Thursday,
24th October, 1889

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

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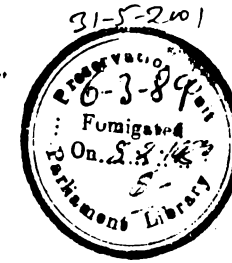

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1890.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 24th October, 1889.

PRESENT:

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E., *presiding*.
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 Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to amend the Central Provinces Land-revenue Act, 1881, be taken into consideration. He said:—

"I have a few remarks to make with regard to objections which have been made against some of the provisions of the Bill.

"It has been objected that the Land-revenue Act, 1881, should not be extended to the scheduled districts. It has been said by the Málguzárs Association, Nágpur, that it is unfair to deprive the proprietors in the scheduled districts of the privileges conferred on them by special legislation, and some landlords of the Hoshungabad District urge that the extension of the revenue law to those districts will deprive the zamindárs of their vested rights in land by the creation of subordinate rights. To these objections I have to say, first, that no privileges have been conferred by special legislation on the proprietors as such of estates which have been made scheduled districts. The zamindárs who own these estates are not independent chiefs, but ordinary subjects of the Crown, and the Scheduled Districts Act, 1874, confers no privileges on them. On the contrary, it may be said to deprive them of privileges enjoyed by the rest of the

community. Laws for the scheduled districts may not only be enacted in the regular way by the Governor General in Council, but the Act also allows the Local Government, with the previous sanction of the Governor General in Council, to declare what enactments are or are not in force in the scheduled districts, and to extend to a scheduled district any enactment which is in force in any part of British India. Moreover, in a scheduled district the Local Government can under section 6 of the Act appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the revenue and all matters relating to rent, and it can regulate the procedure of the officers so appointed. I cannot understand, therefore, how the extension of an Act by means of the Bill before the Council, which extension could be also effected under the Scheduled Districts Act, can be said to deprive the zamindárs of privileges conferred upon them by special legislation. As to the objection that the extension will by the creation of subordinate rights in land deprive the zamindars of their vested rights, this might perhaps be urged against the extension of the Central Provinces Tenancy Act, 1883, but not against the extension of the Land-revenue Act. The latter Act will not deprive zamindárs of their vested rights in land. It is necessary to have some procedure for the settlement and collection of land-revenue, and it is, I think, in the interests of the zamindárs that this procedure should be contained in an Act of the legislature, instead of having to be sought for in Acts and Regulations extended to the scheduled districts, and in orders issued by the Local Government. Why the scheduled zamindáris were excepted from the operation of the Land-revenue Act of 1881 is not clear. Apparently in the first draft of the Bill which afterwards became the Land-revenue Act provision was made for excepting local areas which might be considered to be in too backward a state for a revenue law. Afterwards, it would seem that as these zamindáris were scheduled districts they were considered to be in a backward condition and were excepted from the operation of the Act.

"In his letter dated the 11th of August, 1874, regarding the Bill which afterwards became the Scheduled Districts Act, 1874, the Chief Commissioner of the Central Provinces said that the districts which he wished to have scheduled were, as a rule, the wild and remote zamindári areas, the difficulty of administering which under the law presented itself from time to time in one form or another, and must continue to arise so long as the tracts are subject to an elaborate and technical system which it is impossible to adapt to their existing circumstances. He added that the list of districts which he wished to have scheduled comprised estates which, being distant and incapable of management under any strict administration of the Regulations and Acts, he proposed to administer under special rules. The

