

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

General Assembly 1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

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1877.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 8th February 1876.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.M.S.I.,
presiding.

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q.C.

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

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble John Inglis, C.S.I.

The Hon'ble Sir Douglas Forsyth, C.B., K.C.S.I.

The Hon'ble T. O. Hope.

His Highness Mahārājā Iswarīparshād Nārāyan Singh Bahādur, of
Benares.

The Hon'ble D. Cowie.

The Hon'ble Rājā Nārendra Krishna Bahādur.

PLEADERS, MUKHTARS AND REVENUE AGENTS' BILL.

The Hon'ble Mr. Hobhouse moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Pleaders, Mukhtars and Revenue Agents in Northern India be taken into consideration. At the last meeting he said a few words in explanation of the dimensions which the Bill had assumed, and gave by no means a full, but a general, explanation of the meaning of the section left. He must now state rather more fully to the Council what was the exact bearing of that section. The law on this subject was at present regulated by Act XX of 1865, which was the Act for determining the status of pleaders, mukhtars and revenue agents. Some provisions were made by that Act for the examination and admission of pleaders, and it was provided that pleaders, when duly admitted and enrolled, might appear, plead and act in any Revenue Office within the limits of the general jurisdiction of the High Courts in which they were enrolled. Then provisions were made for creating, under certain qualifications and certificates,

practitioners called "revenue agents;" and when a person was duly admitted as a revenue agent by the Board of Revenue, he was admitted to practise as a revenue agent in the Revenue Offices within the limits of the territories under that Board. The Council would see that there were two classes of practitioners who, under the Act, might practise in the Revenue Courts,—duly admitted pleaders and duly admitted revenue agents. Now when that Act was passed, a considerable portion of the jurisdiction of the Revenue Courts consisted of an important class of suits between landlords and tenants, usually called rent-suits. The revenue agents therefore practised in those rent-suits and were very largely employed in them, because they consisted of a class who were employed by the zamíndárs to manage their general affairs, and who would possess, independently of their employment in the litigation, a considerable knowledge of their employers' affairs.

Well, the legislature of Bengal in 1869 passed a law for the purpose of transferring rent-suits from the Revenue to the Civil Courts. The consequence was that those practitioners who could only practise in the Revenue Courts were unable any longer to practise in the rent-suits, and the pleaders who could practise both in the Revenue Courts and in the Civil Courts were the only practitioners whose assistance either the zamíndár or the ryot could obtain in the conduct of their rent-suits. It was found that the Act worked hardship both to the practitioner, who was excluded from the practice he was qualified to exercise, and to the suitor, who could not employ the person whom it was most convenient for him to employ. And accordingly the Government of Bengal made an application to the Government of India for an alteration of the law. Mr. HOBHOUSE had stated erroneously on the last occasion that the application was first made in the time of Sir George Campbell. He saw that it was first suggested at the end of the reign of Sir William Grey, and he would now read to the Council the words of Sir William Grey when making that application. In speaking of revenue agents he said :—

"The status of these men is primarily affected by Act VIII (B. C.) of 1869, which transfers the adjudication of rent-suits from the Revenue to the Civil Courts, where they are debarred from *pleading* with reference to the provisions of section 11, Act XX of 1865 of the Imperial Legislative Council. The words of this section would seem to declare that, though a mukhtár might appear and conduct cases in the Civil Courts, the actual pleading in such suits was beyond his competency in the present state of the law; while revenue agents were by the 25th section restricted entirely as regards their practice to the Revenue Offices. Even when shut out from pleading in the rent-suits to be brought in the Civil Courts, such of the rent-suits as were pending in the Revenue Courts at the time that Act VIII of 1869 came into effect promised to afford work to these men for some time, but even this chance of present employment has been

withdrawn by the operation of Act III (B. C.) of 1870, in accordance with the provisions of which these suits have for the most part been removed from the Revenue Courts. The case of mukhtárs and revenue agents is therefore one of great hardship. The impoverishment, in consequence of the existing state of the law, of the revenue agents of the Backergunge district, who are represented to be an able body of men, has been specially reported by the Collector, and the Board of Revenue have deemed it necessary to recommend that, in the case of all revenue agents who might strike their names off the rolls, a proportionate refund of stamp-duty should be sanctioned on account of the unexpired portion of the current year covered by each cancelled certificate. A petition has also been received from certain zamíndárs and taluqdárs in the Backergunge district, representing the hardship of being compelled, under the amendments of the rent law, to have recourse to the more expensive agency of pleaders, instead of revenue agents, in rent-suits. The Lieutenant-Governor is constrained to recognise the force of the objection; and he fears, indeed, that the advantages of the legislation under Act VIII (B. C.) of 1869 may, to a great extent, be neutralized by the costliness of the agency, which, under present circumstances, litigants are obliged to employ for the conduct of rent-suits.

