COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 10th October 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble H. S. Maine.
The Hon'ble W. Grey.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.
The Hon'ble H. P. Riddell.

OUDH SUB-SETTLEMENT BILL.

The Hon'ble MR. MUIR, in moving for leave to introduce the Bill to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province, said that this Bill was brought forward with the view of giving legislative authority to the arrangements lately sanctioned by the Government of India, for the settlement of certain classes of estates held under Sanad by the great landholders in Oudh.

The reasons which had led to those arrangements had been already fully detailed in the correspondence between the Government and Mr. Strachey, the Chief Commissioner of Oudh, already published in the *Gazette of India*, and he need not therefore refer to them more particularly now.

The Bill related only to that portion of the arrangements in question which provided for the rights of Sub-Proprietors or Zamíndárs, and the terms on which they were to be admitted to settlement. It had no reference to the arrangements concluded in respect of non-proprietary cultivators.

Perhaps some remarks were necessary on the shape and form of the Bill. As the Chief Commissioner's rules embodied stipulations which formed a sort of compromise with the Táluqdárs on certain debated points, it had been deemed

advisable to retain them, as a Schedule to this Bill, in the very words and in the exact form in which they were concluded. But it was really in respect of only a limited portion of these stipulations that necessity for legislation existed. In many points the rules simply enunciated the law as it was acknowledged by the Courts in Oudh.

For example, the provision for maintaining, under a proprietary title, the "nánkár" lands in the possession of ex-proprietary claimants, was nothing more than a statement of the law and practice recognized by the Courts. So with the rules for the determination of the revenue demandable by the Táluqdárs from the sub-proprietors. This was a matter within the exclusive jurisdiction of the Revenue authorities acting administratively under the instructions of the Executive, and their action in this respect could not be called in question by the Courts.

There were in fact, perhaps, only two of the rules, the 3rd and the 8th, which required legislation to make them binding on the Courts. He would refer briefly to each of these.

The 8th rule laid down that, even in cases where the sub-proprietary title was otherwise fully established, still if the average profits of the sub-proprietors during the period of limitation, or so far as they could be ascertained, were found to have fallen short of twelve per cent. of the gross rental, then the sub-proprietors were not to be admitted to engagements. They were to be excluded: but in lieu of a sub-settlement, their "sír" and "nánkár" lands, under a proprietary title, were to be made up to ten per cent of the gross rental of the whole estate. In properties of which the sub-proprietors had been unable to secure a larger profit, in virtue of their proprietary right, than twelve per cent. of the rental, it might reasonably be presumed that the superior proprietor had materially encroached upon that right, and had left the Zamíndárs but a weak and unprofitable title: and it might be held that so feeble and imperfect a right did not justify the claim of the sub-proprietors to a sub-settlement of the entire estate. The assignment of a nánkár allowance, equal to ten per cent. of the rental, might be assumed as placing them in a position nearly as profitable as that which they formerly held. It would not indeed be a position of so much influence and importance. But the amount of profit would be about the same, and consequently the arrangement might be held to be reasonable and equitable. Still it was doubtful whether the arrangement would be recognized by the Courts, unless sanctioned by the Legislature.

The second case was that of Rule 3. This reduced to a precise formula the law of limitation for sub-settlements, which had been hitherto contained in vague and somewhat uncertain rulings; or rather it laid down the length of possession within the period of limitation, necessary as evidence of a good Zamíndárí title. It ruled that for any claimant (not in possession at the date of annexation) to obtain a decree for sub-settlement, he must prove, not only that he had been in possession within the period of limitation, but that he had been in possession *under the superior for a given number of years*—the proportion being laid down generally as not less than one-half of the entire period of limitation, and one year in addition. This rule was held by the Chief Commissioner to be the reduction to a precise form of a principle recognized (although embodied hitherto in vague and indefinite terms) in Oudh, and therefore to be conformable to the law. It was, however, well known that some Judicial Officers in Oudh did not concur in this opinion. These held that wherever a claimant proved that he was the Zamíndár, then possession for even a single year within the term of limitation would entitle him to a sub-settlement: and decisions had actually been given by the Courts upon that basis. Such Officers would not acknowledge an administrative order of the Government, believed by them to be in conflict with the law; in spite of the instruction, they would feel bound to follow the law. And therefore it was absolutely necessary to give legal force to such instruction, if it was to be binding upon the Courts.

