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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1880.

WITH INDEX.

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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 on Friday, the 21st May, 1880.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir J. Strachey, G.C.S.I., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
Major-General the Hon'ble A. Fraser, C.B., R.E.
The Hon'ble J. Gibbs, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble C. Grant.

MULTÁN DISTRICT LAWS BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to declare the law in force in certain lands annexed to the Multán District.

The Hon'ble MR. COLVIN also moved that the Report be taken into consideration.

He said that the object of this simple Bill had been already sufficiently explained to the Council. All that he need add to that explanation on the present occasion was that the Select Committee had made no change in the Bill since its introduction. Inquiry had been made in order to ascertain whether any validating clause would be necessary in respect of things done during the time which had elapsed between the cession of this territory in 1872 and the time when the present Bill would become law. It had been found, however, that no such clause was required, and that the Government of the Panjáb did not wish any other change to be made in the Bill. Accordingly the Committee recommended that it should be passed in the shape in which it had been introduced.

His Honour the LIEUTENANT-GOVERNOR remarked that the Bill was very short and simple, and the object of it appeared perfectly clear from the wording of it. It had been found necessary to enact a law to provide that jurisdiction

might be legally exercised over the lands of the Indus Valley State Railway transferred from Baháwalpur territory to the Multán District; and the Bill as it stood met that want completely.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT moved for leave to introduce a Bill to consolidate and amend the law relating to Land-revenue and the jurisdiction of Revenue-officers in the Central Provinces. He said this Bill, and the Tenancy Bill which he would subsequently move for leave to introduce, were of a kind familiar to the Council, several similar measures having been enacted in the course of the last few years. As in those cases, the Land-revenue Bill would provide for the assessment and collection of the land-revenue, and for the maintenance of the machinery required for those purposes; whilst the Tenancy Bill would complete the scheme of revenue-administration by regulating the relations of landlords to tenants, and the fund out of which the revenue was ultimately paid.

The Land-revenue Bill would, however, differ from most of its predecessors, and indeed from the form in which it was itself at first cast, in being limited as closely as possible to the subjects just enumerated, and so in excluding much matter of a class which, though usually treated as belonging to Revenue-administration proper, really lay quite apart from it. Whether it was because we inherited some of the traditions of the Native rulers whom we succeeded, or because the position of the Government, as partner in so vast an estate, tended somewhat to cast its other relations into the shade, the fact was notorious—that the collection of land-revenue had always been allowed in this country to stand forward as the representative function of the executive, as might be exemplified in the common designation, so puzzling to English ears, of the chief administrative official of a district as the "Collector", or in the recognized division of the public services into two branches, the Judicial and the Revenue Departments, the latter embracing, as was well known, almost every miscellaneous duty which could be imposed on an executive official, such, for instance, as supervising girls' schools, or looking after the board and lodging of travellers, or even providing fireworks for fairs. Probably for that reason few Land-revenue Acts were quite free from some admixture of foreign matter, and in the Central Provinces Revenue Bill, as it first stood, there were chapters on pre-emption, partition, Government

wards and irrigation-tanks, all of which had now been transferred to a separate Bill. As Land-revenue administration pure and simple was a subject on which the authorities were pretty well agreed, its principles having been settled by a long course of experience, the transfer would not only shorten the Revenue Bill, but also, by excluding from it most questions on which difference of opinion was likely to arise, would, he hoped, have the effect of accelerating its passage through the Council.

How important it was that the Revenue Bill, as well as the Tenancy Bill, should be passed without avoidable delay would, he thought, be apparent if he explained briefly the existing condition of the Land-revenue and Rent Law in the Central Provinces. In doing so, he would endeavour to pass as lightly as possible over all details, geographical and historical, which might be found in any ordinary gazetteer or book of reference.