selection, he continued, had been confined to remote zamindáris which it was impossible to administer satisfactorily in any other way. I have already mentioned when introducing the Bill that it is impossible now to say that the zamindáris which are scheduled districts are in such a backward or peculiar condition that the revenue law in force in other zamindáris is unsuitable to them. Out of 18 zamindáris, for instance, in the Sambalpur District, four were scheduled, and these four are neither the most remote nor the most backward. The Bengal-Nagpur Railway will pass through two of them; the third (Phuljhar) is connected by the main road with Raipur and with Sambalpur; and that and the fourth (Bora Sambhar) are among the most advanced of the zamindáris. Moreover, since the Scheduled Districts Act was passed, a number of laws have been declared to be in force in, or enacted for, the scheduled zamindáris. The Specific Relief Act, the Code of Civil Procedure, with the exception of a few provisions, the Criminal Procedure Code, the Registration Act, the Indian Forest Act, the Opium Act, the Excise Act, the Negotiable Instruments Act, the Indian Trusts Act, the Transfer of Property Act, the Easements Act and the Indian Companies Act, and many other Acts are all in force in those zamindáris. It is therefore impossible to understand how they can be said to be too backward for the extension of the Land-revenue Act or how it can be for the interest of the zamindárs to have the revenue-administration of their estates subject to executive rules and orders instead of an Act of the Legislature.

"There is one objection which it will be as well to refer to in order to remove a groundless apprehension. In a petition laid before the Council the Rájá Durjan Singh of the Chhattar estate objects to the extension of the Land-revenue Act because the extension could not be made consistently with the sanad granted to him. I need scarcely say that the Land-revenue Act will not in any way interfere with privileges which may have been conferred on the Rájá with respect to the amount of tribute or takoli, the right to the revenue from opium, drugs and spirits, the pándhari-tax and cattle-pounds, or the proceeds of the sale of unclaimed property.

"The objections taken by the landlords to the definition of sír-land have been principally based on a misapprehension of the effect of the definition combined with section 19 of the Bill. I need only say with respect to these objections that the Bill will not reduce the amount of sír-land to one-quarter of the cultivated area of the mahál. It will be possible to hold the whole mahál as sír-land. All that section 19 proposes to do is to allow, subject to a prescribed limitation, the conversion into sír-land of land which was at the preceding settlement recorded as tenant's land, that is to say, of land which was ordinarily let to and cultivated by

tenants. As regards land which is sír-land, the proprietor will retain all except such as may be unoccupied by him when the Bill becomes law and had been unoccupied for six consecutive years. The section provides that land is occupied by the proprietor when it is leased out with an express reservation of his sír-rights, and when it is occupied by a person to whom he has assigned his proprietary rights, as, for instance, a mortgagee or lessee for a term. In altering the definition of sír-land it is impossible so to legislate that no case of hardship may occur, but I think that the definition in the Bill will as far as possible secure the existing rights of both landlord and tenant, and that it will, if anything, be favorable to the landlord.

"With regard to sections 15 and 16 of the Bill as introduced, which have been amended by the Select Committee, I may say, in answer to objections which have been taken, that there was never any intention of applying the principle of fluctuating assessments to the ordinary cultivated maháls. What was required was a power to assess forest-maháls according to the annual value of the produce or in the form of rates chargeable on the produce of the forest.

"The new section 124A (section 22 of the Bill), which gives the Chief Commissioner power to make rules for the management of forests, has been objected to as unnecessary. It is said by the Málguzárs Association of Nágpur that no case has been made out to justify such a power. I will mention two cases. In 1885 the Deputy Commissioner of Nágpur reported that the málguzár of Munsar had given a contract for the cutting and removal of the wood in the forest-land of his mahál. The villagers had rights in this forest-land and those rights were interfered with by the cutting of the wood; but, in spite of the intervention of the Chief Commissioner, the málguzár continued the cutting, and the hills were completely stripped of all timber and brushwood. In another case the Forest Conservator reported that a zamindár had sold for ten rupees the right to collect resin from his forest. The resin is obtained by girdling the trees, and the Conservator found that in about four square miles of forest every sál tree had been killed outright by the process. The forest thus destroyed was a fine one. The zamindár received ten rupees, and the purchasers of the right to collect resin realised, it is calculated, upwards of 1,200 rupees. Other cases of the wrongful or wanton destruction of forests might be cited, but these two, are, I think, sufficient to justify the enactment of this provision. The principle that the Government has a right to interfere for the protection and preservation of forests in the interest of the owners and the people generally has, I may say, always been recognized in the Central

Provinces. The Bill does not propose to give the Government power to make rules regarding the control and management of all forests, but only of those which the proprietors are bound by a record-of-rights, sanad or agreement with the Government to manage in accordance with rules or instructions prescribed by a Government officer. With respect to the objection that the penalty for contravening the rules is oppressive, I would observe that the Chief Commissioner is not bound in every instance to put all the penalties in force. He can, under section 162 of the Act, impose a fine for a breach of the rules, and this and the confiscation of timber or other forest-produce cut or removed in contravention of the rules will probably be found sufficient in all ordinary cases to secure their observance.

