

Thursday,  
8th October, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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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 the Viceregal Lodge, Simla, on Thursday, the 8th October, 1885.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

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

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

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

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

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

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

The Hon'ble Amir Ali.

CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to make better provision for the Superintendence of Government Wards in the Central Provinces be taken into consideration. He said:—

“This Bill has received the general approval of the Chief Commissioner, but there are one or two points of minor importance with respect to which the Committee thought that the Bill was susceptible of improvement, and we have made a few amendments accordingly.

“The class of persons who may be brought under the jurisdiction of the Court of Wards is described in the Bill as ‘landholders,’ and the term ‘landholder’ was defined in the original Bill, by reference to certain technical terms in use in the Central Provinces, as meaning *málguzárs*, certain *zamíndárs* who are mentioned in a schedule to the Scheduled Districts Act, and persons who, under various names, occupy the position of assignees of land-revenue.

“But it is possible that there are other persons who are interested in land, and to whom it would be convenient to apply the provisions of the law, and yet who

[ *Mr. Ilbert.* ]

[ 8TH OCTOBER,

would not fall precisely under any one of these terms. Consequently we have made the definition more elastic by empowering the Chief Commissioner, with the previous sanction of the Government of India, to extend the definition of landholder to other persons interested in land.

“Then we were not satisfied that the provisions of the original Bill were sufficiently clear with respect to testamentary guardians. It is very desirable to interfere as little as possible with testamentary arrangements. There are doubtless cases where it becomes necessary to remove or supersede a testamentary guardian for misconduct or incompetency, but this power should, in the opinion of the Select Committee, be exercised by a Civil Court after judicial inquiry, and not by an executive authority such as that which will discharge the functions of the Court of Wards under the present Bill. Accordingly we have made it clear that the minors who come under the jurisdiction of the Court of Wards are minors who have not guardians appointed for their property by will. If there is any doubt—I do not say that there is any doubt—about the power of a Civil Court to remove or supersede such guardians, it will be removed by a Bill which I hope to introduce before long, and which will consolidate and amend the general law relating to guardians and wards.

“Then, as we desire to avoid interference with testamentary dispositions, so we desire to interfere as little as possible with the relations of husband and wife. The husband is the natural guardian of the wife, and it is not intended that a married heiress, even in cases where it is necessary to take or retain her property under the charge of the Court of Wards, should be removed from the custody of her husband. We have made this point more clear than it was in the original Bill, by altering the form and position of one of the provisos which declares that nothing in a particular section of the Bill ‘shall authorize the Court of Wards to assume the superintendence of the person of a female who is married to a man of full age and is in his custody.’

“It has been suggested to me that, even in its amended form, the Bill possibly gives unduly large powers to the Court of Wards over the property of heiresses; but I think that, if the provisions of the Bill are carefully examined, it will be found that they are not open to this objection. If you look at section 7 you will find that the persons who are to be deemed, for the purposes of the measure, disqualified to manage their own property are divisible into two classes. The first class comprises minors who have not guardians appointed for their property by will and persons adjudged by a

1885. ]

[ *Mr. Ilbert ; Mr. Amtr Alf.* ]

competent Civil Court to be of unsound mind and incapable of managing their affairs. These persons—minors and lunatics—are necessarily disqualified. Then there is another class of persons which is described by the Bill as follows :—

‘ persons declared by the Chief Commissioner to be incapable of managing their own property—

‘ (i) owing to any physical defect or infirmity,

‘ (ii) owing to their having been convicted of a non-bailable offence, and being unfitted by vice or bad character,

(“ It will be observed that the grounds of disqualification are cumulative.”)

‘ (iii) owing to their being females, or

‘ (iv) on their own application.’

“ Now, it was not intended to imply that a lady is, as such, incapable of managing her own property. Nothing was further from the intention of the framers of this Bill than to suggest anything so untrue or so ungallant as this. All that we meant to say was—and all that I think the Bill when properly read does say is this—that where a landholder is a lady the Chief Commissioner is to be empowered to enquire into her case,—and he will be bound to enquire into each case on its own individual merits,—and if he finds that she is not only a lady but is also incapable of managing her own property, in that case, and in that case only, is her property placed under the superintendence of the Court of Wards. The Chief Commissioner will be responsible for the exercise of his discretion in each individual case, and I need hardly say that the discretion thus exercised will be subject to the controlling orders of the Government of India.

“ The only other amendment which I need notice is the addition of a clause which provides in effect that managers and other servants of the Court of Wards who are guilty of receiving bribes shall be punishable under the Indian Penal Code as though they were ‘ public servants ’ within the meaning of that Code.

“ These are the principal alterations which the Select Committee have introduced into the Bill since its introduction.”

The Hon'ble MR. AMTR ALF said :—“ With Your Lordship's permission I desire to say a few words with reference to this Bill and the remarks made by the Hon'ble Mr. Ilbert with regard to the provisions of section 7. I am

[ *Mr. Amtr Ali; Mr. Hunter.* ] [ 8TH OCTOBER,

bound to say, as I mentioned to my hon'ble friend the Law Member, that I had considerable objections to the language of the section and the provision respecting the disqualification of females. It seemed to me as if there was an invitation to disqualify a female from managing her own property owing to the mere fact of her being a female; but I think the explanation now offered by Mr. Ilbert meets to a considerable extent the difficulties which I had apprehended, though I would have preferred the provision relating to the disqualification of females to have been put into a separate section. That, however, is too late now, and probably a substantive Motion would be required by the rules of this Council for putting the provision in that shape. I think the public may be satisfied with the explanation now given, and I trust that the discretion with which the Chief Commissioner is vested will be exercised only when the female is found to be incapable of managing her estate, and not simply because she is a female.

