

*Friday,
22nd February, 1889*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
LAW AND REGULATIONS

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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,

1889

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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 Vict., cap. 67.

The Council met at Government House on Friday, the 22nd 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.

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 P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.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., Mahárájā 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 On, C.I.E., A.T.M.

The Hon'ble J. W. Quinton, C.S.I.

LOWER BURMA VILLAGE BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma be taken into consideration. He said :—“ The main object of this measure is to define, and where it has been suffered to fall into abeyance to restore, the village-organization which in Lower, as in Upper, Burma we found in existence when we annexed the country. For Upper Burma, a Regulation, No. XIV, was passed in 1887, and after more than a year's trial it is reported to have worked exceedingly well. The greater part of this Bill merely re-enacts the provisions of that Regulation and extends them to Lower Burma. The social conditions of the two divisions of the pro-

vince are very similar, and it seems desirable that the law and the practice throughout the province should be made as uniform as possible. Some of the chief sections of this Bill are not new even to Lower Burma but are already contained, substantially if not in precisely the same terms, in the Rural Police Act, II of 1880. In the Select Committee we had the very great advantage of being assisted by a gentleman from Lower Burma, the Hon'ble Maung Òn, a native of the province and intimately acquainted with its needs and condition. I am glad to say that he not only sees no objection to any of the provisions of this Bill but is satisfied that its effect will be very salutary. In these circumstances I think I may content myself with explaining to the Council as briefly as possible the nature of the enactment which I ask them to take into consideration.

“ It consists of two parts. The first section relates to the title, extent and commencement of the Bill, and of course comes into force at once. Sections 2 to 13 presuppose the existence of a recognised and legally constituted village-headman: they will therefore only be applied to any particular area when the Local Government is satisfied that such officers have been duly appointed throughout such area. Sections 14 to 23 are of general application and will have immediate operation.

“ Of these, 14 to 17 merely reproduce and apply to the lower division of the province corresponding provisions of the Regulation of 1887—

- (14) regarding the imposition of fines on villages accessory to crime, or
- (15) in which homicide has been attempted or committed,
- (16) empowering a Deputy Commissioner to remove from any village a person believed to be aiding and abetting dacoits, and
- (17) regarding the recovery of fines.

“ Section 14, as to the responsibility of villages, substantially corresponds with section 21 of Act II of 1880, which, as I have already stated, applies to the lower division of the province.

“ Section 18 prohibits the assignment or attachment for debt of any emoluments attached to village-offices and enables the Deputy Commissioner, on the occurrence of any lapse, effectually to transfer such emoluments to the new incumbent. This is a provision in force throughout British India, and its necessity needs no demonstration. Section 19 gives the usual protection to a village-headman or constable against improper prosecution for acts done in the execution of his duty. Section 20 vests in the district-officer power to

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revise orders passed by heads of villages. Section 21 simply authorizes the Local Government to confer on Assistant Commissioners powers which the Bill vests in all Deputy Commissioners. So much for that part of the Bill which is not dependent on there being a duly constituted village-headman. I will now go back to the first part of the Bill.

“Section 2 defines a village, and section 3 requires the Deputy Commissioner to appoint a headman for each village and indicates how the selection should be made. Section 4 is merely formal. Section 5, requiring the headman to report certain matters, makes some trifling additions to section 45 of the Code of Criminal Procedure; the most important, so far as I can see, being that by incorporating into that section the new definition of ‘village’ an obligation will be cast on the headman to report any of the specified offences which may be committed on a creek or river flowing alongside his village—a most necessary provision in such a country as Burma.

“Section 6 may be described as the headman's catechism. It gives a categorical list of the duties of a headman and will enable a newly appointed functionary clearly to understand what he has undertaken to do. I find nothing unusual here: they are all duties which by law or in practice devolve on heads of villages in more settled provinces, and many of them exist in Lower Burma already under Act II of 1830. Section 7 confers petty criminal jurisdiction on the village-headmen, such as they exercise already in Madras and Bombay. It is true that sub-section (4) authorises the Chief Commissioner to extend the powers of selected headmen, but under the Code of Criminal Procedure he could go further and confer on such functionaries, as indeed upon any person, all or any of the powers of a Magistrate. Section 10 similarly authorizes the Local Government to confer on selected headmen a petty civil jurisdiction, but such jurisdiction does not extend beyond that which the law has conferred on every head of a Madras village *ex officio*. Section 8 renders a headman or village-policeman amenable to punishment for any abuse of his authority, while section 9 enables him to call on any persons residing in the village to give him their assistance in case of need. This he can do already under Act II of 1880.