If the latter rule to which he (MR. MUIR) had now adverted should appear to bear hardly on the Zamíndárs, it must be remembered that, under the Oudh system, these ousted proprietors would still be entitled to hold as property the sír or nánkár land which they possessed. This was a peculiar virtue of the Oudh system of settlement, as compared with the systems elsewhere; and to the merit of introducing it the late Chief Commissioner Sir C. Wingfield was entitled. If in any estate belonging to the class of cases referred to, the amount of nánkár should, from any cause, be found to be inadequate, then the Chief Commissioner would no doubt take up such cases of hardship under the instructions which His Excellency, in approving the rules, had issued to him. The passage alluded to was as follows:—"While the Governor-General in Council "anticipates that the rules now sanctioned will work equitably for all parties, "it is yet possible that there may be some classes of cases, not here provided "for, in respect of which this expectation may not reasonably be fulfilled. "Should any such hereafter occur, His Excellency in Council trusts that you "will, in communication with the Táluqdárs, be able to apply a suitable "remedy in the spirit of the present arrangements; and the Governor-General "does not doubt that the Táluqdárs, who have on this occasion shown so liberal

"and conciliatory a spirit, would again in a like spirit aid you should such "contingency arise." The Settlement Officers might be trusted to bring forward any cases of hardship of the kind above indicated to the notice of the Chief Commissioner, who, acting on the views of His Excellency, would naturally represent them to the superior landholder; and if he (MR. MUIR) might judge from the fair and liberal spirit evinced by Mahárájá Mán Singh on his late visit to Simla, neither he nor his brother Táluqdárs would be backward in agreeing to an equitable and suitable redress.

The Motion was put and agreed to.

The Hon'ble MR. MUIR then requested the President to suspend the Rules for the Conduct of Business.

In making this request, MR. MUIR said that the correspondence before alluded to, including the rules now embodied in the Schedule to the Bill, were published in the *Gazette of India* in the beginning of September, that is, some six weeks ago. The provisions contained in the Schedule had therefore for a considerable time been well known both to the Council and to the public at large. He (MR. MUIR) believed that they had been well received everywhere, and especially by communications from Oudh, he understood that they had given satisfaction in that Province. No objection of any kind had been raised. Such being the case;—the measures being of local application, and sufficiently known and approved by all who were likely to give any opinion on the subject; being, moreover, the result of a kind of compromise which Government had ratified, it was of importance that the Bill should be introduced and passed at once, and that the faith of Government should thus be maintained by placing the rules beyond the doubt of any want of legal validity.

The President declared the Rules suspended.

The Hon'ble MR. MUIR then moved that the Bill be taken into consideration.

The Hon'ble MR. RIDDELL thought there was no sufficient reason for suspending the Rules. A Bill of such importance should be published in the *Gazette*, and every clause should be fully and carefully considered. Moreover, as the Bengal Regulation VII of 1822 was in force in Oudh, he did not see any necessity for the Bill; for, under the provisions of that Regulation, the Governor-General in Council and the Revenue authorities were invested with full power to determine the conditions under which persons possessed of subordinate rights in Táluqás should be allowed to obtain a sub-settlement. Section 10 of that Regulation provided that, "of several parties possessing

"separate heritable and transferable properties is any parcel of land, or in the "produce or rent thereof, such properties consisting of interests of different "kinds, it shall be competent for the Governor-General in Council to determine "and direct which of such parties shall be admitted to engage for the payment "of the Government revenue." And it is further declared that the Governor-General in Council is competent in confirming a settlement to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand, shall be distributed among the different parties possessing an interest in the land or rents or produce thereof. The following, the second clause of the same Section of the Regulation, related more specially to the classes affected by the Bill; it declared in very comprehensive terms that, with the sanction of the Board of Revenue previously obtained, and subject to the orders and directions of that authority, it should be competent to the Collector to make a sub-settlement, or as it was styled, a Mofussil settlement, with any person having subordinate right in any "Talooka Zemindaree, or the like." A sub-settlement might be made, not only with persons possessing heritable and transferable property in the estate, but with those who had an hereditary right of occupancy, subject to the payment of fixed rent, or of a rent determined by a fixed principle; and it enacted that a 'pattá' should be granted to each of such under-proprietors or occupants, defining the conditions on which he should hold his land.

