

*Friday,  
28th February, 1890*

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

**Vol. XXIX**

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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,

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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 pro-  
visions of the Act of Parliament 24 & 25 Vict., cap. 67.*

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The Council met at Government House on Friday, the 28th February, 1890.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.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 Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887, be taken into consideration. He said:—

“When I introduced this Bill last September I explained at considerable length the nature of the amendments which I proposed to make in the Indian Forest Act and the reasons which rendered them necessary. I am glad to say that no important objections have been made to my proposals, and, that being so, I think I need not trouble the Council with any further general observations, but may proceed at once to explain the several amendments seriatim.

"The definition of 'tree' has been expanded so as to make it clear that it includes palms as well as canes. To the lay and untrained intelligence the possibility that a palm-tree should not be a tree at all would not readily occur, but, some exceptionally subtle authority having suggested the doubt, the Committee thought it better to remove it once for all.

"It was originally proposed to amplify the definition of 'timber' so as to include charcoal, but this will now be separately provided for. The amended definition corresponds word for word with that which this Council adopted in the Burma Forest Act of 1881. The only difference between it and the existing definition is that we have struck out the words 'for cart-wheels, mortars, canoes,' as savouring of needless particularity: all are included in the general term 'for any purpose'.

"The most important amendment occurs in the definition of 'forest-produce.' A difficulty has arisen from timber having been classed as a species of forest-produce only when it is found in or can be shown to have been brought from a forest. As defined by itself timber includes all wood, but when it is coupled with other forest-produce a doubt arises whether it is not to be restricted to wood which can be proved to have been brought from a forest: it is generally impossible to prove this regarding wood which is being conveyed in a place outside a forest. And the word 'forest' is itself indefinite and I fear incapable of definition. Some very eminent authorities consider that nothing should be deemed to be a forest which has not been so constituted under the Act. This, however, would exclude all private forests and many other very extensive tracts which no one seeing them would hesitate to describe as forests—to which, in fact, no other description would be applicable. But, if we cannot define forests and must therefore be content to leave this point in some uncertainty, we can get over the practical difficulty in a very simple way, and that is by classifying as forest-produce all timber and certain other specific articles which are very rarely gathered elsewhere than in a forest, and over which it is essential in the interests of forest-administration and of the public to exercise control. As I explained when I introduced the Bill, this will in no way enlarge the class of offences committed in respect of forests constituted under the Act. Chapters II to VI will be absolutely unaffected by the proposed alteration. Its only effect will be to enable Government under Chapter VII to levy a duty on these special products, and under Chapter VIII to control their transport, without being under the necessity of showing in every instance that the particular log or consignment was produced in the indefinite something known as a forest.

1890.]

[Mr. Hutchins.]

" So far as Chapter VII is concerned this is the law already as regards timber, which is there used by itself and in its wider sense; and when I introduced this Bill I advanced what seemed to me rather strong reasons for holding that the Legislature had never intended to use the term in a different sense in Chapter VIII. If this was the intention, there was no occasion to specify timber at all: in its narrower sense it would be included in the general term 'forest-produce'; but not only is timber specially mentioned but the word 'all' is prefixed to it—'all timber and other forest-produce.' Again, timber being clearly used in the wide sense in Chapters VII and IX, it is *prima facie* improbable that it would be employed in a different sense in the intermediate Chapter. I also referred to the debates in this Council and to the manner in which the Chapter had been understood and practically worked without any objection in most of the Provinces. It is only in Bombay that the Government has found itself constrained to adopt the narrower interpretation of the term, and there it was speedily discovered that such a construction rendered all attempt to control the transit of timber futile and ineffectual. In the Select Committee we have had the advantage of the assistance of the Hon'ble Mr. Nulkar, who was a member of the Bombay Forest Commission, and he entirely confirms the view that the prevention of smuggling is impossible, and that this most important Chapter must remain a dead letter in Bombay, unless the meaning of the Legislature is made clear by some such amendment as that which I propose. I therefore maintain, as I maintained when I introduced the Bill, that the inclusion of all timber in the definition of forest-produce will merely carry out what has all along been the intention, while it will place beyond controversy the practice which exists in every Province but Bombay and without which effectual control is impracticable.

