Friday,
15th February, 1889

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVIII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1889

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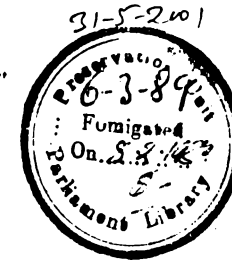

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1890.

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 Vict., cap. 67.

The Council met at Government House on Friday, the 15th February, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India be taken into consideration. He said:—

"This Bill has undergone very little modification at the hands of the Select Committee, the most important alteration being that the date of its coming into force is left to be fixed by the Governor General in Council, in consequence of the standards, ordered from England, not having yet arrived. When received, a copy of the standard will be kept in Calcutta, and measures

certified, under the authority of the Governor General in Council or of a Local Government, to correspond to the lengths marked thereon, will as soon as possible be available for use throughout British India.

"As this Bill is confessedly ancillary to the Bill now before the Council to amend the law relating to fraudulent marks on merchandise, the Select Committee did not consider it desirable to extend its scope to measures of land. So far as it carries out the limited purpose which it is intended to serve, it has met with general acceptance."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble Mr. SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters. He said:—

"As the matters with which this Bill deals are of a somewhat technical character, I will, with Your Excellency's permission, briefly state the effect of the amendments which have been introduced by the Select Committee.

"The primary object of the Bill is to give native executors and administrators in India the same power of dealing with a deceased person's estate as executors and administrators have in England. 'It is a general rule of law and equity,' says Sir E. Vaughan Williams, in the book which is the standard authority on the subject, 'that an executor or administrator has an absolute power of disposal over the whole personal effects of his testator or intestate;' and it is manifestly convenient that it should be so. An executor or administrator, in most cases, must sell in order to perform his duty in paying debts and other charges; and no one would deal with him if liable afterwards to have the transaction questioned.

"In India, however, it was thought desirable that the consent of the Court which granted the probate or letters of administration should be obtained before the property of the deceased could be disposed of. When introducing this Bill in August last I pointed out the illusory character of this supposed safeguard,

and that it tended rather to promote litigation than to afford effectual protection to those beneficially interested in the estate. The Judges of the High Courts at Madras, Bombay and Allahabad, and of the Chief Court of the Punjab, approve of the proposed legislation; but the Judges of the High Court at Calcutta, while willing to give the executor or administrator full power to alienate moveable property generally, consider that the law as it at present stands, so far as it relates to the disposal of immoveable property, should remain unchanged, and that 'Government promissory notes, shares in public companies, &c., which are of the nature of permanent investments' should stand on the same footing as immoveable property.

"The Select Committee were unable to accept this view. Government promissory notes are probably more easily disposed of than any other form of moveable property, and by selling them an executor or administrator can readily put himself in funds to meet the necessary expenses of his position; while it is often desirable that an executor or administrator should free the estate, without loss of time, of the liability attaching to the holding of shares in public companies, or should be able to take advantage of a favourable opportunity of realising them. As regards the disposal of immoveable property, the power of an executor is left subject to any restriction imposed on him by the will, unless he is relieved from that restriction by an order of the Court; and an administrator may not, without the previous permission of the Court, mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property vested in him or lease any such property for a term exceeding five years. It appeared to the Select Committee that these provisions give all requisite security against waste.

"But while thus leaving executors and administrators a freer hand in these respects, the Bill renders more strict the provisions of the law with regard to the filing of inventories and accounts, and materially strengthens the power of the Court to deal with neglect or failure to furnish them, and to punish fraud or falsehood in regard to them. Other sections provide that, when a grant of probate or letters of administration is revoked or annulled, the probate or letters shall at once be delivered up to the Court which made the grant, so as to prevent any improper use being made of them thereafter.

"In introducing the Bill I referred to the doubt which existed as to the stamp to which an administration-bond is liable. That doubt has since been converted into a certainty by a decision of the High Court at Allahabad, which has held that such instruments must, as the law stands, be stamped under the

Stamp Act and also under the Court-fees Act. This is obviously unfair, and the Select Committee recommends that in future they shall be chargeable with duty under the Stamp Act only.