“Under all these circumstances, seeing that the changes in the law adverted to press heavily not only on the mukhtárs and revenue agents themselves, but upon a large body of the people; that in some districts pleaders are even now few in number; and that the men composing the classes of mukhtárs and revenue agents have been long practising with the approval of the Courts and acceptance to the public in this particular class of suits, the Lieutenant-Governor would be glad to see an alteration in the present law as to the position of mukhtárs and revenue agents.”

The Council would perceive that there were two distinct grounds taken in that application; one was the ground of hardship to individual practitioners, and the other was the much broader ground of hardship to the community who wanted to have the assistance of revenue agents in rent cases.

The proposal there contained was submitted to the High Court, and that learned body differed in opinion; and he would state to the Council what were the opinions received. The bulk of the Judges were against the proposal; they were eight in number; they included the two able Native gentlemen who were then Judges of the High Court, Bábu Onoocool Chunder Mookerjee and Bábu Dwarkanath Mitter, and also the whole of the Civilian Judges then on the Bench. Any opinion coming from such a body must bear great weight. The statement of the Judges' opinions was rather long, and several of them had written separate Minutes; therefore he could hardly read all they had said to the Council. But he thought it would be accurate to say that the bulk of them concurred in the following reasons, and that no other material reason was given against the proposal. In the first place, as regarded hardship to the practitioner, they stated that it was only since 1865, the date of the Act

which he had mentioned at the beginning of his speech, that the revenue agents occupied the particular position from which they complained that they were displaced by the legislation of 1869. Therefore the objectors said that the hardship to the revenue agents was not very substantial. Secondly, the objectors said that the proposed alteration of the law would deteriorate the status of the Bar. They stated that the mukhtars and revenue agents who would be let in to practise under the alteration were an inferior set of men; that the High Court had been making endeavours for a number of years to raise the status of the Bar in the country with regard to practitioners of all kinds; and that this would be a retrograde step, and let in practitioners with lower qualifications. Thirdly, they said that the remedy proposed was insufficient, if the hardship were real, for it was only proposed to let the revenue agents in to practise in the Munsifs' Courts; whereas, to give a complete remedy, they ought to be allowed to practise in all the Courts wherever rent-suits were carried. Fourthly, they said that there was great practical difficulty in dividing rent-suits from other suits, and there would be much contention and litigation as to whether certain suits were rent-suits or other suits.

He was sure the Council would understand him when he said that this question was one on which he could not himself undertake to form any very original opinion, because he was not personally conversant with the matter. He could only undertake to give the opinions of other people instead of his own, and he would try to do that as fairly as he could, and he believed he had fairly given the opinions stated by the learned Judges. The Council would observe that these reasons addressed themselves to two main points—the status of the Bar, and the hardship on individual practitioners; and that, of course, was natural enough. These were the points upon which the learned Judges had the greatest amount of familiarity and to which they naturally addressed themselves; but they did not address themselves to the broader ground, namely, the hardship on the clients.

Three of the Judges dissented from the opinion of their colleagues. These were the then Officiating Chief Justice, Mr. Norman, Mr. Justice Phear, and Mr. Justice Paul. They took the same grounds that were taken by the Lieutenant-Governor, and they dissented from their learned brethren in thinking either that the status of the Bar would be deteriorated, or that there would be any difficulty in separating rent-suits from other suits. MR. HOBHOUSE would read to the Council a few words from the opinion of Mr. Paul, because he was a gentleman who for a great many years had a large practice at the Indian Bar, and had thereby been brought into contact with practitioners of

all kinds, and had seen in cases which came up to him how these practitioners did their work. He said :—

“I consider the mukhtár or revenue agency a cheap agency, and well adapted to the requirements of poor suitors.

“Speaking from my own knowledge, I should say that mukhtárs, who have hitherto practised as revenue agents, are ordinarily fully able to discharge the duties required of them. I do not think it can be said that, as a body, these revenue agents are incompetent to discharge their ordinary duties, and I therefore consider the total exclusion of these people would be an act of manifest and intolerable injustice.

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“I generally concur in the views put forward by the Chief Justice, and in that concurrence, and in the few observations I have made, I have entirely omitted from my mind the consideration of hardship. My opinion has been based on the general capacity of mukhtárs to discharge their ordinary duties, and on the sense of justice which ought to guide all legislation.”