" The original draft Bill put all trees and other produce of trees on the same footing as timber, but I do not now ask the Council to go so far as that. The first clause of the definition has now been cut down so as to include only a few important products, the transport of which requires to be regulated for the same reasons as timber: in the absence of such control they can be passed off as the produce of a private holding with hardly any risk of detection. I need hardly say that the Government does not wish to lay hands on any private produce. Under Chapter VII it can only levy a duty on produce to which it *has a right* or which has been imported from foreign territory, while by Chapter VIII it is merely empowered to regulate transport. The only way in which private produce will be affected will be that, in localities where the transport of particular kinds of produce needs to be regulated in order to prevent smuggling, private owners will be required to take out passes showing that the

produce mentioned in the pass comes from a private holding or has been purchased from a proper Forest-officer. Without some such simple procedure private owners will be constantly harassed on the mere supposition that the produce has been smuggled from a Government forest, and I therefore repeat what I stated at the introduction of the Bill, that the amendment will be as much for their advantage as for that of forest-administration.

"Sections 3 and 5 of the Bill require no explanation. Sections 4 and 6 relate to what is called *shifting* cultivation, by which we mean the practice of making a clearing, generally by fire, in forest-land, cultivating it for a year or two, and then shifting to another spot and repeating the same process. It is obvious that such a practice, unless very strictly confined, must be absolutely incompatible with forest-conservation. Those who practise it are mere squatters, and their cultivation of one clearing cannot confer a right to make another at will. Local Governments, however, deal very liberally with the tribes which have been accustomed to the practice, and all that is necessary is that it shall not be recognized as a right, but simply as a privilege to be exercised within such limits and under such regulations as may be prescribed. According to section 6, which has been very carefully considered by the Select Committee, when any claim of this nature is made before a Forest-settlement-officer he is to report it, as well as any local order affecting it, to the Local Government with his opinion whether it may be permitted or should be prohibited. If it is found that it can be permitted to any extent, he is to arrange for its exercise either by excluding a sufficient area from the proposed forest-reserve, or by setting apart a portion thereof in which it may be exercised subject to suitable conditions. In all cases it will be deemed not a right but a privilege, liable to restriction, and even to abolition on proper terms, at the pleasure of Government.

"Section 7 is new but the alteration is not of a substantial nature. Under section 25 (b) of the Act as it now stands, 'whoever sets fire to a reserved forest or kindles any fire in such manner as to endanger the same' is liable to punishment. It is proposed to amplify this provision by substituting 'whoever sets fire to a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest'. These are almost the exact words of the corresponding section passed by this Council for Burma. It is desirable, on the one hand, to allow fires not inconsistent with local rules, and on the other it is essential that no fire should be left burning and unguarded.

1890.]

[*Mr. Hutchins.*]

"Section 8 merely carries out what I have before explained in connection with the definition of 'forest-produce'. By sub-section (4) we make it clear that the rules regarding transport need not be general, but should only be applied to such classes of timber or produce and in such limited areas as may be really essential. The enforcement of rules causes considerable trouble and expense, and that in itself is an additional security that their application will be restricted as much as possible.

"Sections 9, 10, 11 and 12 need no explanation beyond what is contained in the Committee's report.

"Section 13 relates to the compounding of forest-offences and has been entirely re-cast by the Select Committee. The Legislature has repeatedly recognized the principle that petty offenders against forest laws and rules should be allowed the option of making reasonable amends in money, and so escaping the very serious trouble and annoyance of a formal prosecution. It is not, therefore, necessary for me now to defend the principle of the section, but I have merely to show that we have provided sufficient safeguards against its abuse. One of these is the provision that the amends or compensation shall in no case exceed fifty rupees; the other is that the power to accept a composition shall only be exercised by officers specially authorized in that behalf, and that no officer shall be so authorized who is not at least a Ranger on one hundred rupees a month. Only a few of the senior Rangers draw so high pay, and if the power is given to them at all it must be conferred on them by name and therefore after consideration of their individual fitness. It is only to Subdivisional Officers or officers of control that it can be given as a class. Moreover, the Act will in no way interfere with any executive orders which Local Governments may see fit to make in further limitation of the sum which may be demanded or accepted. Thus, for example, the original Bill provided that such sum should not exceed ten times the damage done or the due sought to be evaded. This, as I stated, was founded on an order of my hon'ble friend the Lieutenant-Governor of the North-Western Provinces, and it may still be preserved by him, or varied as he thinks fit, subject to the statutory maximum of fifty rupees. If a larger sum than fifty rupees is fairly recoverable, it is right that the case should go before a Magistrate, for the procedure is only intended to apply to very petty offences.