"There is one other matter in the amended Bill to which I think it necessary to draw attention. It was brought to my notice by the Administrator General of Madras that section 283 of the Succession Act, which provides that, 'if the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled,' was not only bad law, but very burdensome, when applied to the small estates left by Europeans who may die in this country, the whole or great part of the assets being exhausted in the enquiry as to domicile rendered necessary by this section. The rule is based on a decision of Sir John Romilly, when Master of the Rolls in 1854, which has not been followed by later authorities. In the recent case of *In re Klœbe* (L. R. 28 Ch. D. 175) Mr. Justice Pearson expressly dissented from it, and quoted with approval as the true rule, that laid down by Mr. Westlake in his work on Private International Law:—'Every administrator must apply the assets reduced into possession under his grant in paying all the debts of the deceased, whether contracted in the jurisdiction from which the grant issued or out of it, and whether owing to creditors domiciled or resident in that jurisdiction or out of it, in that order of priority which, according to the nature of the debts or of the assets, is prescribed by the laws of the jurisdiction from which the grant issued.' In other words, Indian assets must be distributed according to the law of India. This is the rule of common sense, and the Select Committee has adopted it in section 9 of the amended Bill."

SUCCESSION CERTIFICATE BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Hutchins, the Hon'ble Mr. Quinton and the Hon'ble Maung Ôn be added to the Select Com-

mittee on the Bill to consolidate and amend the law relating to Courts in Lower Burma. He said:—

"Under ordinary circumstances I should make this Motion as a matter of routine; but, the circumstances being special, I think it desirable to explain to the Council the course which, with Your Excellency's permission, I propose to take in regard to this Bill.

"It was introduced by me on the 11th of February, 1887, and referred to a Select Committee consisting of the Hon'ble Messrs. Peile and Whiteside and myself on the 24th of the same month. That Committee never met, and I am the only member of it now remaining in Council. The Bill can therefore be taken in hand by the Committee which I now propose, unfettered by any action on the part of their predecessors.

"The enquiries which have been made during the period which has elapsed since the introduction of the Bill have satisfied me that in its present shape it is not adapted to the requirements of Lower Burma and that the establishment of a Chief Court in that province would be premature. The litigation is not sufficient in volume or in importance to call for such a tribunal; and it will be early enough to consider its necessity when the judicial organization of Upper and Lower Burma has been placed on the same footing, and there is sufficient business to occupy the time of a Court of four Judges. Meanwhile the existing establishment appears to be more than ample, and, with certain improvements of distribution and procedure, quite competent to carry on the administration of civil and criminal justice to the satisfaction of the public.

"The proposals which I shall submit to the Committee have the approval of the Chief Commissioner of Burma and of other officers of experience in that province. They are also, I think, in accordance with what I found to be the prevailing opinion in Rangoon, the town which is principally affected by them. If accepted by the Select Committee, they will involve a considerable departure from the lines of the Bill as originally introduced, and a return to those of the Act of 1875, with such modifications and additions as the experience of fourteen years' working has been able to suggest. In framing these proposals I have been guided by a desire to make the administration of justice simple and efficient, by remedying ascertained defects rather than by establishing a new system in excess of existing requirements, and thus entailing upon the province great expense without corresponding advantage. I hope soon to be able to lay the amended Bill before the Council, so that it may be published and submitted to general criticism without delay."

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to authorise the imposition of a patwari-rate in the North-Western Provinces and Oudh, and make certain provisions respecting kanungos and patwaris in those Provinces. He said:—

"My hon'ble friend the Finance Member will doubtless, when the proper occasion arrives, explain to the Council with greater fulness than I could do, and with an authority which I cannot claim, the reasons which have forced the Government of India, notwithstanding the recent revision of the imperial and local finances by the Finance Commission, to call on the Local Governments either to contribute next year from the balances which are now to their credit on the basis of the contracts made only two years ago, or in some other adequate form to give assistance to the imperial treasury. I shall confine myself today to the task of showing the mode in which the North-Western Provinces and Oudh Government proposes to meet this demand, and to ask for sanction to the legislation necessary to give effect to those proposals.