"The only other matter which it is necessary that I should mention is the amendment of the law regarding patwáris. This amendment has given rise to some discussion, and it will be well therefore to explain what change is actually made in the present law.

"The Bill repeals section 145 of the Act, a section which was intended to enable the Government to secure the proper performance of the duties of the patwári in places where at the last settlement the maintenance of a patwári was left optional with a proprietor. The state of things for which this section was intended to provide exists now only over a limited area. Most of the proprietors who had the option of maintaining a patwári have preferred to pay patwáris' fees and accept the appointment of a patwári in the usual way. It is considered therefore advisable to withdraw the power conferred by section 145 of the Act of fining proprietors or of appointing patwáris when the duties of a patwári are not duly performed by the proprietors, and to empower the Chief Commissioner to appoint patwáris in the few and unimportant tracts in which there are now no regular patwáris.

"This is, in my opinion, the only real change made in the existing law by the Bill. The liability of all proprietors and tenants to pay patwáris' fees is now clearly declared, and the use of these fees to defray charges incurred on account of the proper supervision and maintenance of patwáris' records is legalized. Both of these matters were, I think, within the intention of the Act. That the proprietors of revenue-free land were intended to pay patwáris' fees is shown by the proviso to section 144 of the Act, which expressly mentions land held free from revenue, and there can be no doubt that it was intended that all other proprietors were, unless specially exempted at the settlement, bound to pay such fees. That it is necessary to have patwáris and correct village-records in a

country in which the rights of landlords and tenants depend so much on the accuracy of those records cannot, I submit, be disputed. It is not possible to secure the efficient discharge of their duties by patwáris without supervision, and their records will be of little use unless they are properly corrected and maintained. The employment, therefore, of the patwári fund for the purpose of providing this supervision, correction and maintenance may, I think, be fairly said to be within the contemplation of the Act, and requires no justification. The Bill makes no change with respect to the limit of the rate which can be imposed for the remuneration of patwáris."

The Hon'ble SIR CHARLES ELLIOTT said :—

"I propose to make a few remarks on the Bill, chiefly because of my former connection with the province when I was Settlement-officer of the Hoshangabad District about 25 years ago. My authority has been referred to in some of the papers before the Council, and I have also received some direct applications from old friends and sons of old friends among the Hoshangabad landowners entreating me to see that the rights conferred on them by my settlement were not taken away or diminished by this Bill. I wish therefore to say that I have very carefully examined all its provisions, and have satisfied myself that there is nothing which is either contrary to justice or is injurious to any privilege or prescriptive right which is known to exist and to be reasonable. After what has been said by the Hon'ble Mr. Crosthwaite I need not enter at any length into the provisions of the Bill, and will confine my remarks to two salient points in it—the definition of sír-land, and the treatment of forest-maháls. All Revenue-officers in Upper India know that there is no more difficult crux in settlement questions than the proper treatment of sír, because it involves the holding a just balance between the rights of landowners and the rights of tenants. On the one hand, the landowner desires to enlarge his holding, both for the sake of providing for the employment of an increasing family and of preventing the accretion of tenant-right. On the other hand, the tenant who cultivates and pays rent for land thinks it very hard that no occupancy-right can accrue to him in field *A*, because it is earmarked as sír, while it does accrue in the adjoining field *B*, which is not so designated. When the North-Western Provinces Revenue Act, XIX of 1873, was being drafted, I was one of those engaged on the work. We had a great deal of discussion over this question, and finally adopted a definition which has, I believe, been considered satisfactory. Sír is there defined as land which has been so recorded at the last settlement or has been cultivated by the landowner for twelve consecutive years, and is so cultivated at the time the settlement-record is prepared. The pre-