"Section 14 is founded on section 25 of the Opium Act, I of 1878, and its object is to maintain a control over the operations of contractors and others who may be permitted to extract forest-produce. Such a man is always bound by certain express conditions, as that he will not cut trees which have not

[*Mr. Hutchins; Rao Bahádur Krishnaji Lakshman* [28TH FEBRUARY, *Nulkar.*]

attained a certain girth; but his men often do this for his advantage and probably with his connivance, while, if the breach of the conditions is detected, he pleads ignorance. The servants get access to the forest under cover of his license, and it seems reasonable that the employer, who benefits by an act which he has covenanted not to permit, should be made responsible. The simplest way to effect this is to bind him down by a penalty, and the section provides that, in the event of a breach, the amount of the penalty may be levied as an arrear of land-revenue.

"The remaining sections of the Bill merely provide for identical amendments in the Burma Forest Act, 1881. It is unnecessary that I should go through them in detail, as they are founded on precisely the same considerations which I have already submitted to Your Excellency and Hon'ble Members."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—

"I wish to speak with reference to two provisions of this Bill, as regards their general as well as special applicability to certain localities.

"The provision to give power to Local Governments to extend their control over the transit of private forest-produce is of some importance. While such power is necessary for the effective protection against smuggling of Government forest-produce, it has to be remembered that it is a power which is peculiarly liable to be abused by departmental subordinates; and Local Governments will have to take special care, in framing their subsidiary rules under section 41 of the Act as now amended by section 8 of the Bill, to strictly confine their operation to forest-produce in which there is a considerable trade and with which private produce is likely to come into real competition and facilitate smuggling in the absence of the control.

"One of the applicants for this amendment of the Forest Act was the Government of Bombay, where, in addition to the general control over the transport, it will have a peculiar application. In Tanna and Kolaba, and perhaps in other parts, the Local Government will have, by the free and willing consent of the people, to prohibit, with certain exceptions, the export of private timber, as a means of helping the re-clothing of private lands with forest growths, to enable the cultivators to obtain supplies of timber, branches, foliage, &c., such as are annually required for agricultural purposes, and thereby diminish to a minimum the drain on public forests for



1890.]

[*Rao Bahádúr Krishnaji Lakshman Nulkar.*]

local supplies. Perhaps it may not be out of place if I allude briefly to the history of this point. The energetic and comprehensive character of the introduction into Bombay of the provisions of Chapters II and IV of the Forest Act of 1878 deprived the villagers, with one stroke of the pen, of the use of all lands just outside the limits of their fields, the notification issued under those Chapters having, in numerous instances, claimed as Government forests, without inquiry, even such lands as village-commons, grazing-grounds, and sometimes portions of village-sites. This was perhaps partly due to oversight, a result of the precipitate nature of the action taken. It produced widespread distress and discontent which might have led to serious results, had not District-officers partly delayed action on the notification. The next five years were occupied in a process of formal disforestation, by counter notifications, of tracts erroneously claimed as Government forests; but the resultant irritation could not be allayed, and vested rights and privileges at least partly restored, until, in 1885, a Commission was appointed to make inquiries and report on some of the specific grievances in certain parts of the Presidency. These had reference chiefly to local supplies and village privileges in adjacent forests which had been recognised from time immemorial, and which were more or less expressly or tacitly acknowledged at previous revenue survey settlements, but which, in the forest settlements ordered under the Act, suddenly ceased to be a factor to be counted with and recognised. The Forest Commission found that, while the villagers had these legitimate grievances to be redressed, the people in certain parts, exposed to the temptation of large markets close by, were by no means free from blame for having denuded their own extra assignments of land of all forest growth for present profit, and for having got into the objectionable habit of falling back almost entirely upon the public forests for supplies necessary for their own agricultural and domestic wants. The Commission came to the conclusion that the only practical solution of the difficulty was to enforce the legitimate use by the villagers of their extra lands for the growth of their own private supplies, and to confine the allowance from neighbouring forests to actual deficit, which was expected to become a minimum diminishing from time to time as the scheme recommended had time to work out the solution. The recommendation added, as an absolutely necessary condition, that Government should begin by completely severing its forest connection with private lands by either selling out to the occupants all teak and other royalty trees standing thereon and now claimed by Government, or by acquiring the land itself as Government forest under the Land Acquisition Law, thereby removing all cause of the constant friction between the Forest Department and the people, and enabling the latter to grow and supply themselves ultimately with nearly all the forest-produce they require for their

[*Rao Bahádur Krishnaji Lakshman Nulkar.*] [28TH FEBRUARY,

agricultural operations from their own lands. The villagers examined before the Commission were unanimous in their admission of the justice of such a prohibition against export of their private forest-produce, so long as they continued to require help from Government forests.