Mr. Paul, therefore, quite independently of the consideration of hardship to the individual practitioner, speaking in the interests of the suitors and the community, and speaking from his own knowledge how revenue agents did their business, was of opinion that they ought to be allowed to practise in rent-suits. Mr. HOBHOUSE was sorry to say that this point was very much overlaid and hidden by the discussions about other matters which arose on the Bill. As he explained to the Council on the last occasion, there were other matters in the Bill of very great importance to the general interests of both client and lawyer all over India, and that an extremely voluminous correspondence had taken place regarding them; and he was afraid that the interests of Bengal suitors rather went to the wall in the controversy which was raised, and there had been a good deal of delay which he very much regretted. Owing to that delay, it was thought necessary, when the matter came on for discussion, to apply again to the Government of Bengal to know whether they retained the view which was put forward by Sir William Grey; and the Government of Bengal not only retained that view, but held that it would be proper in the interests of the community to admit all duly authorized revenue agents to conduct their clients' business in rent-suits. The clause in question therefore was somewhat altered, somewhat enlarged, and was put in the shape in which it now appeared before the Council. As it was originally drawn, it applied only to those persons who should be revenue agents whenever the Act happened to pass. It now provided that persons duly admitted by the Board as revenue agents should be admitted to plead in rent-suits. That was the form in which the Bill now was. He had

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endeavoured to give to the Council the conflicting views which had been put forth on the subject, and they could form their own opinion whether the report should be accepted.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA BAHÁDUR said that the provisions of the Bill were, he believed, generally approved of by the public; and the landed gentry of his country would, he thought, find it to their advantage if the mukhtárs had the power to plead their rent-suits in the Civil Courts. There was no necessity for the Bill to be published again in the Gazette for the information of the public, and he would suggest that it be passed at once into law.

His Honour THE LIEUTENANT-GOVERNOR thought that perhaps this was a measure on which he ought to say a few words at this present stage. He entirely concurred in the lucid and impartial statement made by the hon'ble member in charge of the Bill, and also in the remarks which had fallen from his hon'ble friend Rájá Nárendra Krishna, who, as the Council knew, was a Native gentleman of the greatest knowledge and experience in this subject. In fact, the hon'ble member's knowledge and experience in these matters were such as might be considered worthy of his high character and status in Native society. And the Council had just heard, though briefly stated, nevertheless strongly stated, the opinion on his part in favour of the Bill.

As regards the general merits of the question, it might be looked upon in two lights, namely, as regards the interests of the Bar and the interests of the clients. Now as regards the interests of the Bar, he had heard, as everybody had heard, with the greatest respect and attention, the observations which fell from the learned Judges of the High Court. But with all deference to them and the great tribunal they represented, it must be remembered that this was really a question between two sections of the Native Bar. Both of those sections were constituted by one and the same Act; nevertheless they represented two branches of the same stock. There was a Native Bar on the revenue side and a Native Bar on the judicial side. Well obviously, if the Board of Revenue were to speak up on behalf of the Native Bar on the revenue side, it was not a matter to be wondered at. So, by parity of reasoning, if the learned Judges spoke up for the Native Bar on the judicial side, neither was that a matter to be wondered at. It was for the Government and this Council to judge between these conflicting claims.

As regards the merits of the case, it must be considered what was the class of suits to which the present question referred. Well, it referred to suits for

rent, which represented the most important class of suits relating to the landed interests of Bengal. Now he put it to this Council whether it was not just that the revenue side of the Native Bar should be admitted to practise in rent-suits. Was it fair to the two sections of the Bar that a monopoly should be secured either by one or by the other? Now, in the present state of the law, it was secured to the judicial section of the Bar. This Bill did not seek to exclude that section, but it sought to admit both sections of the Bar—to give a fair and open field for the exercise of their respective talents. It was well known that no monopoly was sought for on behalf of the revenue section of the Bar, but a fair division, equal terms, were asked for on their behalf.

