

**Friday,
5th January, 1883**

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS

1883

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

The Council met at Government House, Simla, on Wednesday, the 12th September, 1883.

PRESENT:

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

His Honour the Lieutenant-Governor of the Panjab, K.C.S.I., C.I.E.

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

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. O. Hope, C.S.I., C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

MULTAN DISTRICT LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to declare the law in force, in certain lands which have been or hereafter may be ceded by the Bahawalpur State for occupation by the Ludus Valley State Railway be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH LOCAL BOARDS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh be taken into consideration. He said :—

"MY LORD, in moving for leave to introduce this Bill in May last, I explained to the Council that it embodied the views of the Local Government as to the degree to which the principles of local self-government already recog-

nised in the North-Western Provinces and Oudh should be extended, as to the mode in which the existing machinery of district committees should be utilized for that purpose, and as to the steps considered necessary to supplement that machinery in order to carry out the object in view. I showed that the proposals of Sir Alfred Lyall were the result of careful deliberation and of consultation with all persons likely to be able to give an opinion of value on the subject, and that those proposals had received the assent of the Government of India in the Executive Department.

“The Bill, after its introduction, was published in the usual way for the information of the public, and was referred back to the Local Government for further opinion on its details. Divisional and district officers of the united provinces were again consulted, a committee was again assembled at Naini Tal, presided over by the senior member of the Board of Revenue, and having as its members one Commissioner from the North-Western Provinces, one from Oudh, three officers of the Secretariat, of whom two had not long ago been in charge of districts, and four Native gentlemen, including a member of this Council, the Hon’ble Raja Siva Prasad.

“The opinions of the Local Government and of the officers consulted by it, the report of the Naini Tal Committee, and the criticisms of the English and Vernacular newspapers which discussed the measure, have been carefully weighed by the Select Committee; alterations, which it is hoped are amendments, have been made in the Bill in accordance with many of the suggestions emanating from these different sources; and I have to ask the Council to pass it into law to-day, after taking our report into consideration.

“I do not propose to detain the Council by discussing, or even enumerating, all the alterations which we have made. They will be found set forth at length in our report, but I shall confine myself to explaining a few of the more important changes.

“The Bill as introduced made no reference to towns in the united provinces in which Act XX of 1856 is in force. As the Council is doubtless aware, that Act provides for the appointment and maintenance of police chaukidars in towns other than agricultural villages. In the North-Western Provinces and Oudh, where small towns are numerous, many have been brought under the Act, being too small as yet to constitute municipalities. The cost of watchmen, and in some places of sweepers for conservancy purposes, is raised by an assessment on persons or property within a limited maximum. The assessment is made by a panchayat, and in no cases does it exceed double the charge for watchmen; in many it falls short of that amount. The surplus, when there is any, is spent in petty improvements in the town—generally in making or repairing roads or

surface-drains—by the Magistrate, who is directed to consult the wishes of the rate-payers. Sir Alfred Lyall considers that these embryo municipalities should be left as they are for the present outside the jurisdiction of district boards, a discretionary authority being given to the Local Government to treat exceptionally any case that may seem to call for such treatment.

“Section 3 of the Bill as amended accordingly excludes from sub-districts formed under that section, unless the Local Government otherwise directs, the portions of the district in which Act XX of 1856 is in force.

“We have made a change in the mode of appointing nominated members of district boards in those districts where the central board will consist only of delegates from the local boards. Instead of leaving such members to be chosen by the local boards, which we considered might give rise to complications and difficulty in maintaining the prescribed proportion of nominated and elected members on the district board, we have, in section 6, given to the Local Government the power of appointing the proper number of nominated members to the district boards from among the nominated members of the local boards.

“On the mode of appointing chairmen of local and district boards, a constitutional question of great importance, I dwelt at some length on the occasion to which I have before alluded, and need only now say that no change has been made on this point, and that section 14 has been very carefully drawn, so as to give effect to the proposals of Sir Alfred Lyall.

“The Bill as introduced limited the term of office of chairmen of local boards to one year, in accordance with the suggestion of the Local Government. It was believed that this would give boards the opportunity within a reasonable time of ridding themselves of chairmen who turned out to be inefficient, but the Lieutenant-Governor and many of the officers consulted, on reconsideration of the question, have urged that the term is too short; and the Select Committee agrees with His Honour that annual elections of chairmen might keep agitation constantly alive, might deter competent men from accepting office, and might tend to prevent the acquisition of that knowledge of the rules and of business which it is essential that a chairman should possess. The preponderance of argument turned the scale in favour of the later opinion, and sections 13 and 16 accordingly provide that the term of office of an elected chairman shall coincide with that of his term of office as a member of the board.

“For chairmen who are not elected the term of office will be fixed by the Local Government, but is in no case to exceed three years, the term of office for members. District boards will thus be able at reasonable intervals to review their determination not to elect their own chairmen.

“ Questions may arise occasionally in which residents of military cantonments and district committees are jointly interested, and on which it is well that each party should have an opportunity of hearing the views of the other, and stating its own. With this object, section 27 enables district boards to form a joint committee with the cantonment authorities whoever they may be. We have not specified cantonment committees, of which no mention is to be found in Act III of 1880, the latest enactment which amends the law relating to cantonments; but it will rest with the military authorities to determine in what form the residents of cantonments shall be represented in the joint committees.