The recognition of a right to sub-settlements depended altogether upon Government, and the passing of the present Bill might fairly be regarded as depriving the Governor-General in Council of the power in this respect which he had hitherto possessed. Furthermore, the agreement with the Táluqdárs in which the Bill originated was two-sided, and in return for their sub-settlements, the Táluqdárs were to make certain concessions to their ryots. The Bill proposed to legalize the sub-settlements, but said nothing whatever as to the corresponding concessions. It was said that Mán Singh and other leading Táluqdárs would be sure to carry out these concessions if the Bill were passed, and he (Mr. Riddell) had no doubt they would do so. But there were other Táluqdárs in Oudh besides Mán Singh and his associates, and he (Mr. Riddell wished to know how *they* would be bound if the Bill were passed in its present form? To sum up his chief objections, he thought,—firstly, that the Bill was unnecessary; secondly, that, if necessary, it should be published in the usual way so that all persons concerned might have ample opportunity of considering its provisions; and thirdly, that the defect which he had pointed out should be supplied, and that clauses should be provided, either in the shape

of a separate Bill or by way of additions to the proposed enactment, binding the Táluqdárs to carry out their promises to the ryots.

The Hon'ble MR. GREY thought that the Hon'ble Mr. Riddell's objection to passing the Bill was inconsistent with his own admission that the Government was at liberty, under Regulation VII of 1822, to pass rules, in its executive capacity, respecting sub-settlements. So far, then, as under-proprietors were concerned, he (MR. GREY) thought there could be no objection to the Government passing such rules in its legislative capacity. He did not understand how this could possibly, as Mr. Riddell thought, compromise the power of the Governor-General in Council. But the question was, had the Governer-General in Co uncil power to make such rules for Oudh? Did the Regulation cited by Mr. Riddell apply to that Province? The general Regulations had certainly not been extended to Oudh. However the case might be, the fact remained that some of the Revenue Officers in that Province exercising judicial powers—amongst others he might mention the Financial Commissioner—entertained grave doubts as to whether the rules regarding sub-settlements embodied in the Bill were legally valid, although they had received the sanction of the Governer-General in Council. The necessity of legalizing these rules was therefore undeniable.

As to suspending the Rules, and passing the Bill at once, there could, he thought, be no reasonable objection. The Bill if passed, would merely confirm what the Government had ruled in its executive capacity, and what the Government was bound to do in fulfilment of the obligations which it had entered into with the Táluqdárs in 1858. There could be no possible use in opening a discussion which had been closed, and giving the opportunity for again raising difficulty questions which had long since been settled satisfactorily.

The Hon'ble DR. MUIR wished to add a few observations on the objections taken to the Bill by the Hon'ble Mr. Riddell. In the first place, his Hon'ble friend had urged that the Bill was unnecessary, because the powers it conferred on the Revenue Courts, were already possessed by the Governor-General in Council in his executive capacity. It did not materially affect this questien, wehther the law referred to (Regulation VII of 1822) was in force in Oude or not. He (MR. MUIR) believed that it had been introduced into Oudh by Lord Dalhousie in February 1856, along with the rest of the Revenue law then in force in the North-Western Provinces and the Punjab; and that it was still in force in Oudh, excepting in so far as it had been modified by the Táluqdárí system subsequently by due authority prescribed. But it appeared to him that his

Hon'ble friend had confounded two distinct things; namely, on the one hand, the power of Government to determine as between the Táluqdár and sub-proprietor, which of the two parties should be admitted to direct engagements with the Government; and, on the other, the power of the Courts to determine whether a sub-proprietary title existed at all. In respect of the former, the Government did undoubtedly possess the authority stated by Mr. Riddell; and it had already, in virtue of that authority, determined that, in all cases, the engagement with Government should be held by the Táluqdár in the first instance—the sub-proprietor holding on a sub-lease from the Táluqdár. But this was an entirely distinct matter from the legal power possessed by the Courts of determining, as between the Táluqdár and claimant of sub-proprietary rights, whether the latter did possess those rights. The Government had agreed that such rights would be recognized only under certain circumstances, and when a certain length of possession had been established. Now there was nothing in the law, as construed by certain of the Judicial authorities, to prevent the Courts from decreeing the sub-proprietary right on a prescription less than that laid down in the Government rule,—that is, on conditions different from those agreed to by the Government. In such event, the Táluqdárs would justly regard the stipulation as broken. It was of the first consequence to maintain the faith of Government inviolate. And for this purpose it was indispensable that the rules should be invested with the force of law.