“Sections 11 and 12 merely reproduce and apply to Lower Burma the provisions of the Upper Burma Village Regulation already mentioned requiring strangers to report their arrival to the headman and obtain his permission before acquiring or erecting a permanent residence.

“It seems to me that none of these provisions are open to objection. The necessity of strengthening the hands of the district-officers in Lower

Burma was pointed out by Sir Charles Aitchison when he introduced the Bill, and nothing will do this more effectually or in a way more consonant to the ideas and traditions of the people at large than the enforcement of village responsibility."

"The Hon'ble MAUNG ÔN said :—"For the past few years Burma has been very much in want of a proper Village-system Act to facilitate in quieting down of the rural parts of the country, and to lighten the heavy work of the township-officers, such as Myo-ôks and Extra Assistant Commissioners.

"The present Bill sufficiently provides for the former object by insisting on strangers to report their arrival, name, the last place they resided and the date of their departure (which I have no doubt will prevent the coming in of lawless and vicious characters), and again to force the headmen as well as the inhabitants to report to the nearest police-station or to the nearest Magistrate if any member of the village gives maintenance and help to evil disposed persons, &c.

"With regard to the latter object this Bill will enable the villagers to bring their suits (the value of the subject-matter is too small to occupy their time in going to proper Courts) to the headmen. This will not only benefit the inhabitants of villages but it will greatly relieve the township-officers from their burden. In the last few years the township-officers, who have to look after the revenue as well as civil and criminal matters, have scarcely any time to attend to petty cases.

"As the existing Burma District Cesses and Rural Police Act of 1880 does not force the headmen to assist the officers of different departments, I have known several officers of the supplementary survey who could not get any assistance from either the headmen or inhabitants when such is required. But the present Bill fully provides that the headman of the village is bound to assist all the officers of the Government.

"And, for the above stated reasons and objects, I think this Village-system Bill should be passed with as little delay as possible."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

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[*Mr. Quinton; Mr. Evans.*]

NORTH-WESTERN PROVINCES AND OUDH KANUNGOS AND
PATWARIS BILL.

The Hon'ble MR. QUINTON moved that the 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 be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins, the Hon'ble Sir David Barbour, the Hon'ble Mr. Halliday, the Hon'ble Muhammad Ali Khan and the Mover, with instructions to report within three weeks.

The Hon'ble MR. EVANS said :—“ The facts laid before the Council on the last occasion by the hon'ble mover amply justify the re-imposition of this particular tax, but I think it must have occurred to every one that those facts show an exceedingly unsatisfactory state of things in the past as regards the remission of the tax. It would appear that the Government of India at that time found itself in the position of having a surplus and decided to get rid of it by remitting taxation. I presume that they, in making this remission, must have consulted the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, but I cannot find that they consulted the revenue-authorities or the revenue-officers of those provinces. The result of the consultation was that the Government of India determined to take upon the imperial revenues the provision of patwaris for the North-Western Provinces and Oudh. It appears also that these patwaris had for about a century been supported by the zamindárs and the raiyats in some form or other, and that the great object to be gained by the remission of the tax was supposed to be, first, the relief of the raiyats, and, secondly, a principle which was considered more important, to get the patwaris of Oudh into the power of the Government by making them Government servants, divorced from all interests either in respect of the raiyats or the zamindárs. It also appears that when this was attempted to be put into practice the remission had no corresponding beneficial effect on the raiyat. It was also found that the patwari-cess paid by the raiyats in the North-Western Provinces had been amalgamated with the rent. Under these circumstances very little or no benefit has been derived by the raiyats from this remission. As to the other object of making the patwaris servants of the Government, it appears that this was an absolutely impossible thing to do. The result was that the imperial revenues were burdened to the extent of some thirty lakhs of rupees annually without appar-

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ently any benefit to anybody and in pursuance of a chimerical idea. If that was all, it would be simple enough to retrace our steps and re-impose taxation, and there would be an end of it. But it is not found possible to re-impose the tax in its entirety, but only partially, because it is very difficult to re-introduce the state of things existing before ; and it is to be regretted that now in re-imposing the tax the imperial revenues will still be burdened to a great extent. It will also, to a certain extent, inflict injustice upon the raiyats who are contributing towards the old cess, which has been incorporated in their rents. The Select Committee will have to consider how these difficulties can be met. I think it desirable that attention should be drawn to the grave error which has been committed by this hasty and ill-considered remission, in order that, if possible, some steps may be taken to frame rules by which sacrifices of revenue should not be made hastily and without due time for deliberation. That no proper enquiries were made and no reasonable time for enquiries allowed in this case is abundantly clear from what took place in 1882 and it should be noted as a warning for the future."