“ Some of the local officers consulted took strong exception to the clause of section 24 which enabled district boards to establish and maintain relief-works in times of scarcity of famine, urging in effect that undivided responsibility was essential to the successful conduct of a famine-campaign, and that this could not be expected from district boards. They appear to have overlooked, or to have thought insufficient, the qualification in the first sentence of section 24, which applies to all that follows, ‘subject to such exceptions and conditions as the Local Government may from time to time make and impose.’ There is no doubt of the general truth of the proposition on which the objection is based, where a widespread and severe famine has to be dealt with, but periods of scarcity frequently occur which do not require the universal application of official agency; and during such periods, or even occasionally in more serious famines, the services of the boards may often be utilised with advantage in administering relief-works of a subsidiary character. To meet such cases, the provision was inserted. It was intended by it not to empower the Local Government to divest itself of the responsibility for famine-administration, but to enlarge the armoury of weapons at the disposal of the Government for employment against the common enemy. The clause has been re-drafted so as to make this clear.

“ In the Statement of Objects and Reasons, and in my speech when I asked leave to introduce this Bill, it was explained that the measure proposed to extend the financial independence of local bodies; and this object was secured by the provision which vested boards with the district fund. A suggestion of the Naini Tal Committee, supported by the Lieutenant-Governor, that ‘unexpended balances of yearly income should be credited to the boards subject to such conditions as the Lieutenant-Governor might impose,’ was carefully considered by the Select Committee, which felt compelled, for the reasons given in the Report, to reject it. Such a condition appeared to the Select Committee to be fatal to that financial independence which it is the object of the Bill to confer on every district board. Section 13 of Act III of 1878 and section 12 of IV of 1878, which left unexpended balances of the allotments at the disposal of the

Lieutenant-Governor and Chief Commissioner, have been accordingly repealed and not re-enacted.

"The sections respecting the appointment of officers and servants have been recast. As regards the appointment of the secretary, no substantial change has been made; but we have rendered subject to rules made by the Lieutenant-Governor appointments to offices requiring professional skill. The supply of candidates for professional employments is limited, and the boards to be constituted under this Bill will not, at least for some time to come, be well adapted to judge without guidance of professional qualifications and scientific acquirements, whereas the selection of competent professional servants is of the utmost importance to the success of their administration.

"Two sections (36 and 37) have been added respecting the grants by boards to their servants of gratuities, pensions and leave-allowances. Here also it was felt that boards should be enabled to resist the pressure to which they will no doubt be largely subjected, and that the law should strengthen their hands in refusing to burden the rate-payers with extravagant charges.

"We have empowered the Local Government (clause (8), section 47) to make rules for the guidance of the boards in conducting litigation, but have struck out altogether the section of the Bill as introduced which conferred upon district boards and their officers and servants the privileges which the Secretary of State for India or a public officer has under Chapter XXVII of the Code of Civil Procedure. As stated in the Report, the tendency of recent legislation in England has been to remove special protection in the case of legal proceedings against public bodies, and except that boards might possibly be placed at a disadvantage in the conduct of their legal business by the delay necessitated by the reference to Government under the rules, there appeared no good reason for continuing such protection to the boards for which we are now legislating. Such delay would, we think, be always accepted by the Courts as a good and sufficient reason for granting a postponement under the ordinary provisions of the Code.

"It also appeared to us that a provision for special notice of an intention to institute a suit against a board was uncalled for. Cases will rarely, it ever, occur in which persons thinking themselves aggrieved will not apply for redress to the boards before bringing them into a Court of law; and plaintiffs who fail to make such an application would doubtless be made, or, probably my hon'ble friend of the Chief Court will agree with me, ought to be made, to pay for their laches by being mulcted in the costs of the suit.

"I also propose to ask the Council to pass an amendment to section 40 of the Bill. Section 47 gives the Local Government the very necessary power of making rules as to the manner in which the accounts of the boards shall be

audited ; but section 40, which specifies and limits the charges and expenses to which the funds of the board can be legally applied, makes no provision for payment of the expense of auditing those accounts, so that the Local Government has the power of making rules for the performance of a duty the cost of which the board is under no obligation to pay.

"Section 47, clause (12), enables the Local Government to make rules as to the language of the board. This power was originally given to the district board, but on further consideration we adopted the view of the Lieutenant-Governor that, if this matter were left to the decision of the members, much controversy might be the result, and in some districts business might be seriously and uselessly retarded. My hon'ble friend the President of the Education Commission will, I am sure, bear me out in saying that the use of Hindí or Urdu as an official language has in many places become a burning question, and that opposite sides are frequently taken by Hindus and Muhammadans more from a desire to secure a badge of race-ascendancy than from considerations of the public convenience.

"The Bill, my Lord, will thus confer on the people of the North-Western Provinces and Oudh a substantial, though not an unsafe, measure of local self-government : it is a move, and a decided, but not a rapid move, in that direction. For a somewhat centralized system of administration of local funds, it establishes local bodies appointed mainly by such a form of election as is considered by those best acquainted with the provinces most suitable to their present condition, presided over by chairmen of their own choice, charged with the performance of definite duties, vested with the control of their own funds, and possessed of the local knowledge and local interest which it is the tendency of centralised departments in their zeal for improvement sometimes arbitrarily to override. It is not to be expected that large results will at once be apparent from the passing of the Act, or that a population composed chiefly of peasants and petty landholders, engaged in a hard struggle, for existence, of whom not quite 6 per centum have acquired the arts of reading and writing, will suddenly manifest a great amount of public spirit, will display an unselfish interest in commercial affairs and develop a conspicuous genius for administration ; but we may reasonably hope that in these respects a promising start will be made, and a steady rate of progress gradually attained, under the guidance of a body of divisional and district officers second to none in India in sympathy with, and knowledge of, the agricultural classes, controlled by a Lieutenant-Governor who has so thoroughly familiarised himself with the ideas and principles underlying the structure of Indian society."