On the second objection, that measures of such serious moment should not be finally passed without further deliberation, he (Mr. Muir) had already stated the reasons why he had proposed this step. Besides having been made public for some weeks, these measures had been the result of long and anxious deliberation. The subject involved many perplexed questions of great difficulty, and was embarrassed by pledges from time to time given by the Government to the Táluqdárs. The present arrangement afforded a solution of the difficulties, which, under the peculiar circumstances, was, he believed, the most satisfactory that could be arrived at. And as the Government had pledged itself to its fulfilment, it was of the highest importance that there should be no doubt left, for a moment longer than was necessary, as to the legal force of the rules; or that any possibility should exist of decisions being given by the Courts at variance with the principles they laid down. He therefore thought that the Council was fully justified, there being no doubt as to the equitable character of the rules themselves, in proceeding at once to remove all questions as to their legal validity.

The last objection adduced by Mr. Riddell was, that the Bill related to only one part of the arrangements lately concluded, and that if the rules for sub-proprietary rights were passed into law, so also should that portion of the rules which related to cultivating rights. As he (MR. MUIR) had been in correspondence with the Chief Commissioner on the subject, he would mention in explanation, that it was, at the present moment, only in respect of the sub-proprietary rules that immediate necessity for legislation existed. It was understood that the Courts would have no scruples in carrying into effect to the letter the rules relating to non-proprietary cultivators. No doubt legislation might eventually be found necessary in this respect also. But the subject was a large and difficult one, involving other considerations; and the Chief Commissioner was not prepared at the present time to recommend a legislative measure which should embrace all the points involved. All that was in the meantime required was to see that the arrangements agreed to on the late occasion were fully acted up to. And he (MR. MUIR) could assure his Hon'ble friend that the Chief Commissioner would carefully watch that this was the case: and if at any time it was found that the rules were in any respect not acted up to by the Courts in consequence of doubts as to their legal force, then the Chief Commissioner would lose no time in asking for the necessary sanction from the Legislature. In this respect, his Hon'ble friend might be satisfied that the honour of Government was in safe keeping in Mr. Strachey's hands.

His Excellency THE PRESIDENT observed that it had been a moot point originally, that was, after the arrangement between himself and Mr. Strachey, whether or not legislation was necessary. Some of the Members of the Council were doubtful as to the necessity, and it was decided, after discussing the matter with the Chief Commissioner, that on his return to Oudh, he should reconsider the matter in consultation with the Financial Commissioner and send the Government his final opinion on the question. Mr. Strachey accordingly returned to Oudh, and after consulting the Financial Commissioner, wrote up to say that both he and Mr. Davies concurred in thinking legislation absolutely necessary. He also expressed his desire that legislation should be limited to validating the rules which he had prepared regarding sub-settlements and other subordinate rights of property, and that the question of the rights of the ryots should be left to be solved when it arose in practice.

When Mr. Riddell objected to suspending the Rules for the Conduct of Business, and maintained that more time should be given for considering the proposed measure, His EXCELLENCY thought that Mr. Riddell forgot that the

Táluqdárs had been fully represented at the discussions which resulted in framing the measures embodied in the proposed enactment. Mán Singh and the other Táluqdárs whom the proprietors of Oudh had chosen to represent them came up to Simla with the Chief Commissioner. They were present at the discussions at which every point was gone into (His Excellency might say) with the utmost care, and all signified their concurrence in the rules published in the *Gazette* and embodied in the Bill now before the Council. After returning to Oudh and reconsidering the whole matter, Mán Singh and his co-representatives said that they were fully prepared to abide by the rules in the Bill. The Government proposed modifications in the rules as originally drafted by the Chief Commissioner, and these modifications were quite agreed to by the Táluqdárs. On the other hand Mán Singh and his co-representatives also proposed modifications, to which the Government likewise assented. His Excellency mentioned this to show that the matter had not been hastily transacted on the part of the Táluqdárs, but that they had fully entered into the consideration of the rules now before the Council.

As to whether Regulation VII of 1822 extended to Oudh, His Excellency admitted that it was a moot point; but His Excellency thought that the spirit of the Regulation was intended to apply to Oudh. That opinion, however, had been controverted with ability and force by Sir C. Wingfield, the late Chief Commissioner. It could not be denied that the policy adopted by Lord Canning and embodied in the Sanads granted to the Táluqdárs had had the effect of modifying the laws previously in force in Oudh.