The Hon'ble MR. STEEL said :—" When introducing this Bill the hon'ble member in charge prepared the way for his proposals by explaining the nature and the history of the patwari-cess as it existed prior to the year 1882. He showed that the cess was not a tax, but was in fact purely a rent-charge. The zamindárs held their interest in State property on the distinct and well-understood condition that they paid the cost of keeping correct village-accounts. In the year 1882 the cess was abolished, without any attempt to secure for the raiyats the benefit of the remission, although that was the object Government had in view. It thus appears that a class which had no special claim to indulgence was unwittingly presented with thirty lakhs annually at the cost of the revenue.

" My Lord, I must say that the hon'ble member's speech has exposed one of the most lamentable blunders ever made public. He was guarded in his censure, but it is evident from his language that the mistake was only possible because those who were conversant with land-revenue matters were never consulted. There must have been scores of experienced revenue-officers whose advice, if obtained, would have kept Government right. My hon'ble friend himself could certainly have given in 1882 as clear an account of the history and incidence of the cess as he did last week. Again, if the public had been consulted, I do not hesitate to say that the blunder would have been impossible. The opportunity would have been taken to remind Government of really press-

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ing claims for remission of objectionable taxation. The abolition of the rice-tax, promised for so many years, would again have been urged upon Government. Those who protest against the exaction of revenue from the administration of civil justice would have made themselves heard. When confronted with legitimate claimants this impostor must necessarily have been detected.

“ But I should not have considered it my duty to express lamentations over the past if I did not desire to emphasize the moral for guidance in the future. A demand has been made by the public, supported by unanswerable arguments, that the Council's Act should be so modified as to permit of discussion on projects for remitting taxation. The history of the patwari-cess affords an admirable illustration of the need for this reform.

“ When a tax is imposed rapidity of action is commonly essential, in order to prevent individuals from profiting at the expense of the revenue, but the law requires that the proposal should be submitted for discussion in your Lordship's Council. But when it is designed to remit taxation there is no such occasion for haste. Deliberation is specially desirable, since a step once made is with greater difficulty retraced, and yet by law Government is precluded from affording an opportunity for discussion.

“ With respect to the measure now before us I must say that the hon'ble member's speech did not support his conclusion. He shewed that the cess should never have been abolished, and the logical conclusion would appear to be that it should now be restored in its integrity. Instead of this he proposes to reduce the demand by one-third. During the past seven years the zamindárs have been unintentionally presented with two crores of rupees, and I see no reason why the cess should not now be levied on the same scale as before 1882. I do not know why the North-West Government should contribute ten lakhs from provincial funds. If the money can be spared I would much prefer that the Hon'ble Finance Minister should sweep it into his capacious bag. Again, there seems no sufficient reason why the Oudh tenants, who in 1882 were supposed to be entitled to relief, but who never obtained it, should now be called upon to contribute to relieve their landlords from a just claim.

“ If those proposals are put forward by way of compromise suggested by the zamindárs, I cannot approve them.

“ I am well aware, my Lord, that I have no constitutional right to propose any amendment to the Bill which would have the effect of increasing a money

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demand upon any class; but I feel justified in expressing the opinion that Government should re-consider the subject before proceeding with the Bill."

The Hon'ble MR. QUINTON said :—" I should like to say one or two words in reply to what has fallen from hon'ble members to remove what I think are partial misconceptions. I should be very sorry if any inference could justly be drawn from what I said when I introduced the Bill as to the Government having acted without consulting properly qualified authorities at the time of granting a remission of this taxation. The Government of India referred to the then Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, whose territories were to be affected by the proposed legislation. Sir George Couper, who was at that time Lieutenant-Governor and Chief Commissioner, I am bound to suppose, was guided in making his recommendation in a matter of such importance by the opinions of officers who he considered were the best able to give useful advice, and I certainly never meant to convey any impression to the contrary; therefore, so far as my speech is concerned, I strongly disclaim the construction which has been inferentially put upon it by my hon'ble friend.