He might be asked, whether the revenue section of the Bar was likely to be qualified. In point of fact they were likely to be more qualified, perhaps, from their special experience than the judicial section of the Bar. As regards their inferior status and qualifications, which some of the learned Judges referred to, he was sorry that this should be the opinion of such competent authorities. But he would ask the Council to consider the sections of the Act under which these revenue agents were enrolled. The whole Native Bar, both revenue and judicial, was constituted by one Act of this Council (Act XX of 1865). It laid down very precisely the method by which the judicial section of the Bar should be constituted. Having done that, it proceeded to lay down in precisely a similar manner, *mutatis mutandis*, the manner in which the revenue section of the Bar was to be constituted. At the head of the judicial section of the Bar there was the High Court, which might be considered very proper. At the head of the revenue section was the Board of Revenue, which was obviously a proper authority; an authority not, perhaps, so high as the High Court, but which was still at the head of fiscal matters, and an authority which was almost equal in importance to any authority whatever as regards the vastness of their responsibilities and as regards the numerous and weighty public interests entrusted to them. Might he for one moment ask the attention of the Council to the very strict provisions of Act XX of 1865 regarding these agents? Before section 19, there was a heading “of agents practising in Revenue Offices.” The section set forth that no person was to act in Revenue Offices unless qualified as therein provided; section 20 said that the names of revenue agents were to be enrolled; section 21 prescribed the form of certificate to which a stamp was to be affixed; section 23 provided that the Revenue Board was to ascertain the qualifications of revenue agents; section 24 prescribed that the Local Government was to appoint examiners; section 25 related to the enrolment of revenue agents in the Offices in which they should usually practise; section 27

provided that the Board should suspend or dismiss revenue agents practising before it who were found guilty of unprofessional conduct; section 28 prescribed the procedure to be adopted when a pleader was charged with unprofessional conduct before the Board; section 30 gave power to the Board to call for the record of a case; then section 33 provided that a dismissed agent was to surrender his certificate; section 34 laid down the penalty for an unqualified person practising as an agent; section 37 laid down that the Board was to fix the fees to be demanded by revenue agents in civil and revenue proceedings. So that HIS HONOUR could not but think that these provisions were, *mutato nomine*, just as exactly, as strictly and as carefully arranged and drawn from beginning to end as on the judicial side, and you had exactly the same security for the qualification and standard of the revenue side of the Native Bar as you had on the judicial side; and it was not open to any authority to question the qualifications of these agents.

Well, then, as regards the interests of clients, it was but natural that landlords, one great class that had interest in land, should prefer to employ in their rent-suits the same gentlemen that they employed in all other classes of business before the revenue authorities; and it was but natural that the cultivators, the humbler classes, should desire to employ revenue agents whose services could be obtained at an amount not much cheaper than the services of the judicial section of the Bar, but still somewhat cheaper than the members of the judicial Bar. So that there was really an important interest to be served on behalf both of the landowning and the cultivating classes of the country in this matter. The improvements of the Bar (he used the word in its broadest sense), that was to say, the whole Native Bar, whether on the revenue or on the judicial side, was a matter of great importance in Bengal; and cases on the revenue side in the Revenue Offices were becoming just as intricate and important as on the judicial side. He did not know how far the members of this Council followed the course of local politics in Bengal, but it was probably known, more or less, to all the members that there were great revenue laws pending before the local legislature which would in some shape or other be passed into law sooner or later, and the slightest inspection of their character and extent would show the important classes of business which were likely to come up in increasing quantities before the Revenue Courts. He would instance the amendment of the law of partition; the law regarding the management of joint undivided estates; the law regarding the registration of possessory titles in land; and probably—he spoke, perhaps, without absolute authority—the law regarding agrarian disturbances was more or less likely to be passed in some shape or other. These were four important Acts, and doubtless owing to the constant

attention given to all matters relating to land in Bengal, there would be some more Acts of a similar nature passed. Now, all these Acts threw a large class of quasi-judicial business on the Revenue Courts, and therefore the revenue Bar became necessarily an important part of the Native Bar; and it was but fair that they should have an equal share with the other section of the Native Bar in these rent-suits.

This matter had been for some time past under the consideration of the Government of Bengal, and as his hon'ble friend opposite (Rájá Nárendra Krishna) knew, and as was known to many other gentlemen and bodies of gentlemen connected with the land, it was a matter on which considerable interest was felt; and without in any way arrogating a position for them superior to their judicial brethren, His Honour did say that in this, which was an essentially revenue field—relating as it did to rent—revenue agents ought to have a fair and equal share and be admitted upon equal terms; and for such admission the Act in force prescribed a perfect and certain procedure. He was confident, if the Council were pleased to admit revenue agents on the terms on which the Local Government desired, that these men would prove themselves by their conduct and qualifications worthy of the concession.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. He said that the Council had heard what conflicting opinions there were on this subject. If any of his hon'ble colleagues thought it was desirable that a republication should take place, or that more time should be allowed for consideration of the question, he was quite willing, with the consent of His Excellency the President, to vary his motion accordingly. Otherwise, he begged to move in the terms of the notice.

