

*Friday,
25th October, 1901*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 25th October, 1901.

P R E S E N T :

His Excellency Baron Curzon, P.O., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

The Hon'ble Sir C. M. Rivaz, K.C.S.I.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. F.G. Law, K.C.M.G.

The Hon'ble Major-General Sir E. R. Elles, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Kunwar Sir Harnam Singh, Ahluwalia, K.C.I.E., of Kapurthala.

REPEALING AND AMENDING BILL.

The Hon'ble MR. RALEIGH moved that the Bill to facilitate the citation of certain enactments and to amend and repeal certain obsolete enactments be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the Bill be passed.

The motion was put and agreed to.

CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES made the following Statement as to the Cantonments (House-Accommodation) Bill :—

" My Lord, I propose, with Your Excellency's permission, to make a statement regarding the course which we intend to pursue in dealing with the Cantonments (House-Accommodation) Bill.

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" This Bill, the object of which is to grapple with the great and ever increasing difficulty experienced by officers in securing suitable accommodation in houses built within the limits of cantonments, was, after the most prolonged consideration dating back to the year 1887, if not earlier, introduced in the Legislative Council by my predecessor Sir Edwin Collen on the 4th November, 1898. The Statement of Objects and Reasons and the Bill were duly published in the Gazette of India and circulated for criticism, and the result was the receipt, during the year 1899, of a large number of representations, official and non-official, regarding the measure. To all of these the most anxious consideration has been given by the Governor General in Council, and, looking at the history of this legislative project as disclosed by these facts, I think we may safely claim that there has been in this case no undue haste or want of deliberation.

" As was only to be expected, the Bill has not been favourably received by the majority of the house-owners in cantonments, the objections put forward being most pronounced in the case of the very cantonments in which the want of accommodation for officers has been most acutely felt. On the other hand, the measure has met with approval in many quarters, and in some cases even the house-owners themselves have admitted the necessity for such a Bill and the equity of its provisions.

" Now, I desire to make it very plain at the outset that the Government of India are unable to admit that cantonment areas can be regarded in the same light as the other parts of the country. On the contrary, the circumstances in them are altogether special and totally different from the circumstances anywhere else; and I have no hesitation in asserting that this fact is well known and thoroughly felt and appreciated by every resident of any of the permanent military stations, which here in India we call 'cantonments.' The term has for over a century been applied in this country to well defined areas, always primarily, and in some instances almost exclusively, set apart for the occupation of troops and their followers. The necessity for maintaining special laws in such places surely goes without saying, and this has indeed been recognised in actual practice and throughout all our legislation affecting cantonments. When, therefore, I find the common law of England cited and vague denunciations directed against the measure on the ground that it encroaches upon private rights which ought to be held sacred and inviolable, my answer is that the subject is approached from the wrong standpoint and that I fail to perceive the

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force of arguments which beg the question and have, in fact, no application to the case.

"And this brings me at once to the most important part of the Bill and of the opposition which it has excited. I allude to clause 3, sub-clause (5), in which it is laid down that all land in a cantonment to which the provisions of the proposed Act are, after due inquiry, applied, shall be presumed to be held under a grant from His Majesty, unless and until the person in possession proves to the satisfaction of the Local Government that he held the land by a lawful title acquired prior to the formation of the cantonment. This provision, of course, shifts the burden of proof from the Government on to the shoulders of the cantonment house-owner, and it has, perhaps not unnaturally, been objected to as involving a serious interference with the rights of property. It has been urged that the presumption laid down by it is directly opposed to the ordinary legal principle which recognises possession as good *prima facie* evidence of title, and that it is unfair to remove the *onus probandi* from the Government, on whom it ought to lie, to the house-owner. From what I have already said it will be anticipated that I cannot admit that this objection should be allowed to prevail. Cantonments are military stations, in which military considerations always have been, and always must be, regarded as paramount, and can never have been intentionally put on one side. The position of the Government with regard to them has been clear; for, throughout all the various orders which have been issued, the principle has constantly been affirmed that land in cantonments is held subject to the requirements of the military authorities. Proceeding on the presumption which I have alluded to above, and which I maintain is a fair presumption, all that the Bill does is to reproduce and render enforceable conditions the imposition of which on persons permitted to build houses in cantonments has been consistently aimed at ever since cantonments were formed in India, and has, as I shall endeavour to show, been insisted upon by a series of executive orders issued in Army Regulations for the guidance of cantonment authorities. As the orders in the three presidencies were distinct, it will be necessary to notice each separately.