“Regarding the provisions of section 10 it appeared to me they were likely to create considerable alarm in the public mind, but what has fallen from the Hon'ble Member in charge of the Bill, that the discretion must be exercised on some substantial grounds, and that there is after all a reference to the Government of India if the discretion is exercised upon grounds which do not furnish a reasonable basis for proceeding to declare a person disqualified to manage his or her estate, will, I believe, allay the doubts of the public on this point.”

The Hon'ble Mr. HUNTER said :—“ My Lord, I think the alteration made by the Select Committee in regard to the penal responsibility of officers of the Court of Wards is an improvement. Those officers exercise in many matters the same powers as public servants, and they are practically shielded by the authority of the public servants to whom they are subordinate. It seems right, therefore, that in regard to taking bribes or other illegal gratifications, they should be subject to the same restraints, and to the same punishments, as public servants. The amendment made by the Select Committee, on the suggestion of the Chief Commissioner of the Central Provinces, will protect the interests of the public, and it will act as a salutary safeguard to the integrity of the officers concerned.”

The Motion was put and agreed to.

The Hon'ble Mr. ILBERT moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

1885.]

[ Sir A. Colvin; Mr. Ilbert. ]

## INDIAN SECURITIES BILL, 1885.

The Hon'ble Sir A. COLVIN presented the Report of the Select Committee on the Bill to amend the law relating to Government Securities.

## MIRZAPUR STONE MAHÁL BILL, 1885.

The Hon'ble Mr. ILBERT moved for leave to introduce a Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces. He said :—

“ This is a Bill of a purely local character, and its object is to make better provision for regulating the use of the well-known quarries of building-stone situated near the hill fort of Chunar, under which we pass as we go by rail from Allahabad to the junction for Benares.

“ These quarries are at present under an old Regulation of the year 1800, and the circumstances under which that Regulation was passed are described in its preamble, which runs as follows :—

‘ The stone-quarries at Chunar, Gházípur and Mirzápur, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1795, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

‘ With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

‘ In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares.’

“ I may mention that a curious little blunder was made in drafting this Regulation. At the time when it was passed one of the principal quarries was situated at a village near Chunar, which is described in the records of the time by a name spelt variously as “ Cassepoor,” “ Cassipoor,” “ Cassepoore ” and “ Ghassepoor.” When the draft came up to Calcutta to

be settled, the copyist, who had probably never heard of the village, turned the 's's' into 'z', and thus made the Regulation read as if it applied to the well-known district of Ghazipur, east of Benares. All this occurred in the pre-Hunterian period, and the Regulation, as originally printed, spells Ghazipur with two 'e's' and two 'o's' after the old fashion; though I observe that, in the edition which I hold in my hand, Mr. Stokes, who, in the matter of spelling, was a most conscientious follower of my hon'ble colleague, has substituted the orthodox spelling with an 'i' and a 'u'. Now, the district of Ghazipur is an alluvial tract where not a single vestige of stone can be found, and more than one critic has made merry over the official ignorance of those who applied a Regulation for quarries to a part of the country where it was as likely that stone would be found as in the jungles round Calcutta. This slip has not given rise to any inconvenience, but the Regulation itself is obsolete in many respects, and among those of its provisions which are still operative many are seriously defective. For instance, I find that the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. Now, as the owners of the cattle and carriages are for the most part poor people who are hired by the day, and can often have little or no means of knowing whether or not the stone has had duty paid on it or not, it would be inequitable to confiscate their property. The man who really deserves punishment is the dealer who procures the use of their cattle and carriages for the purpose of transporting the stone, and for him the confiscation of the stone itself is a wholly inadequate penalty. Moreover, if the stone which has been removed without payment of duty has been used in the construction of a house or well, it is not easy to seize or confiscate it. Consequently the penalties prescribed by the Regulation are apt to fall upon the wrong persons, and when they do fall upon the right persons they are either inadequate or practically unimposable. For that reason it is proposed to repeal the Regulation and to supersede it by a new law.

"The Bill which I am asking leave to introduce begins by declaring the rights and powers of the Government, of landholders and of private persons. It declares that the Government is entitled to levy duty on all stone quarried in the district; it declares, in accordance with the existing law, that no private landowner is entitled to levy duty or place any restriction on the working of these quarries; and it also declares that any person, subject to certain rules and local customs, may open and work a quarry in the district.



1885.]

[ *Mr. Ilbert.* ]

“Some of these local customs are very curious. I find that under one of them the opener of a quarry has an exclusive right to quarry within a circular area of which the radius is measured by the distance to which he can throw a stone with his left hand. One is reminded of similar customs which prevail in various parts of England. For instance, in Derbyshire, the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, while in certain parts of Cornwall tanners are entitled by local custom to ‘bound’ unappropriated waste to the extent of an acre. In the same way the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining, and this right has been regulated by statute.

“It is obvious that customs such as these are likely to lead to a good many disputes, and consequently amongst the various matters for which provision may be made by rules under the Bill is the mode of determining questions arising out of conflicting claims to the right to quarry. The Bill gives a somewhat extensive power to make rules, but it contains the usual clause which provides that a draft of the proposed rules is to be published in such a manner as to afford full opportunity for criticism and objection to all persons likely to be affected by the rules.

“There is little else that I need notice in connection with the Bill. It contains a provision for exempting from duty in certain cases; it saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and it continues to the inhabitants of the hills the privilege conceded to them by the Regulation of 1795 and maintained in their favour by the Regulation of 1800.”

The Motion was put and agreed to.

The Council adjourned to Thursday, the 15th October, 1885.

D. FITZPATRICK,

*Secretary to the Government of India,*

*Legislative Department.*

SIMLA ;  
 The 15th October, 1885. }