The Central Provinces, as was well known, were made up of various fragments, including a large division of the North-Western Provinces, a district from Central India, another from Orissa, the remains of an extinct Marátha kingdom, and a wild strip of territory from Haidarábád. For present purposes it would, perhaps, be sufficient if he confined his remarks to the two larger of these component portions, formerly known as the Nágpur Province and the Saugor and Nerbudda territories.

The Saugor and Nerbudda territories had now been under British rule for rather more than 60 years, during the first two-thirds of which they were tossed about from Administration to Administration. They were originally divided between the political authorities of Nágpur and Central India, but were soon united under a Governor General's Agent of their own. From his charge they were transferred to the Government of the North-Western Provinces. Then broke out the rebellion of 1842, and the Governor General, Lord Ellenborough, took them into his own hands. In a few years, however, they were restored to the North-Western Provinces, and lastly, in 1861, they were incorporated into the newly created Central Provinces.

Thus, in little more than forty years, there were five changes of administration, with an average duration scarcely exceeding eight years to each. It would readily be conceived that in such circumstances there was little opportunity for the law to settle down and consolidate. The spirit of the Regulations was, it was true, prescribed for the guidance of local officials, but it did not seem to have penetrated very deeply; for in 1834 Mr. Mertins Bird, a distinguished and still remembered Member of the North-West Revenue Board, who was deputed to visit and report upon the country, wrote that "none of the British officers had read a word of the Regulations applicable to the province," and that they "knew nothing of their spirit or of what was valuable in

them." Twenty years later a scheme of coercive processes for the collection of the land-revenue was introduced by the North-West Board of Revenue; but as parts of the existing province were not confiscated and annexed until after the rebellion of 1857, whilst others again, though managed by us from an early period, were not formally ceded to us until 1860, it was impossible to say that the powers with which the Local Government was thus armed were of universal application even in the Saugor and Nerbudda territories.

In the Nágpur province the difficulty was, not to say how far the revenue-law was applicable, but what was the law—indeed, whether there was any law at all. After the death of the last Bhonsla Rájá in 1853, and on our assumption of the country in 1854, it was decided by Lord Dalhousie that the system which had been employed in the management of the State by Sir R. Jenkins, during a Regency lasting from 1818 to 1827, should be resumed. The essence of that system was declared to lie in the adoption of "plain, simple and efficient Regulations based on the ancient laws and usages of the country". It did not seem, however, to have provided any particular procedure for the collection of the land-revenue. Probably it would not have occurred to anyone at that time that special powers were needed for such a purpose. The land was undisputedly the property of the State, and, even if there could have been any doubt on the point, the Resident, assuming, perhaps, some of the despotic powers of the Native dynasty which he represented, had been long accustomed to solve far more intricate questions by his simple fiat. Thus, when he determined to put down complaints of witchcraft, he ordered fifty lashes, and if necessary more, to be administered to all over-officious witchfinders; and he suppressed, even in a more summary way, an ancient and lucrative usage of the country, *viz.*, the sale of poor men's widows for the benefit of their richer neighbours and of the Government. An authority, thus competent to declare a new offence and suppress an old usage, would certainly not be unequal to enforcing, even without legislative aid, the collection of revenue admittedly due to the State.

When by degrees a more settled system was introduced, the moderation of the land-revenue assessment, and the long habituation of the people to executive guidance, for a time kept administrative jars and legal difficulties in the background. Of late years, however, the diffusion of legal knowledge and the increasing facility for obtaining legal advice had on some occasions placed the Government and the land-revenue payers at arm's length, if not in actual collision; and, although, by the exercise of some mutual forbearance, those cases had been compromised or otherwise settled, it was high time that the rights and liabilities to each other of the Government and the land-holders should be clearly defined, and that land-revenue administration should no longer proceed more or less in the dark.

