensure the well-being of the Bar, and to avoid further occasion for the enemy to blaspheme.

In so desiring we are actuated by nothing but what is due to the honourable traditions of the Ceylon Bar, the prestige and prerogatives of the Profession, and the respect that power and trust are at all times entitled to demand

at the hands of law-loving and law-abiding persons; we are not influenced by the many menaces with which, of late, legitimate discussion has been sought to be smothered, nor by the clamant irrelevancies with which sundry contraband communications to the lay Press have been embellished.

What is the Situation?

It has been assumed both in public and in private that the Bar Council has resigned. The members of the Council have signed a paper of resignation and submitted it to the Attorney-General. The Council having been electedby the general body of advocates, we think that the resignation should have been tendered to the electors, in the absence of any provision in the rules to tender it to the President of the Council. The opinion is prevalent at Hultsdorf that a general meeting should be convened for discussing the situation and to take such steps as may lawfully be possible. We do not know whether the resignation has been accepted or not by the President. The situation at present is in the nature of a strike, if we may say so without offending the susceptibilities of anybody in the Council. The Council, in its quickness to take offence at the action of the general body of advocates, had for the moment lost sight of its duty to its electors, and that duty was to place before them, at the earliest convenient opportunity, the reasons for divesting itself of the responsibilities of its trust. The general meeting of October 14 was such an opportunity, when the resignation might have been tendered or some intimation given to the advocates then assembled, of the Council's intention to abandon the duties with which they had been entrusted.

The Councillors present at the meeting, we humbly think, were not entitled to the silence they had chosen to maintain there as to the course of action they were to adopt. From the mere fact of their having been overwhelmingly outvoted it was not possible to divine their designs

In this connection it may be pointed out, especially in view of the statements in the newspapers as to use of insulting language, that no appeal was made to the chairman of the meeting against any insult studied or casual. Had there been anything more than mere vehemence of speech the chairman would, certainly have made summary order on the offender or probably dissociated himself altogether from the proceedings. Neither course having been adopted it must be presumed,—and courtesy

to the chairman, if not the force of actual facts, demands the presumption—that no one had been insulted, and that the press references to a particular speaker having been" offensive and insulting right through every speech he made" were mere" strivings after effect."

By the general meeting the Bar has thrown nothing away, has forfeited no privilege, nor surrendered any right. The constitution remains unabrogated, and constitutional action may yet be taken. The Bar relies on its leaders, official and unofficial, by their wisdom and resourcefulness so to direct affairs as to belie the morbid apprehensions of the most pessimistic of its critics.

" Numerical Rectitude."

An evening paper abused us for misrepresenting the Governor's comparison of Proctors to the "snails of Kalutara," and solemnly declared the reference was "numerical" only. By way of establishing its sincerity of interpretation it has since described a Kalutara Proctor as " An impudent Kalutara Snail." This reference is, of course, also "numerical," and certainly also sincere.—*Leader.*

Appeal Court Notes.

104. **Injunction—After plaint and before answer—Water rights—Mechanical purpose—Dam—Insufficient materials for order.**

1. An injunction should not be granted on affidavit based solely on third party's information, but on full materials

2. Where a dam complained of as interfering with the supply of stream water to a tea factory has been removed an injunction is unnecessary.

107 D. C. Int. N. Eliya 574. September 21, 1910.

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105. **Slander—Pettifogging actions.**

The policy of the law is to discourage pettifogging actions for slander. 7 S. C. C. 154 followed.

80 C. R. Col. 16387. October 3, 1910.

106. **Partition—Ord. No. 10 of 1863, Sec. 9—Bar.**

In an action under Partition Ordinance, section 9, plaintiff is precluded from claiming materials of certain huts on the land.

280 C. R. Galle 6059. October 5, 1910.

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107. **Res Judicata—Civil Procedure Section 207.**

If a plaintiff claims two properties, and the defendant denies his title, and the defendant's claim to one of the properties is admitted, and in consequence of the admission judgment is given for the other property only, the plaintiff's claim to the one to which he admitted the defendant's title is res judicata.

129 D.C. Galle 9801. October 5, 1910.

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108. **Executor—Travelling Expenses -Commission—Lapse of time—Civil Procedure Code Sec. 734, 551.**

1. Civil Procedure Code section 551 authorizes commission at the lower rate on cash (i. e. money not including securities for money) which can be found and taken at once by the executor, and on any property specifically bequeathed; at the higher rate on all other property which comes into his hands whether he sells it or not, for instance, on bonds, notes, mortgages, rents, profits, interest.

