

Wednesday, June 8, 1881

COUNCIL OF GOVERNOR GENERAL
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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.

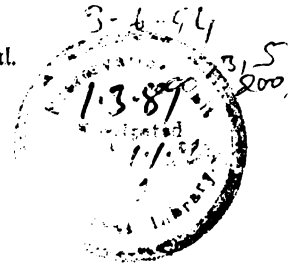
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WITH INDEX.

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1882.

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 8th June, 1881.

P R E S E N T :

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 Panjáb, K.C.S.I., C.I.E.

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

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

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

The Hon'ble C. Grant, C.S.I.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT moved that the Bill to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces, as amended, be passed. He said:—"It is now rather more than a year since I asked leave to introduce the Bill at present before the Council. As I then told the Council, it had already had a pretty long history, and had gone through various experiences and vicissitudes. Since that time, the Bill in its amended form has again been subjected to the criticisms of the local authorities and others in the Central Provinces; and I am glad to say that, among the opinions received, have been those of several of the land-holding body. Their comments have been as favourable as could have been expected, considering that, although the Bill is for the most part a mere consolidation of existing law or practice, yet, it gives, and must by its very nature give, definite shape for the first time to certain restrictions on the land-holding classes. However, viewed as a whole, it has been received with approval. Thus, the Bhuskate, a landholder of considerable position and influence, welcomes it as likely to—

'remove almost all the difficulties regarding the settlement and collection of the revenue that come across both the ruled and the rulers.'

So, too, another well-known gentleman, Vinayak Ráo, an Honorary Magistrate and a large landholder, considers that the Bill will be—

‘ a measure of great benefit to the interests of both landholders and tenants.’

“ On the other hand, objections have been made from various quarters to two or three of its provisions ; but these objections, as I hope to show shortly, either rest on misconceptions, or will be met by the changes introduced in Select Committee. From the officials consulted also, a large number of criticisms have been obtained, many of which are useful, and some valuable ; and, though they have not been such as to necessitate any radical changes in the measure, they have led to a good deal of alteration in matters of detail. With such of the modifications made in consequence as are either formal, or technical, or of minor importance, I need not trouble the Council ; but some explanation will be necessary on those few points which have attracted a comparatively large share of attention.

“ The only provisions of the Bill which have excited anything approaching to genuine apprehension are those relating to *mukaddams*, or village headmen. As the Bill originally stood, provision was made for the appointment of these functionaries, and their duties were described ; but the conditions under which they might be appointed were not stated with sufficient clearness, and hence room was left for the supposition that it was intended to supersede landholders in some of their most legitimate functions by means of paid officials put over their heads in their own villages. Such an idea not unnaturally met with little favour, and I am glad to be able to say that it was quite without foundation. As the Chief Commissioner explains in his letter of 15th October, 1880, transmitting opinions on the Bill, the miscellaneous duties which the Bill imposes on the *mukaddam* had always, in the Central Provinces, been discharged by the head of the village ; and, under the Native Government, any neglect of them would probably have resulted in forfeiture of the village. Even in the earlier days of our rule, before the award of proprietary right at the late settlements, no difficulty could arise in enforcing the performance of these duties, as the bulk of the land was held on mere farming leases, which the Government could always renew or not as it pleased ; and at the head of each village was a responsible farmer, who was aware that the continuance of his lease depended on his good behaviour. The recent gift of proprietary right set grantees free to sub-divide among their families or to sell to richer men. Thus, many village-estates broke up, whilst others accumulated in the hands of absentee capitalists. In the latter case, the Government had no one to look to for the performance of the customary duties attaching to land ; whilst, in the former, there were so many landlords that responsibility was divided and frittered away. Further, notwithstanding pledges made by them at the settlements,

landholders, in some instances, took advantage of the increased securities of their position to neglect duties which could no longer be exacted from them by the simple expedient of ejection. Consequently, there was a practical difficulty to be dealt with ; and, in the words of the Chief Commissioner,

‘ no more simple or effective arrangement was possible than appointing a *mukaddam* in each village to discharge the miscellaneous duties properly devolving on the village head.’

He goes on to say—

“ ‘ On two points there is absolute unanimity among Revenue-officers, namely, that the duties detailed in section 142 (section 141 of the present draft) are duties requiring to be performed in villages, and that they are not efficiently discharged.’

“ I may add that the village headship is an institution by no means peculiar to the Central Provinces, or even to India. Thus, to quote Sir George Campbell’s Essay on Indian Land Tenures in the Cobden Club collection,—

“ ‘ In all cases in which there was not a democratic body electing their own headmen, there was a headman whose functions were partly those of a Government officer and partly those of the head of a quasi-municipality. This headman was called the *mukaddam* in the more northern and eastern provinces ; *patel* in Western and Central India and in the Maratha Deccan ; and *ganda* in some other parts of the south.’