"It will be in the recollection of hon'ble members that in 1882 the Government of India found itself in a position to remit three millions of taxation. In considering the interests and classes to which relief might be afforded the Government of India came to the conclusion that a reduction of taxation was called for in the North-Western Provinces and Oudh. Major Baring, the then Finance Member, stated that a careful examination of the economic condition of the people of the various provinces of India showed that there were but slight signs of improvement in the mass of the people in the North-Western Provinces and Oudh during the preceding ten years, and proceeded to fortify his views by an examination of license-tax statistics. Relief was accordingly given to the North-Western Provinces and Oudh in the form recommended by Sir George Couper, the Lieutenant-Governor at that time. The patwari-rate in the North-Western Provinces was remitted, and the charges for the payment of kanungos and patwaris there, as well as in Oudh, were thrown upon provincial funds. The financial effect of this was to render the Government liable for a charge of over 30 lakhs of rupees which had hitherto been borne by the landlords and, in many cases, by the tenants of the united provinces.

"The Government of India acted to the best of their judgment on the information then before them and on the advice of the Local Governments,

though some exception was taken in the debate on the Bill to give effect to the proposals by Sir Charles Crosthwaite, a very high authority on all revenue questions. He objected to the form in which relief was afforded, on the ground that it was unlikely to reach the persons for whose benefit it was intended, namely, the cultivators and actual occupants of the soil. Objection might have been equally taken on other grounds, such as that the payment was for service directly rendered to landlords or tenants, and was therefore not one with which the Government was called on to burden the general tax-payer. The measure in point of fact, mainly for those reasons, has never gained approval in the Upper Provinces. The proposal, however, became law, and since 1882 landlords in the North-Western Provinces and Oudh have had to incur no charge on account of patwaris. The form which was assumed by this relief must have been to them a matter of surprise, for, as I have just said, the charges to which they were liable on account of patwaris was in no sense a tax for the benefit of the public exchequer, but a payment for services rendered. Nor was the burden one recently imposed. In the year 1793, Regulation VIII required every proprietor of land, who had not already done so, to establish a patwari in each village of his estate to keep the accounts of the raiyats. These provisions were extended to the province of Benares by Regulation XXVII of 1795, and in 1803 to the ceded provinces. Regulation XII of 1817 superseded these enactments, but renewed the obligation and laid down more explicit directions respecting the appointment and duties of the patwari and the liability for his remuneration. This law remained in force in the North-Western Provinces until 1873; and so long ago as 1855 the zamindárs at the North-Western Provinces settlements engaged to pay a cess of 3 per cent. on the rental of their estates, for the remuneration of patwaris, which was paid up to 1882. In Oudh, where Regulation XII of 1817 was in force till 1876, the liability of landlords for the payment of patwaris was enforced up to the same time as in the North-Western Provinces. The Land Acts for the North-Western Provinces of 1873, and for Oudh of 1876, made no change in this liability.

"In 1884 an enquiry was made by Sir Alfred Lyall as to the extent to which the relief from payment for patwaris had reached the tenants for whose benefit it was intended, and it was ascertained that, except in the permanently-settled districts and in a few isolated cases in other districts, the contributions to the patwari-cess formerly paid by tenants had long previously been amalgamated with the rent under the Settlement Rules of 1855 or Land-revenue Act of 1873, and that it was impossible to resolve rents then existing into their

component parts, so as to be able to say what portion of the rent was to be remitted on account of the abolished cess. This clearly showed that in the North-Western Provinces the relief given to the tenants by the legislation of 1882 was but partial, and the present Lieutenant-Governor is of opinion that very much the same may be said in regard to Oudh. The remission of the patwari-cess proved a benefit to the landlords and taluqdárs of the North-Western Provinces and Oudh, whose position has been one of increasing prosperity owing to the excellent seasons the country has enjoyed during the last five years and the great stimulus to the export trade in food-grains; but it is very difficult to maintain, because it is almost impossible to furnish proof that in any material degree it reached the tenants for whose advantage it was designed. The matter may be summed up by saying that the concession, which was in itself, to put it in its mildest form, questionable, not only cannot be shown to have benefited those for whose relief it was intended but is known in many cases to have failed to do so.

