

*Friday,  
30th January, 1891*

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

**Vol. XXX**

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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,

1891

VOLUME XXX



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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.*

The Council met at Government House on Friday, the 30th January, 1891.

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.

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.F.

The Hon'ble Sir A. R. Scoble, Q.C., 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 Khan Bahádúr Muhammad Ali Khan.

The Hon'ble F. M. Halliday.

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

The Hon'ble Nawab Ahsan-Ulla, Khan Bahádúr.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble J. Nugent.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend the Cattle-trespass Act, 1871, be taken into consideration. He said :—

“ When I introduced this Bill I explained at length the reasons which have induced the Government of India to undertake an amendment of the Cattle-trespass Act of 1871, and it does not seem necessary that I should recapitulate them afresh. The Council will remember that frequent complaints had reached us from many parts of India that the present law affords very inadequate protection to landholders against agile and semi-wild cattle which are habitually turned out without any sort of restraint to find pasture where they can. This difficulty will be met by section 8 of the Bill as now amended, which empowers Local Governments to extend to other cattle in particular localities the remedy which the Act has already provided generally against damage done by pigs. At the same

time the Local Government may increase the maximum fine, which in the case of pigs is only ten rupees, to fifty rupees. The sum fixed in the Bill as originally drafted was twenty-five rupees, but the Select Committee considered that this would hardly meet such a case as that of trespass by a large herd of buffaloes. The Governments of Bombay and Bengal advised a maximum of one hundred rupees, but we preferred to adopt the more moderate figure suggested from Madras, Coorg and other places. We thought that in those extreme cases where fifty rupees would not afford adequate compensation the injured party might reasonably be left to prosecute his civil remedy.

"The substitution of cattle for pigs was proposed and rejected in 1871, but only as a general provision to have universal application throughout India. As a general rule, I am glad to say that it is still uncalled for, but the opinions submitted with regard to the Bill strongly confirm the conclusion at which we had arrived, that there are many parts of the country in which agriculturists require some more effective protection against the tyranny or recklessness of cattle-owners. In my introductory speech I gave instances from Coorg, from Assam, from Bhinga, from Nagpur and from Orissa; but because some of these places contained planters, and because I mentioned that the most vigorous complaints had emanated from Planting Associations, the Government of India have been accused of promoting legislation in the exclusive interests of a particular class. I will therefore take leave to read to the Council a few of the opinions regarding this particular provision of the Bill, eschewing all places where there are planters or which I mentioned before.

"The first extract which comes to my hand is from the Judicial Commissioner of Oudh, an officer of very great experience. He says:—

'The amendments are in my opinion called for by the inadequacy of the present Act to meet the numerous cases of intentional cattle-trespass, which are met with in Oudh, and I doubt not elsewhere. Every District Magistrate will be at one in the opinion that owners of cattle often adopt this measure to repay injury inflicted or in retaliation for a similar trespass on their lands.'

"The next is from Bombay, but the Council are already aware that the Government of that presidency had found it necessary to introduce a Bill of their own on precisely the same lines as this section. The ravages of cattle had become an intolerable nuisance in the raiyatwari districts of Kaira and Ahmedabad, where there are neither planters nor zamindars.

"There are planters in Malabar and the Nilgiris; so I pass them by. No; I

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[Mr. Hutchins.]

think I must read one short remark made by the Magistrate of the Nilgiris. He says :—

‘It is notorious that the cattle-owners in this district, who make a trade of trespass, openly boast that the advantages derived by their herds from nocturnal forays on private estates far outweigh the fines now leviable by the pound-keepers.’

“A Deputy Commissioner in the Punjab writes :—

‘The practice of deliberately turning buffaloes into crops has been observed by me in several places, particularly in the neighbourhood of large cities. I remember that great complaints used to be made in the neighbourhood of Delhi against the Gujars on this head. The owners of the injured fields found it impossible to catch and impound the buffaloes. I think there can be no doubt that there is a necessity for making the law of cattle-trespass more stringent.’

“The next extracts which I have made relate to the North-West Provinces. The Deputy Commissioner of Gonda thinks that—

‘the addition to section 26 should be extended to the whole of the district and that cattle should be held to include goats and sheep. Goats especially are a great pest as trespassers. They commit great ravages on crops, and especially on young trees, and while the public complain loudly of the damage thus done they are not willing for obvious reasons to go to the Civil Courts for damages.’