"To judge from the orders passed by the Government of Bombay on the report of the Forest Commission, that Government awaits the passing of this Bill to be able to give complete effect to the scheme of a fair and final adjustment of the conflicting claims and interests I have just explained; and we may trust that now no further delay may occur in carrying out that intention, and the risk of an interruption of the present forest policy with respect to local supplies may be avoided. I may be allowed to assure the Council that I do not unnecessarily allude so prominently to this precaution to place beyond the possibility of interruption the policy of sympathy and consideration in respect to agricultural needs of the people. Five years ago the fact of the appointment of the Forest Commission led to a tacit cessation of some of the most harassing and irritating forms of departmental interference with the people's forest rights and privileges; and the apparent peace so restored is due to the hopefulness of the people that the fuller and more effective measure of justice recommended by the Commission is only delayed till the passing of the Bill before us. If after this a further delay occurs, the impending change in the Local Government may result in a further inheritance by its successors of difficulties harassing to all parties concerned, just as they were left to be inherited by it five years ago, and by its own predecessors five years before that time, through the now admitted errors committed at the first introduction of the Forest Act of 1878.

"The other point to which I wish to allude is section 13, sub-section (3), of the Bill, where Local Governments are permitted to invest Forest-officers down to Rangers drawing a salary of not less than one hundred rupees per month with power to compound certain forest-offences by accepting up to fifty rupees as compensation. In the Select Committee I expressed my doubts as to the propriety of permitting to Rangers the exercise of this power which presented peculiar facilities for abuse; but, from what I learned from Hon'ble Members there, it appeared that in certain localities, owing to the paucity of higher officers at hand, it was sometimes necessary for administrative convenience, and even in the interests of the accused, to invest selected officers of the lower grade with the power. Speaking for Bombay, from some experience in certain districts, I may say that, though there such power has been exercised by officers of higher grades, it was not always used in a manner to command popular confidence.

1890.] [*Rao Bahádur Krishnaji Lakshman Nulkar ; Muhammad Ali Khan ; Mr. Hutchins.*]

We may, however, hope that, under the discretion allowed to Local Governments, sufficient care will be taken in selecting Forest-officers for the exercise of the power in question so as to secure the confidence of the public."

The Hon'ble MUHAMMAD ALI KHAN said :—

"Being a member of the Select Committee to whom the Bill was referred I would like to make some observations. As already explained by the Hon'ble Member in charge of the Bill, this Bill has passed through very few alterations in the Select Committee. Besides some verbal alteration, the Bill has been revised in two important matters.

"First, the Bill as drafted proposed to give the Forest-settlement-officer the power of settling the claims relating to the practice of shifting cultivation ; but the revised Bill places the matter under the control of the Local Government.

"Secondly, the draft Bill provided that any Forest-officer may be authorised by the Local Government to compound certain forest-offences and limited the maximum sum to be accepted by way of compensation to ten times the value of the forest-produce which has been damaged or ten times the amount of money of which the payment is evaded. But the revised Bill limits the class of Forest-officers who may be thus authorised, and provides that the compensation in no case shall exceed the sum of fifty rupees.

"I think the Bill as amended is unobjectionable, and will be very useful if passed into law."

The Hon'ble MR. HUTCHINS said :—

"There is just one remark which I should like to make with reference to what has fallen from the Hon'ble Member opposite. I quite agree that the Local Governments should take special care not to interfere even with the transport of any produce unless in the particular locality there is a considerable trade in the article and a real danger of smuggling. But I do not contemplate anything like an absolute prohibition of the export of private timber. What section 41 says is that Government 'may prohibit the import, export or moving of such timber or other produce *without a pass*.' I understand, however, that the people of Tanna and Kolaba acquiesce in the necessity for such prohibition, and no doubt an arrangement of that nature may be made with their consent. Government could not refuse to issue passes on reasonable terms, but of course

private owners can abstain from asking for passes. I think it right to mention this, although the amendments made by the Bill on the table will not touch the law in this respect. Whatever the law was, just so it will remain.

