

*Friday,*  
*13th December, 1889*

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

Vol. XXVIII

Jan.-Dec., 1889

ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS,

1889

VOLUME XXVIII



Published by Authority of the Governor General.



CALCUTTA:  
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,  
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.*

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The Council met at Government House on Friday, the 13th December, 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 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 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 Churn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

NEW MEMBER.

The Hon'ble SIR ALEXANDER WILSON took his seat as an Additional Member.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Crosthwaite, the Hon'ble the Mahárájá of Vizianagram and the Hon'ble Sir Alexander Wilson be added to the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India.

~~The Motion was put and agreed to.~~

[*Mr. Scoble; Mr. Crosthwaite.*] [13TH DECEMBER,

### CHARITABLE ENDOWMENTS BILL.

The Hon'ble Mr. SCOBLE also moved that the Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Sir D. M. Barbour, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha, the Hon'ble Mr. Evans and the Mover.

The Motion was put and agreed to.

### CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to make better provision for the Organization and Administration of Municipalities in the Central Provinces be taken into consideration. He said:—

“ Since the Bill was introduced it has been carefully considered by the officers of the Central Provinces and by the municipal committees, and there is a general agreement of opinion that its provisions are suited to the requirements of the province and will effect a valuable improvement in the law.

“ It will be in the recollection of the Council that on a former occasion I explained that there was no intention of materially changing the constitution of the municipalities in the Central Provinces or of introducing new principles. It has been found necessary to legislate because the existing Municipal Act of 1873 is no longer sufficient to meet the requirements of municipal administration. That Act is a short Act of twenty-three sections, which gives large powers to the Local Government and provides in very general terms for taxation and expenditure. As regards the powers of committees for sanitary purposes and the definition of offences against the municipal law, it leaves almost everything to be provided for by rules to be made under the Act and to be confirmed by the Local Government. Such a measure was well adapted for the commencement of municipal institutions, when it had not been ascertained by actual experience what forms of taxation were most suitable, what powers were required by municipal committees, and what powers might be safely conferred upon them. It was necessary, therefore, to confer powers in general terms, to leave much to be done by rules, and to give a wide discretion to the Local Government. But now that the people have



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become accustomed to local self-government it is expedient that the responsibility of governing their towns should rest more extensively on municipal committees, and that their powers should be more precisely defined and should be capable of more independent exercise. Moreover, with increased prosperity and the growth of the towns, new wants have arisen which must be provided for, and matters which in former days adjusted themselves, or were adjusted by the authorities without law, cannot now be dealt with unless the Legislature confers the necessary powers.

“In preparing the measure which is now before the Council, the Local Administration had the advantage of the experience gained by many years of municipal government, and the municipal laws in force in the North-Western Provinces, the Punjab and other parts of India afforded also valuable assistance in framing a municipal law for the Central Provinces. The Bill retains the present constitution of the municipalities, and it adopts, with such changes as local circumstances render necessary, those provisions of the municipal law of the North-Western Provinces and the Punjab which are required for the full development of municipal administration, and which are, in the Chief Commissioner's opinion, suitable to the conditions obtaining in the Central Provinces.

“The Bill, my Lord, has not been materially altered in Select Committee, and there are only a few provisions with regard to which it is, I think, necessary for me to make any remarks. It was suggested by some of those who gave opinions on the Bill that, as the municipalities had made so much progress and the committees had acquired so much experience in local self-government, advantage should be taken of this opportunity to alter the constitution of municipalities by providing that a larger proportion of members of a committee should be persons other than salaried officers of the Government, and in this way to make the committee more really a self-governing body. It was said that under the existing law there is a danger that the official members of a committee may have too much power and may interfere with the free action of the non-official members. After carefully considering this question, the Select Committee decided that it was not expedient to amend the law in this respect. The law is that not less than two-fifths of the members of the committee shall be persons other than salaried officers of the Government, but it is not necessary to have a single salaried officer of the Government on the committee. If the people wish to elect a majority of such officers, there is no reason why they should not be allowed to do so within certain limits. Moreover, comparing the provisions of the Bill with the provisions of the Municipal

Acts in force in other Provinces, it does not appear that the rule for the Central Provinces is calculated to give the committees there more official members than can be appointed for committees in other provinces. In the North-Western Provinces, the Punjab and Burma there is no limit imposed on the number of Government officers who can be elected members of a committee. The limitation is only provided in the case when the members are appointed otherwise than by election. In the Bill now before the Council the rule that not less than two-fifths of the members of a committee shall be persons other than the salaried officers of the Government applies in every case whether appointments are made by election or by nomination. Having regard also to the circumstances of the Central Provinces, it was considered inexpedient to enact that the non-official members of a committee shall in all cases be more than two-fifths of the whole committee. There may be municipalities in which such a rule, if enacted, would cause the greatest inconvenience and deprive the municipality of the services of its most useful members. In framing an Act which is to apply to municipalities of all kinds some discretion must be allowed to the Local Government, which must be trusted to use that discretion rightly and in accordance with the principles laid down by the Government of India.