Passing on to the Tenancy question, we came upon the firmer ground of positive law, though it might be questioned whether the reign of a foreign law was altogether preferable to the kind of legal anarchy, tempered by local custom, which it replaced. The present law of landlord and tenant in the Central Provinces was the well-known Act No. X of 1859, which had been described as the "raiyat's charter,"—the complement, in regard to tenants, of the beneficent legislation which conferred a permanent settlement on the landlords of Bengal. Act X might perhaps have been entitled to those high eulogies in the Lower Provinces, where landlords had, by their long start, gained considerable vantage-ground over their tenants, and used it—so it was said—to obtain enhanced rents by means of confinement and other modes of restraint. But in Upper India the new law was certainly no unmixed boon to tenants. Even in the North-Western Provinces it altered the law to their disadvantage by introducing a rapid and summary procedure for enhancing rents instead of the slow and cumbrous process of a civil suit, and by materially enlarging the grounds on which a Court might decree enhancement.

In the Central Provinces, where, as we had seen, custom was stronger than law, it substituted machinery which, if somewhat rigid and ill-adjusted to local circumstances, was none the less powerful in skilled hands, for a system of complete conservatism, founded, partly no doubt on sympathy for the people, but also on a fear of all changes and disturbances which might prejudice the collection of the land-revenue. Mr. Bird, whom MR. GRANT had already quoted, described very graphically the lengths to which this apprehension led the revenue-authorities—how they forced bankers to give loans to insolvent cultivators—how they refused to enforce Civil Court decrees against cultivators until the revenue had been collected—how all agricultural stock was exempted from distraint—and, generally, how all other interests were subordinated to the paramount object of getting in the State dues. As at that time cultivators were scarce, the displacement of a cultivator would have been discouraged, not only as injurious to him, but as objectionable on fiscal grounds, and the result was that old cultivators in the Saugor and Nerbudda territories enjoyed a very considerable measure of protection, and indeed were practically secure against ejectment, so long as they paid a moderate rent with reasonable punctuality. Not only were those privileges directly curtailed by Act No. X of 1859, but, as Mr. Jones, the author of these Bills, pointed out—

"with the inevitable tendency of written to drive out unwritten and customary law, it spread among all ranks of officers a more or less definite impression that it was not very necessary to enquire what rights tenants had before its introduction, and that they could have no rights except those which it recognised. An Act, which was intended to confer rights on tenants, was construed as if it had demolished rights which, before its introduction, they possessed."

Now, no definite law could, of course, restore to tenants, even if such restoration were desirable, immunities which they derived from the very absence of a defined legal system; but this much at any rate might be advanced with confidence respecting the Bills which he asked leave to introduce—that they had been prepared with much research, and with careful regard to the interests, not only of tenants but of landlords, by one of the most experienced of the officials who had served in the province, and that they had since been subjected to repeated and minute criticism, both here and in the Central Provinces. When the time came for him to explain the details of the Bills, the Council would, he hoped, find that they adequately met all reasonable requirements.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. GRANT then moved for leave to introduce a Bill to define and amend the law relating to the tenancy of land in the Central Provinces.

The Motion was put and agreed to.

EXEMPTION FROM MUNICIPAL TAXATION BILL.

The Hon'ble MR. GRANT also moved for leave to introduce a Bill to exempt certain persons and property from municipal taxation. He said it was a Bill for the purpose of empowering the Governor General in Council to exempt military officers and men (not being in civil employ), and also public property, such as horses and wagons, from certain forms of municipal taxation in municipalities which were not also military cantonments. As regards military cantonments, that object had already been attained by section 24 of the recently passed Cantonment Act, No. III of 1880, and it had been proposed to deal with the case of military men and public property in ordinary municipalities by introducing the necessary provisions into the Bill to regulate the levy of Town-duties and Tolls in Municipalities. That Bill, however, could not be proceeded with immediately, and hence it had been thought advisable to complete the necessary legislation by asking the Council to deal with the subject independently.

The Motion was put and agreed to.

The Council adjourned to Friday, the 28th May, 1880.

SIMLA;
The 21st May, 1880.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

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