sent Bill, which in many important respects follows the North-Western Provinces Act, adopts the same definition but adds the clause that if waste-land has been broken up by the proprietor and cultivated for six years it becomes sír. This is a very proper clause in a country with so much waste-land as the Central Provinces. But lest the proprietor should get too much land into his hands by cultivating for twelve or for six years, and then when it has become sír letting it out and going on to cultivate other land, and so by degrees taking up the whole village area in rotation and extinguishing tenant-right, there is a further condition imposed by section 19 of the Bill that the landowner cannot add to the sír-land so recorded at last settlement a larger area than is equal to 25 per cent. of the entire village area. There is of course no essential principle involved in the selection of the figure 25 per cent., but it seems to be a reasonable compromise between landowner and tenant in a country where cultivating proprietary brotherhoods are hardly known to exist, if they do exist at all; and, as far as I can see, the reasonableness of the figure has been accepted by most of those who have commented on the Bill.

"The second point I wish to touch on is the treatment proposed for forest-mahál. If the owners voluntarily agree to submit the forests to proper management under the established rules of forest-conservancy, or if by any covenant or sanad they are bound to do so, then it is provided that any proprietor who violates such rules, as for instance if he fells recklessly and destroys a whole forest for the sake of its timber, may be excluded from the management of the mahál. If, on the other hand, he neither agrees nor is bound to abide by those conservancy-rules, then he is not to profit too much by his greed or folly, and the State will claim a share in the money he receives from such clearances, which is really an anticipation of the revenue due in future years. The Hoshangabad zamindárs have objected to these provisions, and have appealed to me to protect their rights; but, as I understand the question, these provisions will hardly affect them at all. There are no estates which are technically called forest-mahál in Hoshangabad. The arrangement there made by me as Settlement-officer was this: when the nominal village-boundaries included a great deal of waste or forest land, then a certain sufficient amount, generally three times the cultivated area, was marked off for the use of the village, and the boundaries were so laid down as to include this and to exclude the balance, which was then termed Government forest, and has now, under the more precise nomenclature of the Forest Act, been designated either reserved or protected forest. The waste or forest lands included in the village areas were settled with the proprietors as an appanage of the cultivated land, and certain

conditions were laid down in the record-of-rights to define the terms on which proprietors and tenants might graze cattle, collect firewood, or cut down trees and break up land in these wastes. These are not the mahâls referred to in section 15, which lie, I believe, almost entirely in the Bhandara District and the Chhattisgarh Division, and are in the hands of large zamindârs who hold the lands on sanads, which in some cases include conditions about proper forest-management, and in some cases through inadvertence do not contain them. It is principally to remedy this inadvertence that the section has been inserted, and it seems to me to be a very useful condition. I only wish that some such provision had existed in past years to prevent the forest-clearances round Simla and along the southern slopes of the Himalayas abutting on the Punjab plain. The only provision which affects the Hoshangabad zamindârs is that contained in section 22, that if any one violates the conditions of the record-of-rights he may be excluded from the management of the forest-land. The Hon'ble Mr. Crosthwaite has given an instance of flagrant violation of the rules in the Nagpur District, and has shewn that the Chief Commissioner need not put in force the full penalty provided, unless the proprietor is contumacious and persists in carrying on a prohibited course of action. I do not think that any reasonable and law-abiding proprietor need fear the operation of this section."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Report of the Select Committee on the Bill to amend the Central Provinces Tenancy Act, 1883, and the Central Provinces Local Self-government Act, 1883, be taken into consideration. He said:—