“And again—

‘It has been lately ascertained that the suburban *gwalas* of Benares deliberately let out all their cows at or soon after dusk when the green rabi crops are standing: the cattle wander away into the fields and fill themselves with green barley: when detected, they are driven to the pound and cheerfully reclaimed by their owners next morning. The men who do this are well known: they deserve to be treated severely.’

“And here is another extract :—

‘It is not so much that there are “special localities” in this district where cattle-trespass is encouraged by the owners, for the offence is rampant and universal, but the places which have come more particularly under my notice are Nimkhar and Sitapur itself. The practice is for owners to turn their cattle loose at night to graze. The herd returns in the morning to their homes, where the calves of the cows are always kept tied up; so the cattle are bound to come back. Thakurs, Brahmans, zamindars are the chief sinners. It is another instance of the oppression and tyranny exercised by the zamindars over their tenantry. The latter dare do nothing but wail.’

[Mr. Hutchins.]

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"But not to be further tedious, I will only select two more from the numerous extracts which I hold in my hand, and I choose these simply because they are the opinions of Native officers. Mr. Dutt writes from Burdwan that—

'cattle are habitually allowed to trespass by particular cattle-owners of more than ordinary influence in a village.'

"And Mr. Gupta, District Judge of Cuttack, has submitted a most important report, in which he enters into the whole case. According to his experience—

'it is the general habit of villagers to let loose their cattle with the fullest knowledge and of set purpose that they might fatten on other people's pasture or crops. In East Bengal this pernicious practice largely prevails, and is the cause of many a murderous riot. Again and again it was proved before me in criminal cases that cattle were turned out by day and often at dead of night to feed on the *kalai* or paddy crops of others. It is extremely difficult to seize all trespassing cattle. One or two may be secured, but the herd usually escape. It is equally difficult to prove deliberate or intentional turning out of cattle on others' lands; and intention must be proved to secure a conviction for mischief under section 426, Penal Code. Section 289 of the Penal Code deals with the negligent owner of an animal dangerous to human life. For negligently letting loose herds of bullocks or buffaloes, even though with the certain knowledge that they would destroy crops, there seems to be no penalty in the law.

'The provisions of section 26 of the Act, amended as proposed, would for the first time supply this omission, and remedy what is now often felt to be a great grievance.'

"It is this danger of affrays which makes the provision of a prompt and summary remedy most imperative, and in petty cases the Magistrate seems to be the proper person to deal with the whole subject. It is quite true, speaking generally, that trespass may result from mere accident and not be inconsistent with good faith and a reasonable respect for the rights of cultivators, but this can hardly be predicated of those exceptional places to which alone this particular provision will be applied: where there is a practice of turning out cattle with the full knowledge that they will feed on crops or garden produce, and generally with the deliberate intention that they shall do so, there is ample justification for a special measure requiring all owners of cattle to keep their beasts under restraint; and, if, with a full knowledge of the probable consequences, any of them omits to do so, I submit that he will be guilty of gross and criminal negligence and that it is not unreasonable to permit his prosecution in the Criminal Courts.

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"The only other material amendment which was included in the original Bill is that now contained in section 5. The effect of this will be to enable Local Governments to double the pound-fees in local areas where cattle are habitually allowed to trespass. When I introduced the Bill I pointed out that even double fines would be a very trifling punishment, ranging as they would from one rupee for a buffalo to a couple of annas for that most mischievous animal, a goat; and I also intimated that, in view of the fact that to prevent the possibility of hardship I had reserved power to the Magistracy to remit any amount above the scale of fees prescribed by the Act, I was disposed to think that even a higher maximum than double the standard scale might be permitted. Many authorities supported this suggestion and were in favour of allowing Government to go as high as four times the standard fees; but at the same time strong exception was taken, particularly in Bengal, to the clause reserving power to remit, on the very intelligible ground that it would multiply a trivial class of appeals and prolong disputes unnecessarily. The Committee felt the force of these objections, and after discussion we came to the conclusion that it would be better to withdraw the clause relating to remissions and not to enhance the maximum rates beyond what had been originally proposed. In our opinion the maximum of double fees cannot be regarded as oppressive, and there is really no more reason for providing for a remission of enhanced fees, in those exceptional localities for which they will be sanctioned, than there is for allowing a reduction of the ordinary standard fees elsewhere.

"In the first section of the Bill the Committee has made one slight alteration, which is perhaps of sufficient importance to deserve special notice. Although the Cattle-trespass Act was generally applied in the first instance, power was reserved to Local Governments with the sanction of the Government of India to exclude any special areas from its operation. We thought it unnecessary to retain the words requiring the previous sanction of the Governor General in Council, and henceforth the power of exclusion will be left to the unfettered discretion of Local Governments.