“It would seem from what has been said in one or two of the opinions on the Bill that there is some misapprehension as to the provisions of sections 40 and 41 relating to the municipal police. It will be therefore as well to explain that section 40 follows the existing law in imposing on the committee the obligation of maintaining the police-establishment, and that section 41, which is taken from the Punjab Municipal Act, 1884, empowers the Local Government to relieve any committee of the whole or a part of the cost of the police-establishment on the condition that the committee shall pay, or spend on objects to which the municipal fund can be applied, a sum not exceeding the cost of the police-establishment which the Government undertakes to maintain. As a fact municipalities have, in accordance with the instructions of the Government of India, been relieved of the cost of the municipal police, and the sections make no change in this respect, but are in accordance with the existing state of things.

“I have a few words to say with respect to Chapters V and VI of the Bill, which contain provisions regarding the powers of a committee for sanitary and other purposes, and regarding offences against the municipal law. Here the Bill follows the Punjab Municipal Act, 1884. When that



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Act was before the Council the question whether these matters should be left to be provided for by rules made under the Act, or should be provided for by enactments contained therein, was fully considered, and it was decided that the latter course should be adopted. There can be no question that if it is intended to confer on municipal committees important powers for sanitary purposes, such as powers regarding the building of houses, the regulation of burial and burning places and of slaughter-houses, the entry and inspection of houses, and the control of places used for carrying on dangerous or offensive trades within a municipality, it is expedient to confer these powers by express enactment and not to leave them to be provided for by rules. Municipal committees would necessarily seldom be equal to the task of framing rules on such matters. So also I think it will be generally admitted that the definition and punishment of offences against the public health, safety and convenience should, in the interests of the public, be provided for by the Legislature instead of by municipal committees. The only objections to the withdrawal of the power to provide by rule for these matters are that the Legislature will probably omit to provide for the prevention of some acts which, in consequence of local peculiarities, may in some places amount to a nuisance, and that the inclusion of so many provisions with regard to powers and offences renders the Municipal Act too lengthy and elaborate. I do not think that these are weighty objections. The circumstances of the Central Provinces have been considered in framing the chapter on offences, and all local peculiarities have as far as possible been provided for. If there should happen to be a nuisance which is not included in the chapter, it will probably amount to a public nuisance punishable under the Indian Penal Code, or else it will be a private nuisance which only affects an individual and with which the municipal committee should not interfere. The answer to the second objection is that given by the Hon'ble Mr. Ilbert when the Punjab Municipal Act was under consideration. If the powers of committees and the offences against the municipal law are left to be provided for by rules, the Municipal Act is shortened, but the law which will have to be administered is to be found, not in the Act alone, but in the Act plus the rules made under it, and the more you put into the Act the less you will have to put into the rules. 'My belief,' he said, 'is that by adding to the bulk of the Act, and thereby reducing the bulk of the rules, we have made the law more and not less easy to work.'

"There are a few amendments made in the Bill in Select Committee which I think I should mention. By section 65 power was given to the committee to

enter and inspect places used for the sale of articles intended for food or drink for man, to examine such articles, and to seize them if they appeared to be unfit for the consumption of man. It has been found that in some places there is a practice of carrying about meat for sale, and it was apprehended that in this way diseased meat might be sold notwithstanding the provisions of section 65. We have therefore added to the first sub-section of section 84 a clause (l) giving the committee power to make rules for prohibiting the offering of meat or any specified description of meat for sale except at a shop or stall or in a market. We have also in clause (m) of the same section given to the committee power to control and regulate the duties of sweepers employed by it and to prescribe the conditions on which they may withdraw from employment. This provision was suggested by the Nagpur Peoples' Association and by some of the persons consulted on the Bill. The sweepers who are employed by a committee for purposes of conservancy have it in their power, by suddenly refusing to work, to cause very great inconvenience, and we considered that it would be reasonable and proper to empower the municipality to regulate the duties of sweepers and prescribe the conditions on which sweepers who undertook conservancy work in a town might withdraw from their employment. Another important amendment made is the insertion of section 145 of the Bill, which is taken from section 170 of the Punjab Municipal Act, 1884, and gives to the Local Government power to except any municipality from any provisions of the Act which are in the opinion of the Local Government unsuited thereto. I need scarcely say that the necessity for this section arises from the fact that the municipal institutions in the Central Provinces are in different stages of growth. Some committees, such as those of Nagpur, Jubbulpore and Raipur, are capable of exercising all the powers conferred by the Bill; others require control and guidance. If, moreover, it is thought advisable to create a new municipality, it may not be expedient to place it at once on the same footing as the committee of a large town where municipal institutions have been in existence for years. It may also be the case that some provisions of the Act may, owing to local peculiarities, cause inconvenience in a municipality, and it is desirable, therefore, that the Government should have the power of excepting the municipality from those provisions.