THE HON'BLE MR. HUNTER said :—"My Lord, after the exhaustive statement made by my hon'ble friend in charge of the Bill, it is not needful that I should enter into further details connected with this measure. But a

question arose in the Select Committee with regard to which it is expedient that, by your Excellency's permission, I should ask my Hon'ble friend for a fuller explanation in Council. The Bill provides, among other things, for the Local Government making over 'the control and administration' of schools to the Local Boards. No definition is given of the class of schools thus to be transferred, but they are placed in a list ending with the words 'and other public institutions.' It may therefore be inferred that the schools to be placed under Local Boards are of the nature of State schools. But perhaps the Hon'ble Member in charge of the Bill will, at the close of this debate, make it clear that the schools to be handed over 'to the control and administration' of the Local Boards, at the discretion of the Local Government, are not intended to include aided schools, or schools managed by European or Native associations or by similar bodies. It would be particularly unfortunate at the present juncture, if an unfounded surmise should get abroad that Government intends to interfere in any way with private enterprise in education. From what passed in the Select Committee, I am aware that there is no such intention; and I have a perfect confidence that the Local Government will prevent any injustice by the rules to be framed under this Act. I also agree that it is inexpedient to attempt a definition of the schools now to be transferred to Local Boards, as the whole question of popular education and of educational legislation is shortly to come before your Excellency's Government. Nor do I ask for any pledge in regard to schools which the Boards may themselves establish. But it seems desirable that it should be made clear to managers of schools, and to European or Native associations engaged in school work, that the present Bill will not infringe on their private rights. I shall, therefore, with your Excellency's permission ask my Hon'ble friend for an assurance that nothing in this Bill is intended to interfere with the powers at present exercised by individual managers, or by public associations, over aided or other non-Government schools; or to transfer their management to 'the control and administration' of the Local Boards.

"Two objections of a more general character have been brought against the control and administration of those Boards. On the one hand, it has been urged that the powers entrusted to the Boards go too far in the direction of local self-government; on the other hand, it is complained that they do not go far enough. As an independent member of the Council, not pledged by responsibilities to your Lordship's Executive Government, I desire to state my own opinion in regard to these two categories of complaint. The first class of critics seem to suppose that this and similar measures now before the Council, have been modelled upon institutions, and are built up on theories, foreign to India. But if there was ever a series of measures free from the charge of *doctrinaire* legislation, it is the series to which the present Bill be-

longs. Every one of that series has been based upon existing institutions, and in each one of them the development of those institutions is strictly carried out on lines laid down by the District Officers and the Local Government. The Bill for the Central Provinces starts from the village-school committees, characteristic of that part of India, and links them through Local Boards with the District Councils. In Burma, such rural mechanism is comparatively wanting and the Burmese Bill now before the Council, practically confines its scope to municipalities or townships and the areas attached. In the Panjab, different tracts vary widely in their circumstances. The Panjab Bill refrains, therefore, from any attempt to bring that Province under the uniform provisions, and it allows the largest liberty to the Local Government in regard to the rules by which the system will be worked in each district. The North-Western Provinces form a more homogenous territory. But, while the provisions of the present Bill are consequently made applicable to them as a whole, these provisions are based upon local experience and local advice collected from the separate Districts. It embodies the views arrived at by the North-Western Government upon the recommendations of a Committee of its own District Officers. It has been carried through this Council by a gentleman of exceptional experience in the management of North-Western Districts. At each stage of the Bill, the opinion of the Lieutenant-Governor of the North-Western Provinces has been sought; and to that opinion more than one member of the Select Committee has, on particular clauses, yielded his own. Whatever may be the defects or the merits of this Bill, they are not the merits or defects of *doctrinaire* legislation.

"The Bill accepts the existing system of District Boards in the North-Western Provinces, and provides them with Local Boards as agents acting under them. But, in thus giving hands to the District Board with which to do its work, we are told that the Bill has deprived the District Board of its head. The meaning of this is, that the Chairman of the District Board will no longer be necessarily an official appointed by Government, but may, under certain conditions, be elected by the Board itself. Those conditions, however, afford ample security against evil results from so moderate a change. In the first place, a District Board must, at a meeting of not less than three-fourths of its whole members, determine whether the Chairman shall be elected by the Board or be appointed by the Local Government. The condition requiring an attendance of three-fourths of the whole members, although an effective safeguard against hasty or partial elections, seemed, to me at any rate, to be unduly stringent. But, after the careful consideration given to this question by the Local Government, and as local experience shows that this safeguard can be practically carried out in the North-Western Districts, I think that no true friend of self-government should withhold his assent from a condition which those best

acquainted with the North-West believe to be requisite for the successful working of self-government in those Provinces. The second safeguard consists in the circumstance that, when a Chairman has been elected, the approval of the person so selected rests with the Local Government; and, in the event of an unsuitable election, the Local Government shall appoint as Chairman such person as it thinks fit. The third safeguard resides in the right reserved to Government of nominating a portion of the members of the Local Board, not exceeding one-fourth of the whole. The fourth safeguard is to be found in the provision that every resolution passed by a District Board shall, within ten days, be forwarded to the Magistrate of the District. A fifth safeguard rests in the efficient but well-guarded powers of inspection, suspension and control vested in the Commissioner of the Division, and eventually in the Local Government. I do not think that any one can carefully read this Bill without the conviction that its provisions represent the best results of local experience, and that they take ample security against any dangers which might arise from the increased responsibilities now assigned to the District Boards.