"So much, my Lord, for the provisions of the Bill as introduced. Hon'ble Members, however, will not have failed to notice that it has grown in the hands of the Select Committee from five to thirteen sections, and I have now to explain the eight new sections which have been introduced. Two of these, sections 2 and 9, merely reproduce Act XVIII of 1883, which was substantially an Act to amend the Act of 1871, but not expressly made part of it. We took into consideration

the expediency of revising and re-enacting the whole of the old Act; but it seemed sufficient to re-enact the Act of 1883, and to provide for its incorporation together with the new provisions into the Act of 1871, a reprint of which in its amended form will now be promulgated. Section 11 makes a consequential amendment in the Cantonments Act, and sections 10 and 12 also are merely formal.

"Three other new sections remain, and their object is to provide for the suppression of an objectionable practice, represented as prevailing in some parts of India, of detaining in unauthorized places cattle which ought to be sent to the public pounds. Unlike the original provisions of the Bill, which aimed at the protection of cultivators against depredations by cattle, these sections are designed to secure the owners of cattle against anything like extortion on the part of landowners who may have lawfully seized their animals. The right to seize cattle trespassing is given by Statute, and is necessarily limited by the conditions prescribed in the enactment by which it has been conferred. This is section 10 of the existing Act, where the power to seize animals is coupled with a power to take them without unnecessary delay to the place appointed as a pound. A planter or other person who may find cattle straying on his land may lawfully seize them, but he has no right to keep them longer than is reasonably necessary to enable him to send them to the Government pound. We are told, however, that in Assam—and similar complaints come from Manbhoom and other parts of the country also—it is not unusual for the seizer to keep animals tied up at his residence or other unauthorised place until they are redeemed by payment of such sum as he chooses to demand. Such conduct is clearly illegal, and it is not unlikely to lead to breaches of the peace, as it is conceivable that the owner of the cattle might consider himself warranted in attempting their removal by force. We need not insist on cattle being sent to a distant pound if both parties choose to compound the matter amicably, but it is intolerable that any private person should set up what is practically a private pound or extort fees which have no legal sanction. Accordingly we propose to amend sections 10 and 11 of the Act by limiting the period of detention to twenty-four hours, and we have also extended the scope of Chapter V, which now applies only to cases of illegal seizure, so as to empower the Magistrate to take summary cognizance of complaints of longer detention than twenty-four hours, or indeed of any illegal detention.

"This will remove one of the two substantial grievances which I have seen



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AMENDMENT OF CATTLE-TRESPASS ACT, 1871; AMEND-  
MENT OF INLAND STEAM-VESSELS ACT, 1884.

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put forward on behalf of cattle-owners, and the other does not appear to me to be one for which the Legislature is in any way responsible. I allude to the system of farming out pounds, which at first sight certainly seems to hold out direct encouragement to the contractor to abet or connive at illegal seizure. This system is not recognized by the Cattle-trespass Act, and I think it is opposed to the spirit of the Act, though it may not be expressly prohibited. I propose to address Local Governments in the Home Department in view to suppress the practice wherever it may be found to prevail. As far as I know at present it is confined to certain parts of Bengal.

"I trust I have now made it clear that the object of the Bill was not, and that its effect will not be, to place the owners of cattle at any disadvantage. While we hold them responsible for damage caused by their gross and wilful neglect and provide a prompt and summary remedy against them in places where such neglect is shown to be habitual and such remedy may seem to be called for, we have at the same time done our best to remove every substantial grievance of which they have complained. It has indeed been urged that we ought to make pound-keepers responsible for the proper feeding of animals entrusted to their charge, but those who have put forward this complaint must have forgotten to refer to the Act. Under section 27 any pound-keeper omitting to provide impounded cattle with sufficient food and water, or failing to perform any other duty imposed on him by the Act, becomes liable to a fine of fifty rupees. Wrongful seizure is also summarily punishable, as I have already had occasion to mention."

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.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend the Inland Steam-vessels Act, 1884, be referred to a Select Committee consisting

40<sup>o</sup> AMENDMENT OF INLAND STEAM-VESSELS ACT, 1884.

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of the Hon'ble Sir Andrew Scoble, the Hon'ble Messrs. Halliday and Bliss and the Mover, with instructions to report after one month.

The Motion was put and agreed to.

The Council adjourned to Friday, the 6th February, 1891.

S. HARVEY JAMES,

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

FORT WILLIAM; }  
*The 3rd February, 1891.*