" Then, as regards what the Hon'ble Mr. Steel has said as to the injustice of throwing one-third of the total charge on account of these establishments upon the imperial funds, I may not have enlarged upon that point so much as I might have done when introducing this Bill. I did attempt to show that the maintenance and the efficiency of the patwari establishments on an adequate scale produced great savings in the costs of the settlements which are now going on, and may be expected to produce still greater savings in the settlements which will come on in the North-Western Provinces and Oudh within the next ten years. The principles of assessment which have been adopted with the sanction of the Government of India and the Secretary of State to be effectually carried out depend altogether on the efficiency of these establishments and the correctness of these records; and therefore it seems to me that the public, who get the benefit of these enormous savings and who would otherwise have to pay the full charge, may reasonably be asked to contribute in some degree for the maintenance of the establishments by which the savings are effected. I may also add that now-a-days much more is required from the patwari than formerly; that he supplies for the information of the Local Government, the Government of India, the Secretary of State and of Parliament statistics in regard to numerous agricultural matters; and that without the patwari those statistics must be procured by means of a paid agency; and unless the statistics are correct

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they are likely to be more mischievous than useful. On this ground also I think the Government may fairly be called upon to bear a portion of the charge on account of these establishments.

“ Finally, as regards the Oudh tenants, who have been alluded to by the Hon'ble Mr. Steel, he has overlooked the fact that up to 1886 the landholders in Oudh had absolutely unrestricted power of enhancing rents, and therefore whatever was put upon the landholders by way of a cess or charge ultimately came out of the pockets of the tenants, either in the shape of enhanced rent or as a direct charge. But in 1886 this Council passed an Act which conferred very valuable statutory rights upon the Oudh tenants. It checked this power of enhancement on the part of the landlord, and rendered the tenant liable to enhancement of rent only under certain well-defined rules. Therefore it would be impossible for the landlord in the present case to recover from his tenants the sums which they paid under the former procedure. And it must be borne in mind that in consequence of this legislation in 1886 the correctness of the patwari papers has become a matter of infinite importance to the Oudh tenants. The existence of the statutory tenures conferred upon them by that Act can only be proved by these village-papers, and if the patwaris are to be altogether the servants of the landlords, and if their salaries are to be paid only by the landlords, the danger is that the evidence afforded by these papers will in many cases either totally disappear or be manipulated in the interests of one party, namely, the landlord. Under these circumstances I think it is by no means unreasonable to ask the tenants to contribute towards the cost of patwaris a sum which after all is exceedingly small, namely, twelve annas in the hundred rupees in Oudh, and in the North-Western Provinces one rupee and a small fraction of the same amount. So far I think the objections which have been taken by my hon'ble friends can be fairly met.”

The Motion was put and agreed to.

LOWER BURMA COURTS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts in Lower Burma. He said:—“ With your Excellency's permission I will briefly state the principal alterations which have been made by the Select Committee in the Bill as originally introduced.

“For reasons which will presently appear the Select Committee were of opinion that it is not desirable at present to establish a Chief Court in Lower Burma, and that by a revision of existing arrangements it will be possible to provide efficiently for the administration of justice in that province. The Bill, therefore, is one of consolidation and amendment rather than re-construction; and its bulk is to be accounted for by the fact that it contains the substance of four existing Acts of this Council.

“Outside the Towns of Rangoon and Maulmain there will be five grades of Civil Courts, namely:—

- (a) the Court of the Myo-òk;
- (b) the Courts of the Extra Assistant Commissioner and the Assistant Commissioner;
- (c) the Court of the Deputy Commissioner;
- (d) the Court of the Commissioner; and
- (e) the Court of the Judicial Commissioner.

“With regard to these Courts the Bill empowers the Local Government to confer Small Cause Court jurisdiction upon Myo-òks to the extent of one hundred rupees, and on Extra Assistant and Assistant Commissioners to the extent of five hundred rupees.

“The Town of Maulmain has a Judge of its own, who exercises original civil jurisdiction within its local limits and has also the powers of a Judge of a Small Cause Court. To relieve this officer and enable him to discharge other duties which we propose to cast upon him, the Bill enables the Local Government to confer upon any Extra Assistant Commissioner or Assistant Commissioner at Maulmain the jurisdiction of an Additional Judge of a Court of Small Causes, and upon the chief ministerial officer of the Court of the Judge of the Town of Maulmain all or any of the powers conferred or conferable by or under the Provincial Small Cause Courts Act, 1887, upon the Registrar of a Court of Small Causes. As this Judge in 1887 disposed of 202 original suits, of which 106 were contested, and of 2,683 small causes, of which 996 were contested, besides criminal business, he seems well entitled to the relief which these provisions are calculated to afford him.