“ Analogous examples may be found in Russia, among the southern Slavs, in Lombardy, and even among the democratic Swiss, whose village assemblies are regulated by elected Presidents. Indeed, it must be obvious that whenever land is held or worked, as in this country, by bodies of villagers instead of by isolated occupiers, the dealings of the communities, external and internal, must be regulated by chosen representatives, or something approaching to anarchy may result. In a recent paper by the Chief Commissioner of Assam on the Nágá Hills district he partly attributes the difficulty of dealing with the Nágá tribes to their want of some such institution. Thus, he says,—

“ ‘ Much importance was attributed by Sir S. Bayley to the appointment of elected headmen, who might, he hoped, be the nucleus of some sort of village organization, and gradually grow to be possessors of power and authority over the young men of the village. Such a change from the democratic and independent habits which the people now practise, into one of subordination to a Council of Elders under a village headman must, necessarily, be slow ; but, if it can be effected, it will be a great help to good government.’

“ So, too, it has been noticed as regards the Panjáb that, though both the frontier Afghan and the Biluch communities are in the tribal phase of social progress, it is easier to deal with the latter than with the former, because the Biluch tribes have acknowledged chiefs, who are the natural channel of communication with their tribesmen ; whilst the frontier Afghans are comparatively disunited, and often pay so little respect to their chiefs that they cannot well be influenced through them.

“ Still, even in making a necessary reform, it is right to respect vested interests ; and in the question under discussion, namely, the appointment of *mukaddams*, I am happy to be able to say that there is neither occasion nor desire to supersede the ordinary village-machinery where it still exists. Again, to quote the Chief Commissioner,—

“ ‘The truth is that no such evils as are apprehended can possibly result, since the rules will preclude the appointment of outsiders, unless in exceptional cases where no resident *lambardárs* exist to discharge the duties, and where, in consequence, the duties are at present neglected.’

“ In order, however, to make security doubly sure, the Select Committee has added a clause to section 137 of the Bill providing that—

“ ‘ In every village in which there are resident *málguzárs*, one of such *málguzárs* shall be the *mukaddam*.’

“ In some other matters also, we have been able to consult the wishes of landholders who had reasonable objections to make to particular provisions of the Bill. Thus, in order to meet the cases in which the proprietor of a village might take advantage of the law to accumulate in his own hands more land than he could properly manage, as *sír* or home-farm, with the view of preventing occupancy rights from accruing thereon, it was originally provided that land which was allowed by its proprietor to lie unoccupied for three years should thereby lose its privileged character as *sír*. But it was represented by the landholders of *Chhindwára* that the poor soil, of which that district largely consists, must be left to lie fallow, in the ordinary course of husbandry, for at least three years ; and, accordingly, this period has been extended to six years in the definition of *sír*-land.

“ So, too, some landholders of the *Nágpur* district objected to jurisdiction over all claims to hold land revenue-free being assigned to Revenue-officers instead of to Civil Courts. They admitted that, in most cases,

‘ claims to hold land free of revenue rested mainly on the kindness and generosity of the Government,’

but urged that

‘ cases might arise where such claims would be based on contracts implied or express, or other equally binding sources of right.’

“ To meet this plea, the Select Committee has provided, in section 152, clause (b), that cases of the kind contemplated, that is to say, cases of rights arising under any contract between the Government of India and grantees of land, shall be excepted from the matters in which the jurisdiction of the Civil Courts is excluded.

“ These are the principal points in regard to which exception has been expressly taken to the provisions of the Bill. But in other respects also, the

Committee has endeavoured to guard against possible sources of objection, as, for instance, by sharply distinguishing penalties leviable under the Act for breach of rule from criminal fines, and by providing a different procedure for their realization; by somewhat limiting the wide powers of revision vested in the Chief Commissioner; by devising additional securities to protect the right of excluded proprietors; by conceding to landholders against whom proceedings have been taken under section 123 to enforce observance of settlement engagements, other than the payment of revenue, a right of suit to set aside such proceedings; and by various other changes with which I need not trouble the Council at length.

“ Indeed, I hope hon’ble Members will be sufficiently satisfied from the details which have already been given, and from the opinions which will be found in the papers attached to the Bill, that they may safely give effect to the recommendations of the Select Committee. For myself, I believe that the Bill in its amended form will, in all essentials, satisfy the Local Government, and will meet with little or no opposition from the classes which it most concerns.”

His Excellency THE PRESIDENT wished to ask the Hon’ble Mr. Grant one question with reference to a clause to which he had alluded. In the last paragraph of the proviso under section 137 of the Bill, which was intended to secure the interests of the málguzárs, he observed that the words were that “ in every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.” HIS EXCELLENCY wished to know if there were not cases in which there was only one málguzár in a village.