The Motion was put and agreed to.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR moved for leave to introduce a Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India. He said—

“My Lord, it is well known to the Council that various currencies are in use throughout different parts of India, and that many and great evils result therefrom. The difference of coinages seriously embarrasses trade and perplexes dealers in the markets where they are current. And both to individuals and

the State inconvenience and often heavy loss result from the same cause in the realization of rent and revenue. Only those who have been in parts of the country where different coins are current can know the extent of injury and hardship to which the people are subjected by demands being made on them in a different coinage from that which locally prevails. The pressure of each instalment of rent or revenue raises the premium on the coin which is in demand, often to the great detriment of the people. And the same thing occurs in all the dealings of the market. Uncertainty and loss prevail; and the only trade which thrives is that of the shroff or money-changer. The evil demands a remedy if one be possible.

“ But it is evident that the evil must last as long as Native mints continue to issue coin each according to its own standard, differing from our standard and from that of each other in weight and value. And Native States possessing the privilege are naturally unwilling to resign it; because this privilege is highly valued by them as a mark and appanage of sovereignty.

“ Now the proposed measure is designed to remove these objections, and to smooth the way to the adoption of a common currency throughout all districts both Native and British. It is provided in the measure which I hope to introduce, that whenever any State has signified its willingness, we shall undertake to mint for it a coinage in every respect equal as to weight and value with our own, so that it may be admitted as a standard and legal tender in British India as well as in such Native State. The device and legend on the coin will be such as unmistakably to denote that it is the coin of the Native State in behalf of which it is minted. And thus the dignity and sovereign rights of the State will be respected and maintained, while the currency will be uniform in weight and value with British money.

“ To render the adoption of such a course possible certain preliminary securities are required.

“ In the first place, it is evident that the arrangement to have any fixity and value, and to secure confidence in the market, must not be temporary, but must continue at any rate for some considerable period of years. For such period, at the least, the Native State must guarantee that it will close its mint and issue only the new money contemplated in this measure.

“ Next, it must be stipulated that, if at the close of that term, or at any future period, the State should re-open its mint, it will never, in all time to come, coin any pieces of money at all resembling in appearance the money

issued under this Bill. For it is evident that otherwise uncertainty might be thrown upon the legalized coin from the fact of another similar but unguaranteed coinage circulating side by side with the standard money in the British market, before it might be possible to demonetize and withdraw such standard money.

“ These are the chief precautions for assuring the safety of the measure. There are other minor matters for which it is proposed to provide. For example, the device on both sides of the coin must be different from that on coins now made and issued by any Native State, and further such design must be first approved by the Government of India. Moreover, on all such coins the value in our money must be inscribed in the English language, a provision required to secure its ready recognition in British markets.

“ The measure thus guarded will, it is believed, be perfectly safe, and it will be effective in so far as Native States will agree to co-operate with us in adopting it. But the extent and efficiency of its action will of course be entirely dependent upon their willingness to co-operate.

“ It will naturally be asked whether we have any reason to anticipate that they will co-operate. We trust that they gradually will do so. And we have already received adhesions to the measure. The small State of Alwár has the honour of being the first which signified its readiness to fall in with such a scheme. And now Holkar has entered into negotiations with the Government of India for the same purpose. His Highness has in this matter shown his usual wisdom and perception of economic benefits, and his ready and loyal appreciation of the common advantages which will accrue from the measure both to his own dominions and ours; and has accordingly signified his willingness to adopt the new coinage in supersession of his own.

“ Thus there are two States with which we can commence at once; and when the benefits of a uniform and standard coinage come to be seen, as it may be confidently hoped they will in these instances be seen, we may reasonably expect that other States will follow their example. The progress may be slow; we trust that it will not; but even if it be gradual, the object to be secured is so large and so important that we can afford to wait and to keep it patiently in view. Meanwhile, every Native State which gives in its adhesion to the project will close one of the springs from which the varied currencies flow, and in so far diminish the mischief. And eventually we may cherish the hope that the sources of the evil will all be removed, and that a uniform currency will prevail over every part of the Peninsula and Continent of India.”

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES' BILL.

The Hon'ble Mr. HOPE asked leave to postpone the motion for leave to introduce a Bill to relieve from incumbrances certain estates in Sindh.

Leave was granted.

The Council then adjourned to Tuesday, the 15th February 1876.

CALCUTTA,

The 8th February 1876.

WHITLEY STOKES,

Secretary to the Govt. of India,

Legislative Department.