"I do not think, my Lord, that there is any other provision of the Bill which requires notice. The expansion of the municipal law from an Act of twenty-three sections to an Act of 147 sections has been disapproved of by



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some of those who have criticised the Bill; but I fear this cannot be helped. As the country progresses, new wants arise and legislation is required to provide for matters which sixteen years ago gave rise to no difficulties. It is a matter for congratulation that municipal institutions have so prospered that they have outgrown the law which formerly sufficed for them, and I trust that this measure will be found to supply the deficiencies in the present law and to assist the committees in the administration of municipal affairs. There are few provisions in the Bill which have not already been in force in the Central Provinces or in other provinces; and the law, therefore, contained in the Bill is for the most part a law which has already been found by experience to work satisfactorily."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the words and figures "or of a sub-committee appointed under section 19" be added to clause (b) of section 10 of the Bill. He said:—

- "This clause gives the Local Government power to remove any member of a committee who without an excuse sufficient in the opinion of the Local Government absents himself for more than three consecutive months from the meetings of the committee. The object of the amendment is to show that members of a sub-committee appointed under section 19 who duly attend the meetings of the sub-committee are not liable to removal from office if they fail to attend the meetings of the committee. Section 19 of the Bill is intended to provide for the appointment of a sub-committee to manage any ward or wards for which, owing to peculiar circumstances, a committee possessing special knowledge or other qualifications is required. For instance, for the civil station of Nagpur, which is situate within the Nagpur municipality, it has been found expedient to appoint a sub-committee including among its members persons who understand the wants and requirements of the European residents. When a ward in a municipality is entrusted to a sub-committee to manage, the principal duty of the members of the sub-committee will be to attend to the business of that ward, and they will not be concerned with the executive administration of other wards. They will not, therefore, be ordinarily required or expected to be present at the meetings of the committee."

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The Hon'ble MR. CROSTHWAITE also moved that the following be substituted for section 117 of the Bill :—

“ 117. If the owner or the person in possession of any food or drink or animal which is seized under section 65, sub-section (1), does not consent to the destruction or disposal of the same, the Magistrate, if it is proved that the food or drink or animal was intended for the consumption of man and is unfit therefor, may order the food or drink or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the consumption of man, and may direct that such owner or person shall be punished with fine which may extend to one hundred rupees :

“ Provided that a person who is in possession of food or drink or of an animal as a carrier or bailee thereof shall not be liable to a fine under this section.”

He said :—

“ This amendment is merely an amendment in the drafting, and is proposed with the view of making the provisions of the section clearer regarding the power of the Magistrate to order the destruction or disposal of the food, drink or animal which has been seized under section 65 and which is proved to be unfit for the consumption of man. Sections 65 and 117 of the Bill are adapted from the Punjab Municipal Act, 1884, and Bengal Act III of 1886. Section 65 gives the committee power to enter into and inspect places used for the sale of articles intended for food or drink for man or as a slaughter-house, and to seize and remove any article of food or drink or any animal which appears to be intended for the consumption of man and to be unfit therefor. If the owner or the person in whose possession the article or animal is found consents, the article or animal may be destroyed or so disposed of as to prevent its being exposed for sale or used for the consumption of man. If the owner or person does not consent, then under section 117 a Magistrate, if it is proved that the food or drink or animal was intended for the consumption of man and is unfit therefor, may order the food or drink or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the consumption of man and may also fine the owner or person in whose possession it was seized.”

The Motion was put and agreed to.

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

The Motion was put and agreed to.