"In Bengal the first order was issued in April, 1801, and by it the Governor General in Council directed that 'if individuals, not officers, shall purchase, they must remove the materials, as the ground within the cantonment is to be kept appropriated exclusively to the use of troops.' This order was republished on the 28th September, 1807. Again, in 1836, regulations were laid down for the occupation of land and the disposal of buildings in cantonments. Four conditions

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were attached—first, that the Government should retain the power of resumption on one month's notice ; second, that the ground, being in every case the property of the Government, could not be sold by the grantee ; third, that the buildings erected on the land should not be sold to any civilian without the consent of the Officer Commanding the station ; and fourth, that the transfer of any house of over 5,000 rupees in value to a native of India should be subject to the sanction of the Government. The attention of all Officers Commanding stations was drawn to these orders by the Commander-in-Chief on the 20th April, 1853, and the General Regulations of the Bengal Army of 1855 practically reproduced them. In 1858 they were incorporated in the Code of Regulations for the Public Works Department, and they were again and again reproduced in the Regulations issued in 1873, 1880 and 1887. In the Punjab, it may be added, the Bengal Regulations were followed.

" In Bombay a general order of the 6th January, 1807, pointed out that any permission which officers might receive to erect houses on ground within military cantonments, conferred on them no rights of property in the land, as that continued to be the property of the State. Another general order, dated the 30th October, 1832, asserted that ' no private landed property was to be included within the limits of a cantonment, in which the whole of the ground belongs to Government.' It at the same time provided for the removal from cantonments of any person, not being an officer or a soldier, and in such cases permitted the taking away of the materials of any buildings belonging to any such person. In 1835 another Government order laid down rules for the occupation of land in cantonments, and pointed out that ' permission to occupy ground within the limits of a cantonment conferred no proprietary right on the occupant.' This was affirmed by an order which was issued in May, 1838, and included a clause for resumption on one month's notice. In 1851 these orders were affirmed, and in 1862 a Government resolution was issued re-stating the principles already laid down. The Regulations for the Bombay Presidency of 1875 and the Army Regulations, India, of 1887 followed on the same lines.

" In Madras the earliest order on the subject appears to have been issued on the 8th May, 1812, and in it the Governor in Council laid it down that ' no officer or other person should be permitted to erect any building on ground belonging to the company within the walls of a fort or within the limits of any cantonment, but on condition of immediate surrender to the Government', and that ' no grant in perpetuity of any piece of ground within the precincts of a

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fort or cantonment should be thereby accorded to any individual.' Leases renewable at the pleasure of the Government were to be given. These orders were republished as a Code of Regulations under the authority of the Governor in Council on the 1st October, 1813. Revised codes embodying the same conditions were republished on the 12th September, 1820, and again on the 19th December, 1826. Similar orders were issued on the 4th December, 1829, and on the 17th April, 1849, revised rules framed on the same principles were published. These appear again in the Madras Army Regulations of 1869 and 1876, and in the Army Regulations, India, of 1887.

"From the above it is, I submit, evident that the Government have consistently and continuously affirmed their rights as regards building-sites in cantonments. Moreover, in regard to the right of the Government to regulate the purchase and letting of houses for the accommodation of military officers, I would point out that the right was recognised by the Cantonments Acts of 1864 and 1880. By section 19 of Act XXII of 1864 it was provided that rules might be made,—

first, for regulating any cases in which the land within the limits of a cantonment was the property of the Government, but the occupation and use of which by private persons was permissive, and for imposing terms on which such occupation and use should be allowed, and conditions under which the Government might resume possession on giving compensation ;

secondly, for maintaining proper registers of immoveable property within cantonment-limits and for providing for the registration of transfers of such property ; and,

thirdly, for regulating the manner in which houses within the limits of cantonments should be claimable for purchase or hire for the accommodation, when necessary, of military officers.

"These three headings were reproduced in section 27 of Act III of 1880 ; and it appears to me that, if house-owners urge that they purchased property in ignorance of the conditions imposed by the Government, they have only themselves to blame for not having made ordinary inquiries as to the circumstances in which land in cantonments has in fact always been, and must, of necessity, always be, held.

"I now come to deal with the present position, which appears to be this. In some cases the Government would undoubtedly be able to prove that

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conditions such as those which I have just described, were expressly imposed and as expressly accepted. In most cases it could prove that the existence of the orders on the subject above referred to was so much a matter of common knowledge that the imposition and the acceptance of the conditions laid down in them must be implied. But in others it might be able to prove nothing except that the particular cantonment concerned had existed as such for so many years, and that some sort of control over the building of houses in it had always been exercised. It may be that the orders laid down by the higher military authorities and the Government have not always been observed, and that express and unconditional grants of building-sites, or express agreements permitting the building of houses and imposing no conditions whatsoever, have been made. In such cases there is—see clause 4 of the Bill, which I shall be prepared to amend in order to make the point perfectly clear—no intention to interfere. But in a certain number of cases—and it is to meet these that this measure is proposed—neither the Government nor the house-owner, if put to the proof, could show either how the land was originally included in the cantonment or under what circumstances the building on it came to be erected. I maintain that in such cases it is but right to give to the Government the benefit of whatever doubt and uncertainty there may be, and to presume, in the absence of title-deeds on either side, that the land is the Government's and that it was all along understood by every one concerned that in cantonments military considerations must be insisted upon as paramount. The very existence of houses in most cantonments depends primarily on the presence of His Majesty's troops; the value of house-property would, as a rule, be much diminished if the troops were withdrawn; and in these circumstances it is surely not too much to assume that houses in cantonments were in fact built for the accommodation of military men, and that appropriation for their use, in suitable repair and at reasonable rents, is perfectly reasonable, just and proper.