2. Travelling expenses, not supported by voucher, but not opposed till long after 1899, were allowed as acquiesced in.

122 D. C. Int. Galle 2948. October 5, 1910.

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109. **Promissory Note—Endorsement—Onus—Note given as security—Bills of exchange Act secs. 86 (3). 36 (3)—On Demand.**

1. When endorsement of a note, alleged to be given as mere security, is denied, the burden of proving endorsement is on the holder, but if the defendant begins, the endorsement must be taken as admitted.

2. An On Demand note is exempt from the provisions of B. Exchange Act, section 36 (3)

147 D. C. Batticaloa 3232. October 4, 1910.

110. **Costs—Administrator—247 Action—Personal liability—Second administrator—Substitution—Civil P. Code 404, 474.—Final decree—Pendency.**

1. A 247 action by original plaintiff, administrator since dismissed, was dismissed with costs, on default to appear. *Held* plaintiff personally liable for costs, and not the estate. (2 N. L. R. 242);

2. After original 247 plaintiff-administrator's dismissal, defendant seized estate property in hands of new administrator, for 247 costs, and on heir's opposition, moved to substitute new administrator in place of old. *Held*, such substitution can only be effected "pending the action," that is, before final decree. 2 N. L. R. 185, 10 All. 97 followed.

119 D. C. Int. Kalutara 2661. September 29, 1910.

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111. **Civil P. Code 538—Form 90—Bond—Secretary's successor—Security—Action.**

1. Civil Procedure Code 751 not extended to cover bonds under chapter 38 as form of bond is provided for in section 538.

2. The latter part of C. P. C. 538 which enacts that the bond can be enforced in a suit for the administration of the estate does not mean that it can be enforced in such action only.

178 D. C. Galle, 9941. Oct. 3, 1910.

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112. **Estoppel by words—Waiving registered seizure—Purchaser's knowledge.**

Where, at a land sale, a person who had registered his seizure of it intimated to another that he had abandoned his claim under the seizure, and such other person aware of the registration of the seizure, buys the land, the holder of the registered seizure is estopped by his words from disputing the purchase.

166 D. C Col. 28179. Oct. 4, 1910.

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113. **Bond—Stamping.**

Defendant objected that bond (for Rs. 14,000) had not been duly stamped as Rs. 6,000, part of the consideration, was to be advanced after the execution of the bond. The evidence shewed that the defendant had discounted his

promissory notes at the Bank, and received money for them, that is, the whole Rs. 14,000 before the execution of the bond, and that the notes were to be paid at maturity by the plaintiff, but that some of them had not been so paid at the time of the bond. Objection to stamping untenable.

113 D. C. Kaltura, 4013. Oct. 4, 1910.

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114. **Fiscal's sale—Debtor in possession after sale—Prescription—C. P. Code 289, 291—"Deemed."**

1. It is open to a judgment debtor, in possession of land sold under writ, to prove that his possession has been not under C. P. Code 289, 291, but under Ord. No. 22 of 1871.

2. C. P. C. 289, 291 only define the ordinary relations between the execution creditor and judgment debtor for the period between the fiscal's sale and the conveyance, and do not override the powers of proving adverse possession under Ord. No. 22 of 1871. The word "deemed" in C. P. Code 289 is not the same as "taken conclusively to be," but it merely creates a rebuttable presumption.

152 D. C. Nuwera Eliya, 117. Sept. 13, 1910.

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115. **Civil P.C. 428—Commission—Receiver—Chetty vilasam—Deed to Agent.**

1. A conveyance to S. as agent of a chetty firm is not necessarily a conveyance to the firm.

2. A very strong case ought to be made out, of waste or mismanagement, to justify a receiving order against a person in possession of property under a legal title.

3. Where the court finds that there are no materials upon which to appoint a receiver, it has no right to appoint a commissioner under C. P. C. 428 to inquire whether there is waste or mismanagement.

83 D. C. Int. Jaffna 7208. Setp. 14, 1910.

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116. **Right of appeal—Small Ten. Suit—Ord. No. 11 of 1882—C. R. Ord. No. 12 of 1895.**

The right of appeal given by Ordinance No. 11 of 1882 is not taken away by Ordinance No. 12 of 1895.

243 C. R. Kandy, 19252. Sept. 12, 1910.