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## CENTRAL PROVINCES CONSERVANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Report of the Select Committee on the Bill to make better provision for Conservancy in Villages in the Central Provinces be taken into consideration. He said :—

“ This Bill, drafted on the lines of a measure prepared by Mr. Mackenzie, the Chief Commissioner, is an attempt to effect a reform in the sanitary condition of the villages in the Central Provinces, and is based on the principle that village-sanitation can best be carried out with the co-operation of the villagers themselves. It has been seen that municipalities can satisfactorily manage the sanitation of towns, and it may, therefore, be hoped that in the larger villages the inhabitants will, if given the necessary powers, follow the example of municipalities and improve the condition of their villages. The measure, accordingly, has been framed with the view of enabling the authorities to enlist on the side of sanitary reform local knowledge and popular sympathies and to make use of the power of local self-government which has always existed in some form or other amongst the village-communities. I have already on a former occasion given an outline of the provisions of the Bill. Like the enactments which were first framed for the constitution of municipalities, they are very simple and leave a great deal to the discretion of the Local Government, because it is considered that the provisions of a new and tentative measure of this kind should be elastic, so as to enable the Government to ascertain by practical experiment how the intention of the Legislature can best be carried out. It is necessary also to proceed with great caution, to show the people that the sanitation of their villages is possible and is for their benefit, and to avoid any action which might irritate them and arouse opposition.

“ The plan of the Bill is briefly as follows. In the first place, its provisions can be applied only to a village of a certain size which the Deputy Commissioner declares by an order in writing to be in an insanitary state. When this declaration has been made, the Local Government may, either on the application of the mukaddam, or village-headman, and ten or more of the inhabitants of the village, or, if they do not apply, on the application of the Deputy Commissioner, extend the Act to the village. Then a panchayat is to be formed consisting of the mukaddam, and of persons elected by the inhabitants. The panchayat will determine the sum which will be annually required for the conservancy of the village, the provision of a supply of wholesome water and the maintenance of the roads



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in the village, and it will proceed to raise this sum by an assessment on the houses and lands within the village. This assessment will require the sanction of the Local Government, to which also is given power to make rules regarding the election and term of office of members of the panchayat, the amount of the taxes which can be imposed, the regulation of conservancy, the defining of nuisances, and other matters.

“The opinions on the Bill are generally favourable and the alterations which have been made in Select Committee are few and not of much importance. We considered that the number of inhabited houses in a village would be a better condition for the application of the Act than the number of inhabitants. In section 2 of the Bill, therefore, the words ‘a village containing not less than one hundred inhabited houses’ have been substituted for the words ‘a village containing not less than three hundred inhabitants.’ We have given to the Local Government power to direct that there shall be more than four members on a panchayat, and we have struck out clause (d) of section 4 of the Bill, which authorized the expenditure of money on village-schools, inasmuch as we considered that money raised by taxation under the Act should be spent on the sanitation of the village and not on education. The maximum fine which can be imposed for the breach of a rule made under the Act has been reduced to ten rupees. The other amendments do not, I think, call for remark.

“The measure, my Lord, is new and experimental, and in asking the Council to pass it I may say that I am assured that its provisions will be worked with caution, and discretion, and that there is no intention of carrying out a sudden and extensive reform in the sanitation of the villages.”

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*) be taken into consideration. He said :--

“I have to move regarding a Bill which I introduced at Simla to amend

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the law relating to asylums for lunatics. I then explained fully the defects in the existing law which it is sought to remove, and I would not trouble the Council with any further observations but for the fact that there are several Hon'ble Members here now who were not present on that occasion. For their benefit I will state the provisions of the measure very shortly.

"In 1886 it was found that the law required the lunatics of each province to be sent to an asylum established by the Local Government of that province, but, as some provinces were unable to maintain separate asylums, the Government of India took power to appoint asylums elsewhere to which the Magistracy of such provinces might commit insane persons brought before them. It has now been brought to notice that, even when a Local Government has established an asylum within its own limits, there may be some parts of its territory more conveniently situated with regard to an asylum in some other province. I therefore proposed to extend the power to appoint an extra-territorial asylum to cases in which the provincial asylum is not conveniently situated with respect to any part of the province, or does not provide sufficient accommodation for the whole of it: and to these cases in Select Committee we have added one other, namely, the case in which the accommodation contained in the provincial asylum is unsuitable for any particular class of lunatics, such as females. All these cases will now be found provided for in the first section of the Bill on the table.

"The second section merely gives to Local Governments and the Government of India in respect of the transfer of civil lunatics from one asylum to another the same powers which they already possess in regard to criminal lunatics. A Local Government is authorized to transfer such persons within its own limits, but when it is desired to move them from one province to another an order of the Governor General in Council is required.

"By the third section an old enactment is repealed which vested in the Inspector of Jails a power similar to that now conferred on the Local Government. This has become obsolete since lunatic asylums are no longer under the Jail Department.

"It will be seen that the Bill is of a very simple character."

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.

The Council adjourned to Friday, the 20th December, 1889.

S. HARVEY JAMES,

*Secretary to the Govt. of India,  
Legislative Department.*

FORT WILLIAM; }  
*The 18th December, 1889.* }