"By the earlier part of clause 3 of the Bill the application of the measure is to be left to the Local Governments and is to depend on the result of a careful inquiry regarding the precise circumstances of each cantonment. If the occupant of any building-site can show to the satisfaction of the Local Government—judicial proof, be it noticed, is not required—that he holds the land by a lawful title acquired prior to the formation of the cantonment, then the land will be excluded from the operation of the proposed Act. And, subject to the burden of proof referred to above, instead of there being anything to prevent a resort to the Civil Courts by any one aggrieved in the matter, the obnoxious clause under

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consideration expressly directs that, 'if, pending the inquiry or at any time thereafter, any land is proved by the decree of a Court of competent jurisdiction to be held under such a lawful title, it shall be excluded from the area of the notification' bringing the measure into operation.

"I have already recognised the existence of a feeling in some quarters against the measure. On the other hand, favourable opinions have also been received. Thus, it is reported that the leading house-owners in Benares, while taking exception to one clause—clause 23—'cordially approved' all the other provisions of the Bill. In Sitapur the agent of a leading landlord appeared to think that the Bill (in the form in which it was introduced) would put house-owners in cantonments in a better position than formerly. A number of persons describing themselves as house-owners of Muttra observed that 'the Bill, though primarily intended to secure better accommodation for cantonment residents, had not neglected the rights of house-owners.' At Jhansi a representative letter was received from the landlords interested stating that, in their opinion, the Act was reasonable and fair, and not injurious to their interests. At Darjeeling the necessity for the Bill seems to have been admitted by the principal house-owners and the opinion was expressed that their interests were sufficiently safeguarded by it.

"On a question of this kind the utmost deference should, no doubt, be paid to the views of judicial authorities, and this has, indeed, been done. The result is so far satisfactory in that I find that, while the Calcutta High Court stands almost alone in condemning the provisions of the Bill, the learned Judges have merely referred to a letter written under their instructions in 1889 regarding the provisions of another Bill then under consideration. Turning to the other judicial authorities consulted—and I believe we have consulted them all—I am glad to find that one learned Judge of the Bombay High Court thinks the proposed legislation 'very desirable' and the rights of private property 'safeguarded by the provisions of Chapter II', while his colleagues have offered no comments. A Judge of the Allahabad High Court considers the provisions of the Bill 'highly desirable'; the Madras High Court has no remarks to offer; and two of the Judges of the Chief Court of the Punjab express approval.

"Again, the attitude of the Courts is a factor which ought obviously to be taken into consideration in connection with legislation of this kind, and I have

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taken pains to ascertain how far the Regulations in question have come before the Judges and how they have fared. The Regulations have been by no means a dead-letter; and, if this be borne in mind, it is very much in their favour that they have but seldom been brought before the Courts, and that, in all the cases appearing in the Law Reports or otherwise brought to the notice of the Government, the Courts have recognised them as legally enforceable. Even in the Barrackpore case most strenuously relied upon by some of the opponents of this Bill—that of *Robinson v. Carey*, which was decided in 1866*—the binding effect of such Regulations was expressly admitted by Sir Barnes Peacock and Mr. Justice Morgan of the Calcutta High Court, although it was found that, in point of fact, the Government had, in the case before the Judges, allowed rights irrespective of those Regulations.

“In these circumstances, my Lord, the Government of India propose to proceed with the Bill and to adhere to the principle laid down in clause 3, sub-clause (5). At the same time, it is fully recognised that some of the objections put forward regarding certain of its provisions are very reasonable, and I shall be prepared to propose in Select Committee several important modifications, which will all be in favour of the house-owners and will, I hope, considerably weaken, if not entirely remove, their opposition.

“In the first place, exception has been taken to the extension of the measure to civil officers, and that with good reason. There is no doubt that cantonments were originally intended solely for military officers and not for civilians, and this is indicated by the fact that in a large number of stations the civil lines are entirely distinct from the cantonment area. In the older Cantonments Acts of 1864 and 1880 it was, as has already been noticed, provided that rules might be made to regulate the manner in which houses should be claimable for purchase or hire for the accommodation of military officers; but no mention was made of civil officers. And so it is throughout. I propose, therefore, to omit paragraph 3 of the preamble to the Bill and so much of its provisions as relates to civilians. By their exclusion a distinct advantage will accrue to house-owners; for a perfectly disinterested agency, through which to administer the provisions of the proposed Act regarding reference to arbitration, will thereby be provided, and this will remove some of the strongest objections which have been brought forward. On the other hand, it will be necessary to afford a certain amount of protection in the case of civil officers in actual occupation, and I will propose that such an officer shall not be required to vacate his house except

* 1 Indian Jurist, N. S., 8.