"As to the other point to which the Hon'ble Member referred, I may mention that Local Governments may by executive order place different limits on the powers of Rangers and of Subdivisional Officers to accept composition. My reasons for not wishing to exclude Rangers altogether were just those which the Hon'ble Mr. Nulkar has described."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the following amendments be made in section 2, sub-section (3), and in section 15, sub-section (2), of the Bill as amended, namely :—

- (i) in clause (a) of both sections, omit the words "trees and", and after the word "catechu" insert the words "wood-oil, resin, natural varnish,";
- (ii) in clause (b), sub-clause (1), of both sections, for the words "wood-oil, gum, resin, varnish," substitute the words "trees and".

He said :—

"I think I have made it clear to the Council that there are some specific kinds of forest-produce which require to be controlled in transit by a system of passes. All these should be included in clause (a) of the definition, for otherwise it will be incumbent on the Government to show that the particular consignment comes from a forest in order to make it subject to regulation. Accordingly, as revised by the Select Committee, clause (a) enumerates timber, charcoal, caoutchouc, catechu, bark, lac, mahua flowers and myrabolams. I had not then any professional adviser with me, and I thought this catalogue would be sufficient. But I now learn that in some parts of the country, and particularly in Burma, Oudh, Assam and Orissa, the transport of wood-oil, resin or natural varnish requires to be similarly controlled. These are all collected in large quantities from the Government forests, but outside those forests there are scattered trees which yield the same products, and smuggling will be an easy matter if the necessary provision is not made to enable Government to make rules to prevent it. There is in all these cases both a considerable trade and a real danger of smuggling.

[28TH FEB., 1890.] [Mr. Hutchins; Sir David Barbour.]

"On the other hand, trees may be relegated to the other class of produce which we do not require to deal with unless they are found in a forest, and gum need not be specially mentioned at all."

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.

#### ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved that the presentation of the Report of the Select Committee on the Bill to amend Act XXV of 1867 (*Printing-presses and Books*) be postponed for a fortnight.

The Motion was put and agreed to.

#### EXCISE (MALT LIQUORS) BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Excise Act, 1881, and the Bengal Excise Act, 1878. He said:—

"There are certain portions of India in which the law, as it at present exists, does not authorise the levy of a duty per gallon on beer and other fermented liquor. The object of the present Bill is to make it possible to levy such a duty. In former years the defect in the law to which I have referred did not give rise to any inconvenience, because in those portions of the country where the defect existed either beer was not made at all, or beer was made of such a kind and in such manner that it was not desirable or even practicable to impose a duty per gallon on it.

"In recent years, however, a considerable industry has come into existence having for its primary object the supply of beer to Government for sale to the British soldier.

"So long as the industry was confined to the manufacture of beer for sale to Government the want of legal authority for the levy of duty was not felt;

Indian-brewed beer sold to Government was exactly on the same footing in respect to non-payment of duty as beer imported from England by Government.

"The industry has, in the course of time, increased in importance, and a considerable quantity of Indian-brewed beer is now sold to the general public. There are three reasons why Indian beer sold to the public should now be taxed: firstly, because it is the general policy of Government to tax all spirituous and fermented liquors; secondly, because it is unfair that Indian-brewed beer should escape a tax which imported beer pays; and thirdly, because the tax will bring in a certain amount of revenue.

"The amount of revenue to be obtained is not great; it will probably amount at the present time to some Rs. 50,000 or Rs. 60,000 yearly, and from this sum must be deducted the cost of collection. It would have been considerably less some years ago, before the industry had attained its present proportions.

"The question whether legislation should be undertaken for the purpose of taxing Indian beer has been more than once under the consideration of the Government of India, but action was deferred in consideration of the small amount of revenue which the measure would produce. I have thought it necessary to explain the reasons for the inaction of Government, because theories of a somewhat malicious nature and really not requiring very serious notice have been invented to account for the non-levy of duty in the past.

"At any rate, I think there need be no hesitation in now undertaking legislation which will, at one and the same time, add to the public revenue, satisfy the requirements of a rigorous political economy, gratify the advocates of temperance, and which, strange to say, appears to meet with the approbation of the brewers—the producers of the article on which the taxation will fall.

"It is provided in the Bill that the rate of duty on Indian-brewed beer shall not exceed that levied on imported beer, which is practically of the same class and quality."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

1890.]

[*Sir David Barbour.*]

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be taken into consideration on the 21st proximo.

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th March, 1890.

S. HARVEY JAMES,

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

FORT WILLIAM ;  
*The 5th March, 1890.*