"There are only two matters on which I need trouble the Council. The first is the extension of the Central Provinces Tenancy Act, 1883, to the scheduled districts. I have already explained that these scheduled districts were zamindâris which were supposed to be in such a peculiar and backward condition that they could not be administered under the same law as other zamindâris, and I have endeavoured to show that they cannot be said to be in such a condition now. In the scheduled zamindâris the Bengal Rent Act, X of 1859,

is now in force. This Act was applied to the Central Provinces as a mere temporary makeshift, because a rent law was urgently required, and not because it was suited to the conditions and requirements of the country. Its provisions are undoubtedly at variance with the customs of the people. The principle that every tenant other than an occupancy-tenant or a tenant holding under a lease is merely a tenant-at-will, and that an occupancy-right could be acquired by cultivating land for twelve years, was quite unknown in the zamindáris. By the general custom of the country, especially in the wilder tracts, the tenant had a fixity of tenure so long as he paid a fair rent. This is the main principle on which the provisions of the Central Provinces Tenancy Act are based. Except in so far as the provisions of Act X of 1859 have affected the rights of tenants in the scheduled districts, there is no difference between the customary tenures of the scheduled, and those of the non-scheduled districts. The Government has conferred the proprietary right in the land on the zamindárs, and it is bound to provide for the interests of the cultivators. This provision can best be made by the extension of the Central Provinces Tenancy Act to the scheduled districts, and the zamindárs will not be deprived of any of their rights by the extension. That Act prevents a landlord from arbitrarily enhancing the rent of his tenant and ejecting him, but it cannot be contended that a zamindár has a vested right to deal in this manner with the cultivators of his estate. I submit, therefore, that the repeal of Act X of 1859, which is admittedly unsuited to the requirements of the scheduled districts, and the extension to those districts of the Tenancy Act of 1883, which is found to meet the requirements of the rest of the Provinces, are fully justified.

"The other question about which I wish to say a few words is the provision contained in section 8 of the Bill regarding cultivating in partnership. This provision has been very carefully considered by the officers of the Commission and by the proprietors of land, and a great deal of information regarding the practice of cultivating in partnership has been obtained. It appears that in some parts of the country the landlords occasionally cultivate in partnership with a raiyat instead of letting land to him as a tenant, because the raiyat has no means of cultivating and requires seed-grain and bullocks to be provided for him, and because it is found more profitable to give him an interest in the produce of the land than to employ him to cultivate it as a labourer. Against this occasional cultivation in partnership there can be no objection and it should not be interfered with. But it also appears that in some parts of the country there is at least a tendency to adopt the practice of cultivating in partnership in order to prevent the acquisition of tenant-right and to rackrent the

raiyats. Instead of letting the land, the landlord makes the raiyat his partner for the purpose of cultivating it. The raiyat is bound to borrow his seed-grain from the landlord and to pay a high interest on it. He can be turned out of the land at the end of the year when the partnership terminates, and the landlord has it, therefore, in his power to exact the greatest possible share of the produce. The raiyat is nominally a partner, but in reality he is a rackrented tenant. If such a practice is largely resorted to, it should, in the interest of the raiyats, be put a stop to; and provision has therefore been made in section 8 of the Bill to enable the Local Government to interfere and declare that in any particular local area raiyats cultivating in partnership with the proprietor of land other than sír-land shall be ordinary tenants. Unless then the practice of cultivating in partnership with raiyats is abused, proprietors will not be interfered with.

"Several valuable suggestions have been received as to matters in which the further amendment of the Central Provinces Tenancy Act of 1883 is said to be desirable, but they do not fall within the scope of the present Bill, the main object of which was to amend the Tenancy Act so as to make its provisions agree with the amendments made in the Central Provinces Land-revenue Act of 1881 by the Bill which has just been passed."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to make better provision for the Organization and Administration of Municipalities in the Central Provinces.

CENTRAL PROVINCES VILLAGE-CONSERVANCY BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to make better provision for Conservancy in Villages in the Central Provinces.

1889.] [*Mr. Hutchins.*]

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*Lunatic Asylums*).

The Council adjourned *sine die*.

J. M. MACPHERSON,

SIMLA; *Offg. Secretary to the Government of India,*
The 25th October, 1889. *Legislative Department.*

G. C. Press, Simla.—No. 522 L. D.—25-10-89.—316.