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with the sanction of the Local Government and upon such terms and conditions as the Local Government may think fit to impose. I am also ready to admit that some provision should be made to safeguard house-owners against loss where a tenant under a long lease is required to vacate in favour of a military officer whose tenancy is to be from month to month. I will, therefore, propose to provide that a tenant holding under a lease for any term exceeding a year or from year to year shall not be required to vacate without reference to the Officer Commanding the District, and that, if a house is held under a lease exceeding one year, the Secretary of State shall be liable for the rent for one year or for the unexpired term of the lease, whichever is shorter. Similarly, if a house is held from year to year or under a lease reserving a yearly rent, the Government should be liable for the rent up to, say, six months.

" Clause 16 of the Bill I propose to amend so as to make a tenant liable for half a month's rent even where he is unfortunate enough to be compelled to depart at a moment's notice on duty or on a medical certificate.

" In clause 22 I propose to provide for the execution of necessary repairs by the Public or Military Works Department, and not by the tenant himself.

" The stringency of clause 23, restricting transfers, has been reasonably objected to as an unnecessary interference with the rights of property. I shall be ready, therefore, to limit the right of veto exercisable by the General Officer Commanding, with the concurrence of the Local Government, to cases in which the house-owner is a bad landlord against whom there has been frequent occasion to enforce the provisions relating to the execution of proper repairs.

" Under clause 26, as it stands, a Commanding Officer might refuse a house-owner's application for a reference to arbitration. I shall be prepared to propose an amendment making it obligatory to accede to such an application.

" It may be desirable to provide for the nomination by the parties of some one—other than the District Magistrate—whom they mutually regard as fit to be chairman of the Committee of Arbitration convened to settle the difference between them ; and I will ask the Select Committee to consider whether clauses 28 and 31 might not with advantage be amended so as to admit of such an arrangement.

" Under clause 33 it would be fair to take into consideration, in fixing the rent, the probable expenditure which a house-owner will have to incur in order to maintain his house in repair, and I will propose an amendment with that object.

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"With reference to clause 34, we have fully considered the question of allowing an appeal from the decision of a Committee of Arbitration. I cannot think that it would be desirable to do so. By the exclusion of civil officers we shall have an unbiassed agency in the person of a Civil Magistrate as chairman of a Committee or, possibly, of a chairman selected by the parties themselves. And I think it is most desirable on all grounds that the award of the arbitrators should be final and conclusive.

"To meet the criticism that some of the matters referred to in clause 39 should be provided for by the Act, and not be left to rules, I will propose the addition of clauses prescribing the mode of serving notices, and empowering Committees of Arbitration to receive evidence, compel attendance and administer oaths.

"From the penal clause (40) I shall be prepared to exclude the reference to imprisonment.

"Finally, I shall be prepared to meet the suggestion that facilities should be provided for the recovery of rent by landlords in cantonments, and I will propose the addition of a clause providing for the registration of rents by the cantonment authority, and enacting that, if the rent is not paid by the middle of any month in respect of the previous month, the grantee may apply to the military authorities, by whom the amount may be deducted from the salary and allowances of the officer concerned, wherever he may be. My clause will further provide for the eviction (where necessary) of the military tenant, if this mode of recovery is infructuous within a certain period.

"These are the main alterations which the Government are disposed to agree to in order to meet the objections raised and criticisms offered. There are also some minor amendments which will be proposed, but none of them are in the direction of rendering the Bill more stringent.

"To summarise: the principal concessions which we are prepared to make are, first, the exclusion of civil officers; second, the provision of facilities for recovering rent; and, third, the withdrawal of the power to veto the transfer of house-property except in extreme cases. These will, I think, be very valuable to house-owners, and I trust that they will go far to meet the objections to the measure. Further I am not prepared to advise the Government of India to go.

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"The next step to be taken, my Lord, is to move for leave to refer the Bill to a Select Committee. This, however, I propose to defer doing until the Council reassembles in Calcutta and any vacancies in it have been filled up. I have, therefore, no formal motion to put before the Council now, but have merely taken this opportunity to let the public know how we propose to proceed with a measure which, from the military point of view at all events, is regarded as being one of considerable and pressing importance."

The Council adjourned *sine die*.

SIMLA;
The 25th October, 1901. }

H. W. C. CARNDUFF,
Offg. Secretary to the Government of India,
Legislative Department.