“Those responsibilities are of a very real character. The list of duties made over to the District Boards include much of the daily work of rural administration. The evils of the undivided responsibility borne by Indian officials, have long been recognised, and have received fresh illustration in the most able of popular accounts of India by Mr. J. S. Cotton, which has just reached this country. But in regard to the duties and powers of District Boards, this Bill has been based on the past experience of District officers in the North-West, not upon theories or first principles. The construction and maintenance of public roads, wells, waterworks and certain local buildings; the management and inspection of schools, hospitals, markets, cattle-pounds, staging-houses and public ferries; the regulation of encamping grounds for travellers; the licensing of stage-carriages; the conduct of local works likely to promote the public health, comfort or convenience; and the relief of the people in time of scarcity or famine, are among the duties entrusted by the Bill to the District Boards, under rules and conditions to be laid down by the Local Government. Some of these duties have already been conducted by District Boards; but hereafter the District Boards will have an inducement to efficiency and economy which they did not possess before. For, any balance unexpended at the end of the year from the sums allotted to them by the Local Government, will no longer be swept back into the Provincial Treasury. Such balances will form a fund to enable the District Board still more efficiently to carry out its duties; and the more economically it performs its work each year, the better will be its financial position at the beginning of the next.

“With the responsibility for many branches of the rural administration, will come, I believe, an increased appreciation of the difficulty of the task. The

British Government has, during the past twenty years, accepted responsibilities for the continuous welfare of its subjects which no previous Government of India admitted. The State now interposes its efforts between the calamities of nature and the people. When it fails in its almost insuperable task, the people are apt to blame, not the calamities of nature, but the efforts of the State. No one has so clearly described the result of this condition of things as the present Lieutenant-Governor of the North-Western Provinces. 'Cholera, famines and great sea-inundations,' writes Sir Alfred Lyall in one of his brilliant essays, 'when they are not made the text of invectives against the British Government, do at least, in some confused way, bring upon it great discredit; not apparently from the idea that the gods are angry with the Government, but upon the dim feeling that the Government has undertaken the gods' business and is breaking down.' The best remedy for such a state of things is to make the people themselves share the difficulty of the task; and I believe that the Bill to be passed to-day for the territories over which Sir Alfred Lyall presides, is the most important legislative step yet taken in that direction.

"We have lately heard much of the great influence exercised by the small but highly educated Native communities in the towns. It is complained that that influence is altogether disproportionate to the number of the persons who wield it, or to the pecuniary stake which they have in the country. Without pronouncing as to the justice of this view, I think that the present measure affords a new and valuable guarantee against the evil complained of. For this Bill creates effective mouthpieces for public opinion outside the great towns, such as the rural population never possessed before: Public opinion exists in the village as it does in the town; but under previous Indian Governments the village was separated by wide untraversed tracts from the ruler. This separation has stamped itself in the language of the people. The terms for the village and its internal life are almost everywhere taken from the vernacular Indian speech; but beyond the village stretched the Persian *zila* or District, and beyond the *zila* the Persian *subah* or Province, whose capital formed the residence of the remote Government or Persian *sarkar*. My Hon'ble friend in charge of the Bill, has mentioned that the language to be used by the Local Boards is a burning question at the present day; that is to say, whether the language is to be the native Hindi of India, or the naturalised Urdu derived from its former foreign rulers. He has dealt, I think, very wisely with that question. But the Bill which he has to-day conducted to a successful issue, goes to the root of the evil which bequeathed to us this and similar difficulties in the rural administration. Indian history discloses scarcely anything of the nature of a political institution between the village and the Central Government; and after the downfall of each successive dynasty the village alone survives,

raising its head above the waste of anarchy like the Lower Bengal hamlets in time of flood. This absence of cohesive institutions has always been a source of political weakness in India. The present Bill and the series of measures to which it belongs takes the village, the indestructible unit of the Indian social system, and links it to the Central Government. My Hon'ble friend has truly said that the progress of local self-government must at first be slow. But the progress, such as it is, will be steadily in the right direction. The peasant landholders and the village heads will be represented on the Local Board. The Local Boards will, either directly or by election, constitute the District Board; and the District Boards will be in immediate communication with the responsible representatives of the Government. The old indestructible element of organization in India, the village, will no longer stand out as a solitary unit, but will be incorporated into a well-knit system of rural administration.

"I think the local Government of the North-Western Provinces, as well as the Hon'ble Member in charge of the Bill, is to be congratulated on the passing of this measure. I believe it to be an honest effort to carry out the policy of local self-government laid down in your Excellency's Resolutions, and to carry out that policy with due safeguards against the risks which must attend all administrative changes in India."

His Honour the LIEUTENANT-GOVERNOR said:—"My Lord, I was not aware that any difficulty had arisen in connection with those provisions of section 24 of the Bill which refer to the control and management of schools made over to local bodies. No mention of any such difficulty has been made in the report of the Select Committee, and therefore I have not come prepared to discuss the principle at any length. Nor do I clearly understand what is the particular difficulty in respect to aided schools to which my hon'ble colleague Mr. Hunter has referred. Perhaps when the Hon'ble Member in charge of the Bill comes to answer the appeal which has been made to him, some further light may be thrown upon the subject. But if it is asked that a pledge be given that the clause in the Bill shall apply only to Government schools and in no respect to aided schools,—that is to say, that grants-in-aid are to be given only from provincial finances and not from local funds, that all examinations in aided schools are to be conducted by provincial and not local establishments, and that local boards and committees are to have no concern with aided schools,—I sincerely trust no such pledge will be given. As far as the Panjab is concerned, I distinctly contemplate, under the provisions of the Panjab Bill, now before a Select Committee of this Council, to give certain powers to local boards in connection with aided schools, as well as Government schools. In regard to the Bill now before us, I think that the clause in the first part of section 24 which makes the provisions of the section subject

‘to such exceptions and conditions as the Local Government may, from time to time, impose,’ provides an ample check against any arbitrary or unwise interference with aided schools. Altogether, the matter is one which should be left to the discretion of the Local Government.”