If the rules embodied in the Bill did not expressly receive the force of law, it would be open to any Judge before whom cases arising under them should be brought cases, His Excellency might observe, which were very intricate and often bitterly contested by rival interests—to consider whether all or any of these rules were or were not legal. This would doubtless result in conflicting decisions—a great evil—for it might lead the people of Oudh to think that the intentions of the Government had been insincere. It was hard for an ignorant population to distinguish between the acts of an officer in his judicial and his fiscal capacity, and the mere suspicion, however unreasonable, that a breach of faith had been committed or was intended by the Government was a serious evil, and one which doubtless had influenced Mr. Strachey and Mr. Davies in recommending that the Bill should be passed.

On the whole, therefore, His Excellency thought it better that the question as to sub-settlements should be decided legislatively. As to legislating at

present with respect to the rights of occupying tenants, HIS EXCELLENCY thought that the answer of Mr. Muir was conclusive. The Government believed that the Táluqdárs would act in good faith towards the ryots, and if any difficulty should arise, we could then resort to legislation. The great argument in favour of the Táluqdárs was that, although they had always denied the existence of rights of occupancy in Oudh, and though their Sanads were silent as to such rights, they were willing to grant certain privileges to the class of ancient proprietors of the soil who, although they had lost all proprietary right, still occupied as cultivators land in their ancestral villages. The ready assent which the Táluqdárs had given to the proposed measures as to the sub-settlement also justified the expectation that they would carry out in its entirety the scheme now proposed to be legalized.

The Hon'ble MR MAINE said that, on the technical point, he agreed with Mr. Riddell that the Bill was not necessary. But when any doubt arose whether a particular measure required legislation, or was within the competence of the executive, it was the invariable practice (he might appeal to his Right Hon'ble friend Mr. Massey as to the practice in the House of Commons) to give the preference to legislation. In the present instance, the Bill was intended to set at rest certain not very substantial doubts which had been raised respecting the executive capacity of the Governor-General in Council.

The Hon'ble MR. RIDDELL desired to say that the arguments used in the course of the diousion had altogether removed his objections to the immediate passing of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved as amendments that the word "administration" should be substituted for the word "Government" in the preamble and in Section 1, and that the word "is" should be substitued for "shall be" in Section 2, line 3. The latter amendment would improve the wording of the Section. The former was rendered necessary by the fact that the Local Government of Oudh was the Governor-General in Council—the Chief Commissioner being only charged with the administration of that Province.

The Motion was put and agreed to.

The Hon'ble MR. MUIR then moved thar the Biil as amended be passed.

The Motion was put and agreed to.

TRUSTEES AND MORTGAGEES' POWERS' BILL.
MORTGAGEES AND TRUSTEES' PROPERTY BILL.
COURTS OF REQUESTS' (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give to Trustees, Mortgagees and others, in cases to which English law is applcable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the law of property and relieve Trustees.

He also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

He also presented the Report of the Select Committee on the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca.

STRAITS' SETTLEMENT ÁBKÁRÍ BILL.

The Right Hon'ble MR. MASSEY in introducing the Bill for amending the laws for collecting a Revenue of Excise on Spirituous Liquors and Intoxicating Drugs in the Settlement of Prince of Wales' Island, Singapore and Malacca, said, that this Bill repealed the existing Ábkárí Law in the Straits' Settlement, which had been found ineffective for the purposes of revenue, but substantially re-enacted that law with the amendments which experience had shown to be necessary. No new taxation was proposed, and no question of policy was involved. The Bill was introduced at the instance of the Local Government by whom it had been carefully framed. The Statement of Objects and Reasons which had been published thrice in the *Gazette*, showed with considerable minuteness the changes in the law which the Bill if enacted would effect. It was therefore not necessary to enter into the details of the proposed measure, nor, under the circumstances, did he desire to refer it to a Select Committee. Since the publication of the Bill, an Act had been passed by the British Parliament removing the Straits' Settlement from the Government of India. But the transfer was not to come into operation until the 1st of January 1867. The legislative powers of the Council would therefore remain in force as to the Settlement down to the end of the present year; and as the Local Government was anxious that the Bill should become law as soon as possible, he proposed that the Bill should be passed on the next day of meeting.

The Council then adjourned to the 24th October 1866.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

SIMLA,
The 10th October 1866.

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