"From an administrative point of view the change made is also open to serious objection. In the North-Western Provinces, since 1873, the proceeds of the patwari-cess constituted a fund appropriated to certain specific objects, which carried forward its balances from year to year and was unaffected by the fluctuations in the annual provincial budgets. It expanded with the growth of the land-revenue and afforded a stable basis for improvement in the kanungo and patwari establishments throughout the provinces. The importance of the efficiency of these establishments both to the rural community and the general tax-payers is well set out in an extract of a letter from Mr. Benett, then Director of Agriculture and Commerce, now Officiating Chief Secretary to Government, North-Western Provinces, addressed to the Board of Revenue in 1883:—

'Whatever his faults may be, the patwari is now the mainstay of order in the rural community, and the chief protection which the tenant has against illegal exactions. If we once destroy his efficiency as a village-accountant, we shall deliver more than two-thirds of the population of these provinces into a condition very nearly resembling anarchy. The second consequence would be that we should lose the safe and simple guide of the rents which are actually paid in assessing the land-revenue. The subject is too complicated to enter into minutely; but it may safely be said that for Government to be driven to wholly theoretical calculations in determining the amount to which it is entitled from the land would be an evil of the first magnitude both to itself and to the people; and that, if the guide furnished by rent were ever lost, it would eventually be compelled, after ineffectual and disastrous efforts to escape the result, to sacrifice all further share in a continually increasing source of revenue.'

'The second part of his work, that is, the maintenance of correct maps and record-of-rights, is in fact hardly less indispensable. The only alternative to his doing it is that it should be done periodically by Government. It is not necessary only in temporarily-settled tracts for the purposes of the revision of the revenue; but, as is shown by the surveys now in progress, it is equally unavoidable in the permanently-settled districts. The advantages of getting it done by the regular patwari staff are simply incalculable. In the first place, it avoids the periodical intrusion of a host of amins and the unhinging of all current relations which are bad enough evils in permanently-settled districts, but which are infinitely aggravated in temporarily-settled districts by the fear of a revision of the revenue which checks cultivation and promotes the wholesale bribery of every subordinate who is supposed to be able to affect the result. In the second place, it maintains the record at a uniform pitch of correctness, whereas the renewals of it formerly in use could only occur at the oftenest once in thirty years, and in the meantime the record kept on growing more and more inaccurate till, when the time for renewal came round, it had become to all intents useless, and every succeeding stage of deterioration meant more litigation for the people and increased difficulty to the revenue-administration. The third advantage is perhaps the most obvious; but, great though it unquestionably is, it may perhaps be doubted whether it is as great as the two already mentioned—that is, the saving of expense. If the patwaris maintain the maps and record-of-rights, the whole of the cost of their preparation at a new settlement is saved.

'The cost of making a regular revision of the record-of-rights and survey is extremely high. The late settlement of the temporarily-settled districts cost more than one-and-a-half million sterling, and is good for only thirty years. If capitalized at 4 per cent. compound interest for that period, it represents a charge to the State of more than four millions sterling. The survey of the permanently-settled districts has cost, I believe, about R170 to the square mile—a rate which, if applied to the whole province, would amount to nearly one-and-a-half million sterling. This is the cost of a survey where there is no revision of revenue, and it must recur periodically unless the papers are systematically kept up by the regular staff. The whole of this enormous expense is avoided if the maps and records are maintained by the patwaris, and not only does the work then cost Government absolutely nothing, but, as has been already shown, it is done in a way which makes it answer its purpose much better.'

"Subsequent enquiries have shewn that the actual cost of the late revisions of settlement was greater than what had been estimated by the Director of Agriculture five years ago, and that the capital charge of a revision on the former method for both permanently and temporarily-settled districts combined would be at least two and a half millions sterling.

"The Government of India and the Secretary of State have now fully adopted the policy of basing temporary settlements on the actual rentals of the

estates for the ascertainment of which the correctness of the patwaris' records is essential; and in the Meerut Division, where this policy is for the first time being put into practice, the cost has already been reduced to less than a quarter of what it would have been under the old system, while the duration of the proceedings has been shortened in almost the same proportion. There is, moreover, reason to expect that half of even the present low average charge might be avoided if Government were in a position to make the patwari staff (which must in any case be maintained for the ordinary purposes of administration) fully efficient. Another and most important consideration is that in Oudh this Council in 1886 conferred upon the tenants of that province statutory tenures for the maintenance or accrual of which the same records form the chief evidence. The efficiency in these establishments, so all important from different points of view, is now endangered by the change made in 1882. In the North-Western Provinces it is calculated that to bring the pay of every patwari up to ₹7—the minimum required, in the opinion of those best able to judge, to secure a competent man—would require nearly 1½ lakhs of rupees; and the cost of these establishments must obviously increase *pari passu* with the spread of cultivation, and the subdivision of estates, of fields and of cultivating tenures which accompanies increased cultivation. Had the fund as formerly constituted continued in existence, these demands would have been gradually and fully met by the natural increase of the assets of the fund, but the substitution for the fund of an annual grant from provincial revenues has effectually precluded all hope of improvement. The state of the provincial finances will not admit of progressive expenditure on the pay of patwaris or other not less important objects connected with this branch of the administration; and, especially in view of the dangers which continue to overhang the finances of the Empire for some time to come, the strictest economy will be necessary in order to enable the Local Government to ensure to itself financial equilibrium.