The Hon’ble SIR STEUART BAYLEY said :—“My Lord, I cannot anticipate the answer which my hon’ble friend Mr. Quinton will give to the question asked him by the Hon’ble Mr. Hunter in regard to the control and management of aided schools, but I am of opinion that it is undesirable that any definite pledge should be given in their case. It seems to me that there is a principle underlying the question which may enable the Local Government to come to a decision in the matter ; and that, in regard to schools for the higher education, where these schools are in the main private institutions and can only be called public in consideration of the grant-in-aid they received, they would hardly come under the wording of the section. Where, for instance, private persons or associations have invested time and money in starting a school on the faith of a system of grants-in-aid administered by Government, there is a *prima facie* reason for not making over such schools to local bodies without the consent of those persons and associations. I think that might be the guiding principle, but at the same time much must be left to the discretion of Local Governments, and it would be unsafe to give anything like a definite pledge.”

The Hon’ble MR. QUINTON said :—“The question raised by my hon’ble friend Mr. Hunter is no doubt one reasonably suggested by the wording of section 24 of the Bill, and, as it also arises in the Municipal Bill, I shall deal with both at the same time.

“It was found impossible to lay down by law a precise classification of the schools which should be placed under the control and administration of the boards, and the decision was accordingly left to the Local Government, while we indicated by a general qualification in the section the principles on which such decision should be based.

“The section runs—‘Every district board shall, so far as the funds at its disposal will permit, but subject to such exceptions and conditions as the Local Government may, from time to time, make and impose, provide, among other things, for the establishment, management, maintenance and visiting of schools.

“It was not the intention that boards should have anything to do with schools other than those maintained or aided from the district or municipal funds.

“Schools which in future accept grants-in-aid from boards will of course be bound by the conditions on which such grants are given, and must make their own terms.

"Schools which at present receive grants-in-aid from Provincial funds are in a different position. Government may find it convenient to transfer the charges for such grants-in-aid to the funds of the boards; but, as the schools were often established on the faith of the continuance of the grants in-aid by Government, as stated by my hon'ble friend Sir Stuart Bayley, the latter would doubtless, before taking action, we presume, consult the wishes of the managers of the institutions, and, if they objected to being rendered subject to the control of the boards, would probably either not make the transfer at all, or attach to it such 'exceptions and conditions' as would satisfy the reasonable objections of the proprietors or managers of the schools. I cannot give any assurance beyond this. We have left the matter to the Local Governments with every confidence that the discretion will not be abused."

The Hon'ble MR. ILBERT said:—"My Lord, we are much indebted to our hon'ble friend Mr. Quinton for the great care and skill with which he has conducted this measure through Council, and for the fulness of his explanations. It clearly appears from what he has said that, with respect both to the details and to the principles of this measure, we have adhered as closely as possible to the views and suggestions expressed by the Local Government; and I have every reason to believe that this measure will lay down the lines of a useful and effective system of local self-government. To what has been already said, I need only add a very few words, and those will be in explanation of the financial clauses of the Bill. In defining the funds and sources of income to be placed at the disposal of local boards, we have endeavoured to keep in view three considerations. First, for the purpose of securing the requisite amount of elasticity in the adjustment of provincial and local revenue and expenditure, we have found it necessary to reserve to the Local Government a certain amount of discretion with regard to the funds to be allotted. We have done this by providing in section 38 of the Bill that the arrangements specified in that section are to be subject to such conditions and exceptions as may be made and imposed by the Local Government. Secondly, it has been thought desirable to give the Local Government, by express words, the power of reserving from the local rates fund such amounts as may be necessary for expenditure on matters of the district which it may be necessary to place under provincial as distinguished from local administration. We have provided for this by a sub-section, which will be found in section 56 of the Bill, amending the Local Rates Act of 1878. Whilst conferring these discretionary powers, we hope and believe that they will be exercised in accordance with fixed rules, and in such a manner as not to cripple the independence and responsibility we intend to give to local bodies. In connection with this point, I have to express my entire concurrence in the principle of leaving unexpended balances in the hands of those bodies. Lastly, it is necessary that local bodies should pay the expenses of such services

as may be rendered to them by the officers of Provincial Departments, and we have accordingly charged the district fund with the payment of such amount as may be held to be equitably due in return for such services."

His Excellency THE PRESIDENT said:—"The remarks which have been made by the hon'ble members on this and previous occasions at the several stages of the Bill have so fully explained the objects and purposes of this and the sister measure which will be passed, I trust, in a few minutes, and I myself have had so many occasions of expressing my views on the question of local self-government in India, that I need not now occupy the time of the Council. But I cannot let those two Bills pass without expressing my hope that they will prove to be measures calculated to make a substantial advance in the development of local self-government; and it is a great satisfaction to me that these Bills should be passed by this Council during the time I have the honour to preside over it."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that, in section 40, sub-section (1), after the words "payment of" the following be inserted, namely:—"the expenses incurred in auditing the accounts of the district and local boards, and."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the North-Western Provinces and Oudh be taken into consideration. He said:—

"The printed report of the Select Committee enumerates at length the changes, except amendments in matters of minor detail, which have been made in the Bill as introduced, and gives briefly the reasons for each. It also states that, in making those alterations, the Select Committee was guided by the opinions of the local authorities, which in the case of a Bill of this nature appeared to be specially deserving of attention.

"The changes as regards terms of office of chairman of the board, the appointment of joint committees with the cantonment authorities, the language of the board and the appointment of officers and servants, the grant of pensions, gratuities and leave-allowances and special privileges in conducting

litigation, correspond with those made in the Local Boards Bill; and, as I have dwelt on the reasons for these changes in the remarks I have just made on that measure, I need not weary the Council by going over the same ground.

"Towns in which Act XX of 1856 is in force were not alluded to in the Bill as introduced, but, as the Local Government is enabled to apply the Municipalities Act when passed to any town or group of towns, we have provided that, when a town in which Act XX of 1856 is in force is brought under the Municipalities Act, the former enactment shall cease to have effect therein, and every panchayat constituted under it for the local area in which such town is situated shall cease to exist. The maintenance of a proper establishment for watch and ward will then become the duty of the municipal board.