“In Rangoon, besides a Small Cause Court composed of two Judges, there have been for some years a Recorder and an Additional Recorder, to whom the disposal of civil business has been entrusted. In 1887 these two Judges

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disposed of 265 original suits; and the small causes under ₹1,000 in value were dealt with by the two Judges of the Small Cause Court. It appeared to the Committee that if the jurisdiction of the Small Cause Court were extended to suits of ₹2,000 in value—an extension which may be made without overburdening that tribunal—one Recorder would ordinarily be able to dispose of the residue of the civil business in the Recorder's Court, and they have provided accordingly in the Bill. To give additional relief to the Recorder, as it appears that much of his time is now occupied in the disposal of formal business which ought to be, and in a Presidency High Court would be, disposed of by a Registrar or other ministerial officer, section 56 of the Bill provides that any non-judicial or quasi-judicial act which is required by the Code of Civil Procedure to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code, may in the Court of the Recorder be done by the Registrar of the Court or by such other officer of the Court as the Recorder may direct.

“It may be conceivable however that, even with these alleviations, the growth of business in Rangoon may be so great as to necessitate the appointment of an Additional Recorder; and power is therefore reserved, under section 60, to the Governor General in Council to appoint such an officer should occasion require.

“So much as regards original civil jurisdiction. As regards the trial of criminal offences, we have made but few alterations in the existing law. The criminal business both in Rangoon and Maulmain is not heavy; in 1887 there were 47 sessions cases in Rangoon and 22 in Maulmain. But the annexation of Upper Burma has rendered it necessary to provide for the trial of European British subjects and persons jointly charged with European British subjects throughout the province, and the Bill accordingly declares the Court of the Recorder to be the High Court for the whole of Burma, inclusive of Upper Burma and the Shan States, in reference to such proceedings; sentences of death passed by the Court of the Recorder as such High Court being subject to confirmation by the High Court in Calcutta. The Bill also empowers the Recorder to hold his Court for the trial of such cases at any place in Burma which the Local Government may direct.

“As regards civil appeals, we have left matters very much as they were. From the Recorder's decisions, in cases where the decree is for a less sum than ₹3,000, no appeal lies; between ₹3,000 and ₹10,000 there is an

appeal to the High Court at Calcutta; above Rs. 10,000 to the Privy Council. This appears a somewhat arbitrary division, but, so far as I have been able to ascertain, it is not objected to by litigants and does not seem to have worked otherwise than satisfactorily during the last quarter of a century. The returns of the High Court show that, for a period of ten years, from 1879 to 1888, there were only sixteen civil appeals and ten references from Burma; and, considering that Calcutta is quite as accessible from Burma as for instance from Assam, these figures are very significant.

“From the decisions of the Judge of the Town of Maulmain in civil suits an appeal lies to the Special Court, which for this purpose is composed of the Recorder and the Judicial Commissioner. As a Court of Reference or of Criminal Appeal, the Special Court has a wider range, and may be resorted to in suits pending before, or cases tried by, one of the judicial officers of whom it is ordinarily composed. To obviate any difficulty that might arise from the Court being thus constituted the Bill provides that the Local Government may associate the Judge of the Town of Maulmain with the Judicial Commissioner and the Recorder for the hearing of any particular case or class of cases. As the Special Court has hitherto sat for only about nine days in the year, the work cannot be heavy.

“With regard to the admiralty jurisdiction of the Recorder, we have made no change. As regards insolvency, the Bill provides that in the Towns of Rangoon, Maulmain, Akyab and Bassein the law in force in the presidency-towns, and not that laid down in the Code of Civil Procedure, shall be applicable. In divorce cases we have substituted the Special Court for the High Court at Calcutta.

“Advantage has been taken of the introduction of this Bill to declare the effect of certain enactments in Lower Burma, and to remove difficulties which, upon a careful examination of the laws which constitute the Burma Code, have been found to exist; but, as these matters are fully specified in the Report of the Select Committee, I need not detain the Council by further alluding to them at this stage of the Bill.”

The Council adjourned to Friday, the 1st March, 1889.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

FORT WILLIAM; }
The 27th February, 1889. }