The Hon’ble MR. GRANT replied that there were.

His Excellency THE PRESIDENT inquired from the Hon’ble Mr. Stokes whether any doubt in such cases as to appointment was likely consequently to arise.

The Hon’ble MR. STOKES explained that, under the General Clauses Act (No. I of 1868), section 2, clause 2, the plural included the singular. He thought that where there was only one resident málguzár he would be the mukaddam, and that the case was sufficiently provided for.

The Hon’ble MR. GRANT remarked that the only object of the appointment of a mukaddam was to secure from landholders the adequate performance of their admitted duties; and that there was no desire to supersede them. Where there was only one málguzár, he would, naturally, be the mukaddam, and the provisions of the Bill would enable the authorities to keep him up to his engagements.

His Honour THE LIEUTENANT-GOVERNOR said that there was one point on which he should like to ask a question. In section 141, which provided for the duties of mukaddams amongst other things, it was to be the duty of the mukaddam, under sub-section (e), "subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition"; further on, in section 143, it was provided that "Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties"; and again, in section 149, those sums might "be recovered in the same manner as an arrear of revenue payable directly to the Government." His Honour wished to know if any limit was placed on the sums which a mukaddam might expend on village sanitation, and which would be recoverable from the village as arrears of land-revenue.

The Hon'ble MR. GRANT replied that there was no such limit provided for in the Bill; it was a matter which would be more conveniently provided for by rules; and it was to be expected that the local authorities would not sanction anything like extravagant expenditure. It was scarcely possible to devise a limit in the Bill for such a matter; but there was no reason, judging by past experience, to suppose that the charges for these purposes, if incurred at all, would be otherwise than light.

His Honour THE LIEUTENANT-GOVERNOR said that every Indian village was in need of sanitary improvement; opinions as to the degree to which such improvement should be carried varied with the interest which District Officers took in the subject. Proposals for improvement did not come from the people themselves. In order to produce real sanitary improvement it was necessary to carry the people with us. The Bill took power to impose taxation upon villages for sanitary purposes; and it seemed to him that, unless some safeguard was provided, a village might be taxed very much beyond what the intelligence of the people might consider a proper amount to spend on sanitation.

His Excellency THE PRESIDENT remarked that, as he understood the Bill, the matter would be within the competence of the Chief Commissioner, who might pass whatever rules he considered necessary.

His Honour THE LIEUTENANT-GOVERNOR said that he was not prepared to make any proposal on the subject; but the provision seemed to him quite novel; and it conferred a power of taxation which, in his opinion, ought not to be given without placing some restriction upon the amount to be raised, so that it might not exceed the means of the tax-payers.

His Excellency THE PRESIDENT observed that it was perfectly true that a power of taxation was given; but the power was given at the discretion of the Chief Commissioner. The question was how it was possible to put a limit upon it.

His Honour THE LIEUTENANT-GOVERNOR said that collections were made for village-expenses at a rate fixed by custom and recorded in the settlement-papers. The rate was generally a percentage on the land-revenue: the village headmen were not allowed to incur village-expenses beyond this amount. It seemed to him that some limit of this kind might be imposed in the present case.

The Hon'ble MR. STOKES said that it might, perhaps, reconcile His Honour to the provision to which he took exception if he (MR. STOKES) pointed out to him that, under section 162, paragraph 2, all powers to make rules conferred by the proposed Act on the Chief Commissioner would be exercised subject to the control of the Governor General in Council.

Major the Hon'ble E. BARING said that he might mention that the last phrase in the section just quoted by his hon'ble friend Mr. Stokes had been introduced especially with a view to giving some additional controlling power over the Chief Commissioner. It was meant with reference to all the sections of the Bill, in order to prevent any excessive exercise of the powers vested in the Chief Commissioner.

His Honour THE LIEUTENANT-GOVERNOR expressed himself as satisfied with those explanations, and thought that the power of control taken by the Government would be sufficient.

Major the Hon'ble E. BARING said that he should like to explain, with regard to His Excellency the President's remarks respecting the last paragraph of section 137, providing that one of the málguzárs of the village should be the mukaddam, that it was at his initiative that the clause in question was introduced. His idea at the time he proposed it was that, if there was only one málguzár in a village, he should be the mukaddam; and, as his hon'ble friend Mr. Stokes had now explained that the plural included the singular, he thought that the clause might be allowed to pass.

His Excellency THE PRESIDENT remarked that, after the explanations which had been given, he was quite satisfied with the clause as it now stood.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 15th June, 1881.

R. J. CROSTHWAITE,

SIMLA ;
The 5th June, 1881. }

*Officiating Secretary to the Government of India,
Legislative Department.*