"The maximum term of office of members of the board was originally fixed at two years, but the local authorities and Native gentlemen consulted considered this period too short, especially where the system of retirement by rotation is in operation—a system which has worked satisfactorily and is well understood. In deference to these views, we have extended the period to three years.

"The Bill as introduced practically allowed a board to elect as its chairman any person whatever: 'one of its own members or some other person' was the language used. Exception was taken to this as throwing open the chairmanship in a manner inconsistent with ordinary rule and practice elsewhere, and as allowing a person who had not stood for election, or who, having stood, had not been elected, to be brought in to preside over the board's deliberations as chairman. It was urged that, although the power might occasionally be used to bring in a man of peculiar ability or aptitude, the probability was much stronger that it might be misused for purposes of private interest, and that, it might foster dissension, especially if a candidate who had been defeated at the election for board membership were nominated.

"The Select Committee has given full weight to these considerations; but, looking to the fact that *all* elections are subject to the approval of the Local Government, has decided not to narrow the field from which chairman may be chosen, except by the single restriction that they must possess the qualifications which would enable them to stand for election as members of the boards. These qualifications will be prescribed by rules made by the Local Government under section 9 of the Bill. This will prevent the election of an outsider who has no interest in the municipality, while the Local Government will be able, by withholding its approval, to cancel the election to the office of a person obviously improper or unfit.

"To prevent municipal administration coming to a standstill by the neglect of a board to fill up the chairmanship within a reasonable time after the occurrence of a vacancy, we have enabled the Local Government to appoint a chairman when the office is allowed to remain vacant for three months. The control of the ordinary business of the committee will rest in a great degree with the chairman, and inconvenience to the public would result from its being interrupted. I shall leave to my hon'ble and learned friend Mr. Ilbert to explain the grounds on which we have altered the sections giving power to the board to make rules regarding nuisances. The principle involved is one of general application, and will doubtless regulate litigation on the point in other provinces than those to which this Bill relates. No power was given to the Local Government in the Bill as introduced to alter the limits of a municipality. The law now in force, Act XV of 1873, section 5, does enable the Local Government to effect this by notification, and on the suggestion of the Government of the North-Western Provinces and Oudh we have inserted a section (74) to make provision for future cases in which it may be necessary to alter municipal limits.

"The object of this Bill, my Lord, like that of the Bill just passed, is to develop in the direction of local self-government institutions already in existence; and I may say that the institutions to which it applies have attained a much more advanced stage of development, and call for much less radical changes, than those with which we were dealing earlier in the day.

"Some degree of local self-government in municipal affairs existed in the North-Western Provinces since 1850, when Act XX of that year enabled residents of towns to apply for the extension of the Act to the town in which they lived, and to form committees for the purpose of taxing themselves and administering the funds raised by such taxation.

"As to Oudh, a Municipal Act for Lucknow and other towns to which it might be extended by the Governor General in Council was passed in 1864; and the Governor General in Council was subsequently empowered to extend to any towns in Oudh the Panjab Municipal Act of 1867. In 1868, a new Municipal Act was passed for the North-Western Provinces, and was keenly debated in this Council; the opposition, headed by Sir H. Durand and Sir W. Mansfield, being opposed to granting to the Lieutenant-Governor power to apply the Act to any town irrespective of the wishes of the inhabitants and to the preponderance on the committee of official members, and the influence which it was likely they would exercise.

"Finally, in 1873, a fresh Act, No. XV of that year, being the law now in force, was passed for the North-Western Provinces and Oudh, in order to

provide for municipalities in Oudh governed by the Panjab Municipal Act, then about to expire, and to make alterations and amendments in some small matters, to which experience had shown to be required, to the North-Western Provinces Act, regarding which the mover, Mr. (now Sir) Arthur Hobbhouse, stated his belief that it had worked in a very satisfactory manner. By this Act all municipalities in both provinces are now regulated, and a brief account of its operation, taken from the printed Administration Report of the North-Western Provinces and Oudh for the year ending on the 31st of March, 1882, may interest the Council, as showing the stage of advancement which municipal institutions have there reached.

“There were in that year in the United Provinces 109 municipalities, with a population slightly in excess of 3,000,000. Members were appointed in some places by election only, in others by nomination only, and in others again by election and nomination combined. There were 438 *ex-officio* members, against 1,022 nominated or chosen by election. An income of Rs. 23,30,837 was raised by taxation, of which 88 per cent. was derived from octroi-duties, and the average incidence of taxation per head was 12 annas.

“The first charge on the net income was for police, of which an establishment consisting of 2,802 constabulary and 4,006 non-constabulary forces was entertained. I may say here that, by the present Bill, municipalities will be entirely relieved from the cost of the former, under the obligation of devoting the funds thereby set free to purposes of education, medical relief and the like. Conservancy, maintenance and construction of roads and buildings, drainage, sanitation, charitable and educational grants, absorbed most of the remaining funds.