"In Oudh it was supposed that the Act of 1882 would tend to greater efficiency in the patwaris by enabling Government to exercise a much stricter control than was admitted by the then existing law over their appointment and their conduct in the discharge of their duties. But it was found inexpedient abruptly to break the ties which at that time bound the patwari to the taluqdár, and objections, to which the Local Government felt bound to yield, have resulted in the patwari, while he is paid by Government, being less directly under Government control than was contemplated when the Act was passed.

"The following passage from a minute of Sir Auckland Colvin on the

subject illustrates the point of view from which I am asking the Council to consider it:—

'In view of the fact that one of the first decisions to which I have been compelled to come has involved negativing any improvement to the material position of the patwari; though knowing the important part which he plays in the fiscal machinery of the Government and in the economic life of the landlord and tenant, it seems to me a lesser evil that a class of men to whom the relief from taxation has come by a side door should suffer than that an important body of public servants should be left without prospect of relief in a state of organization which is very prejudicial to the interest of the Government, of the tenants and of the landlords themselves.'

"Fiscally economically and administratively, therefore, the measure of 1882 has resulted in disappointment.

"We now propose in the Bill to retrace our steps to a certain extent, and in the North-Western Provinces to re-establish the patwari-rate, but at a rate of 4 instead of 6 per cent. on the revenue. In Oudh no cess was ever paid, but the landlords, or in some cases the under-proprietors, were liable for the pay of the patwari. This had great disadvantages, as it prevented the organisation of the patwari establishments on a uniform system or the attainment of anything like a uniform standard of efficiency. It has therefore been determined to arrange for the levy of a patwari-rate on the same principle as in the North-Western Provinces. This is in Oudh a novel measure, but the taluqdárs of the province have been carefully consulted respecting it, and with their usual public spirit and fair treatment of questions concerning land-revenue administration have given their adhesion to it. The rate to be imposed in Oudh is put at ₹3 instead of ₹4 per cent., which the Local Government consider will be sufficient from the point of view of their finances; and, as the rate is being introduced for the first time, the Lieutenant-Governor sees no reason for going beyond what is strictly necessary to secure an adequate sum for the remuneration of patwaris. Tenants benefit equally with landlords, if not to a still greater extent, from the efficiency of the patwari establishments; and in Oudh, as I have already pointed out, whatever may have been the case up to 1886, the Rent Act passed in that year has given tenants a substantial interest in the accuracy of the village-records. It is considered therefore not unreasonable that tenants also should contribute to the cost of the maintenance of the establishments required to secure that object; and the Bill proposes to allow landlords to collect with the rent a cess which, allowing for difficulties of collection and unrealizable balances, should yield about half the sum which they are called on to pay as a rate to Government. This will

regulate the liability of the tenant and exempt him from indefinite exactions to which there are reasons for thinking he may, under the old system, have been subjected.

"These rates will not, however, suffice to meet the necessary charges, and Government, representing the general tax-payer, is fairly liable to take its share in the burden. For the reasons which I have attempted to explain Government has an equal interest with the tenant and the landlord in maintaining the correctness of the patwaris' records, and would not be justified in throwing on those classes the whole of the cost necessary for the purpose. The Bill therefore proposes that the contributions from the cess should be supplemented by a grant from the public funds.

"The assets thus made up will be formed for each province into a fund applicable only to specific objects, and with the revision of settlements the amount available will progressively increase. This will secure that independence of the annual variations of the Provincial Budget, and that elasticity of income so essential to the growing demands of the land-revenue administration, and will at once enable the Local Government without crippling its establishments to furnish the assistance required from it by the Government of India."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 22nd February, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 15th February, 1889.

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