“Any one conversant with the condition of the towns and cities of Upper India five-and-twenty years ago, who compares it with their present state, must admit that the improvement effected by municipal administration in matters affecting the public health, safety and convenience is immense. I may perhaps be permitted to mention the cities of Lucknow, Allahabad and Cawnpore, of which I have personal knowledge, and in the two former of which a considerable portion of my official life has been spent. The cities are now distinguished by wide and handsome streets, excellent roads, comparatively good drainage, which is being daily improved, and efficient conservancy all brought about by municipal committees, in whose proceedings some of the leading and most intelligent citizens took an active part. In Lucknow, my friend Nizam Agha Ali Khan Bahadur, commonly known as the Agha Sahib, and the late Daroga Wajid Ali, so conspicuous for his loyal services to the British Government during the Mutiny, interested themselves above others in municipal affairs, and rendered invaluable assistance in municipal administration,

“Similar public spirit to that manifested by these gentlemen and others was not universal, and the system, under which the satisfactory results I have just alluded to were obtained, depended largely for its success in the first instance on the presence on committees of *ex-officio* members. The number, however, of non-official residents of towns and cities who evince an intelligent interest in municipal business has been gradually increasing, and it is believed that the time has now come when the co-operation of officials on most municipal boards is no longer needed. The provisions of the present Bill have accordingly been framed with the view of giving to residents of the cities and towns to which it applies the sole management of their own municipal affairs, under rules for securing due attention to the public health, safety, convenience and interests generally—objects which no Government can suffer to be neglected. Some few places will still require the guiding hand of an official president, and in all a judicious exercise of the control from without established by the Bill cannot be safely dispensed with; but, with these exceptions, the State practically withdraws from the management of municipal affairs, in the expectation that the boards will prove themselves equal to the fresh responsibilities thrown upon them, and carry on with zeal and efficiency to ever advancing stages of development the system of municipal government, which has already conferred such substantial benefits on the United Provinces.”

The Hon'ble MR. BARKLEY said:—“My Lord, there is only one point to which I wish to refer in connection with this Bill. I have no desire to oppose the passing of the Motion now before the Council, but it will be observed that I have qualified my assent to the Report of the Select Committee by expressing a doubt whether it was expedient to dispense with the notice now required before a suit can be brought against a committee or its officers for compensation for any thing done under the Municipalities Act. This question is likely to arise again with reference to other Bills now before this Council, and I may therefore briefly explain my reasons for considering it desirable that the law should require notice of such suits to be given.

“The principal reason is the tendency of such notice to reduce the number of cases in which municipal committees need be concerned as litigants. The object of the notice is to give them an opportunity of offering amends out of Court; and section 43 of Act XV of 1873 goes on to provide that, if sufficient amends are tendered before suit is brought, the plaintiff shall not recover. A similar provision is to be found, I believe, in all Municipal Acts now in force throughout India, those of the Presidency-towns included, and there is reason to believe that it has often led to claims being adjusted out of Court. It is said in the Report that the provisions of the Code of Civil Procedure on the subject are sufficient; but the only notice before suit required by that Code is that pro-

vided by Chapter XXVII before suing Government or public officers. It was decided in Committee that it was not desirable to make Chapter XXVII of the Code, as originally proposed in the Bill, applicable to municipal committees; but while I agree in considering the provisions of that chapter unsuitable, I still think that it would have been desirable to retain a provision similar to that contained in section 43 of the existing Act. Claims may of course still be adjusted out of Court, either after suit, or, if sufficient notice is given, before suit; but in cases of the former description the costs of bringing the suit must be paid by one party or other; and, if no notice is prescribed by law, cases of the latter description will be rare, as formal notice before suing is rarely given in India, and a plaintiff will think that he has done more than is necessary if he has told a member or servant of the committee that he intends to sue.

"My hon'ble friend Mr. Quinton has suggested that the Court would decree costs against the plaintiff if no formal notice had been given, but it is quite possible that the Court might think it harsh to throw or costs upon the plaintiff if he had given an informal warning to a member or servant of the committee.

"It appears that a similar provision which has long existed in English law has recently been found unnecessary, but the circumstances of England are very different from those of the interior of India, and I am unwilling to deprive municipal boards, which are bodies appointed to discharge a public duty and are, like individuals, liable to err, of a protection which is given to public officers.

"A minor reason is that, as the protection has hitherto been given by law to municipal committees, it does not seem desirable to withdraw it just at the time when it is proposed to give them a more representative character and place them in a more independent position than before. This would not be a very strong reason if the protection served no useful purpose, but, from what has been already said it will be seen that I think, it is beneficial.

"But as the Local Government has been informed that the Select Committee did not think that Chapter XXVII of the Procedure Code should be made applicable, and has not suggested that a provision similar to section 43 of the existing Act should be substituted, and the subject is one closely connected with local administration, I have not thought myself called upon to propose an amendment."

The Hon'ble MR. ILBERT said:—"My Lord, my hon'ble friend Mr. Quinton has asked me to explain, somewhat more fully than it has been found possible to do in the Report of the Select Committee, the principles by which we have been guided in framing section 55 of the Bill, which delegates to municipal

authorities the power to frame bye-laws. It is obvious that a power of this kind ought to be very carefully guarded and its exercise as carefully watched. Experience has shown that similar bodies have not unfrequently framed bye-laws which are either unnecessary, vexatious or in excess of their powers. This remark, I need hardly say, applies not only to India, but also to England. For the purpose of preventing similar abuses, it has been suggested that we ought to take away from municipal authorities the power of framing bye-laws, except those which are necessary for the regulation of their own proceedings, and to insert an exhaustive list of acts and omissions punishable within municipal limits, and of the penalties to be imposed for them. I do not think, however, that such a suggestion is practicable. I have examined carefully the different Indian Municipal Acts, and I find that, whilst they differ from each other materially with respect to the extent to which they define offences in the Act itself, or leave them to be defined by bye-laws, they all agree in reserving to local authorities a supplementary power of framing bye-laws for the prevention and punishment of petty municipal offences. The English Public Health Act, which goes into greater detail than is usual in Indian Acts, is framed on similar principles, and reserves to local sanitary authorities extensive powers of making bye-laws. This is a matter with respect to which I should be disposed to leave a reasonable amount of discretion to the Local Governments. I have not yet had an opportunity of minutely examining the Panjab Municipal Bill, but it appears to have been framed with great care, and it contains provisions apparently borrowed from the Bombay, Bengal and Madras Acts, which specify in some detail the offences punishable under the Act. The North-Western Provinces Bill, however, has been framed on somewhat different lines, and the reason for this difference probably is, that the North-Western Provinces Government have already framed a model Code of bye-laws, which, as I understand, has been put in force, with local modifications in a good many municipalities in the Province, which has been found to work well, and which, I presume, the Local Government would wish to continue in force with as little alteration as possible. Under these circumstances, the Select Committee have not thought it necessary to insert in the Bill provisions which had not been suggested by the Local Government, and the suitability of which they would not have had sufficient opportunity for considering. At the same time, we thought that the bye-laws clause which appeared in the Bill as introduced was susceptible of improvement. This clause appeared to me to be open to two objections. In the first place, it gave to municipal authorities the power to interpret the term 'public nuisance'—a power which should properly be left to the Courts of law; and secondly, it gave, by implication, to those authorities the power of creating offences punishable by so heavy a penalty as a fine of Rs. 200. I have gone through the offences which are punishable under the model Code of bye-

laws now in use in the North-Western Provinces, and I find that, with few exceptions, the offences dealt with under them can be brought under one of two categories. They are either offences which might properly be treated as belonging to the same class as those defined as public nuisances by section 268 of the Penal Code, or else they are offences which might be appropriately dealt with under that chapter of the Code (Chapter XIV) which contains this section, and which is headed 'Of offences affecting the public health, safety, convenience, decency or morals.' We have accordingly, by the first sub-section, given a general power to municipal authorities to frame bye-laws for the prevention and punishment of offences belonging to either of these two categories, and we have added sub-sections dealing specifically with offences about which doubt might be entertained whether they were sufficiently covered by the general words of the first sub-section. And, in order to avoid an artificial extension of the term 'public nuisance,' we have not given that name to offences against municipal bye-laws as such. Of course, there are many offences which might be punishable both under the Penal Code and under a municipal bye-law. In these cases, the prosecutor will have the option of proceeding either under the one or under the other, subject to a proviso, which will be found in section 70 of the Bill, and which provides that no person shall be punished twice for the same offence.

"Then, we have provided sundry safeguards against the possibility of municipal committees exceeding or abusing their powers. In the first place, the maximum penalty for an offence against a municipal rule is limited to Rs. 50, with a proviso for the case of continuing offences; next, a draft of the proposed rules must, under section 68, be published, and objections and suggestions from persons interested must be invited before the rules are passed; and, lastly, the rules are made subject to the approval of the Local Government. This procedure is substantially the same as that prescribed in the case of bye-laws under the English Public Health Act. All such bye-laws require the sanction of the Local Government Board, and the course adopted by that Board in dealing with such bye-laws is this. They have drawn up a model Code of bye-laws containing all such provisions as have been shown by experience to be necessary and sufficient, and they do not allow local authorities to depart from this model except for special reasons to be assigned in each case. I think that, if Local Governments in India adopt a somewhat similar course, and employ a reasonable amount of care in framing their model Code of bye-laws, there can be no ground for apprehension that the powers entrusted to municipalities are likely to be abused or exceeded.

"So much for bye-laws. Next, as to the point which my hon'ble friend Mr. Barkley has raised, with respect to the propriety of omitting the provision which requires a month's notice before the institution of legal proceedings against

a municipal committee. As my hon'ble friend Mr. Quinton has explained, we have, in omitting this provision, followed the most recent precedents of English legislation. Protective clauses of a similar kind to that which we now propose to omit are to be found scattered up and down in great abundance in the English Statute-book. I once had occasion to make an exhaustive examination of these clauses for the purpose of seeing whether they could not be enacted once for all in a generalized form. I found that they had a long history, and that some of the forms now in use contained provisions which dated from the time of James I, and had been copied mechanically from one Statute into another, though they had long ceased to be of any practical utility. When the English Army Act was being framed, the most suitable form of such a clause was carefully considered, and the conclusion came to was that the requirement of a month's previous notice of action was likely to do more harm than good, and had better be omitted; the reason being that no person of ordinary prudence begins legal proceedings against an individual or a body of individuals for acts done under colour of statutory authority without taking the precaution of previously sending a lawyer's letter or in some similar way affording an opportunity of settling the matter without litigation; and that, if any person was so foolish as to dispense with this precaution, he would probably be mulcted in costs, even if he won his case. It appeared to me that, notwithstanding the differences between English and Indian circumstances to which Mr. Barkley has referred, the same considerations applied in India also; and, though I am fully impressed with the importance of protecting persons in office from vexatious litigation, yet I am very reluctant to increase the number of formalities of which proof must be furnished before a suit can be maintained, or to make any addition to the number of the existing opportunities for delay and procrastination which our civil procedure affords. Moreover, if such a provision as this is really required, it ought to be embodied in a general Act, which should grant the necessary kind of protection to all persons acting under statutory or other similar authority. These were the reasons which induced me to advise the Committee to omit the clause in question from the Bill."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PUNJAB MUNICIPALITIES BILL.

The Hon'ble MR. BARKLEY moved that the Bill to make better provision for the organisation and administration of Municipalities in the Panjab be

referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Ilbert, Hope, Hunter and Quinton and the Mover. He said :—" My hon'ble friend Sir Steuart Bayley has mentioned to me that the Hon'ble Mr. Gibbs would shortly relieve him of the charge of the Home Department, and ask me to substitute Mr. Gibbs' name for his. I have altered the Motion accordingly, and if this alteration is not objected to, I desire to move that the Bill be referred to a Select Committee consisting of the hon'ble members abovenamed."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 19th September, 1883.

D. FITZPATRICK,

SIMLA ;
The 18th September 1883. }

Secretary to the Government of India,

Legislative Department.