ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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

The Council met at Government House on Monday, the 4th January 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpur.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

ARTICLES OF WAR BILL.

His Excellency the COMMANDER-IN-CHIEF presented the report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY presented the report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

IMPROVEMENT OF LAND (N. W. PROVINCES) BILL.

The Hon'ble Mr. STRACHEY moved that the Bill to facilitate the improvement of land in the North-Western Provinces be referred to a Select Committee with instructions to report in a month. He said that the Council would remember that in October last the Bill was introduced in order that it might be published in the Gazette. It was then not referred to a Select Committee, it having been thought right that the opinion of the Lieutenant-Governor of

the North-Western Provinces should first be received in regard to the details of the Bill. Although, as Mr. STRACHEY had explained, both the Lieutenant Governor and the High Court at Agra had come to the conclusion that legislation in these matters was necessary, and although the Lieutenant Governor had generally stated his approval of the provisions of the Bill, the opinion of His Honour had not then been received on the whole of the actual details. The views of the Lieutenant Governor had only lately been received by the Government of India.

MR. STRACHEY might state briefly the reasons which had rendered legislation on this subject necessary. Some time ago it was decided by the High Court at Agra that by the general law applicable to the North-Western Provinces a tenant possessing a right of occupancy was liable to ejectment from his holding if he dug a *kacha* well or planted trees without the previous consent of the landlord. As mentioned in the Statement of Objects and Reasons—

"a *kacha* well is often a mere hole in the ground, a few feet deep, made at the cost of a few rupees, and, as stated by the Board of Revenue, it is very commonly impossible without such wells to obtain any crop at all. It is clearly not reasonable that, in consequence of the performance of acts which are essential to the proper cultivation of the land, a tenant should be liable to ejectment from his holding and to forfeiture of his property."

It was plain from the judgment of the Court itself that this view of the unreasonableness of the law was held by the Court, although it felt itself bound to administer the law as it found it. Since the Bill had been introduced there had been unhappily fresh instances of the real necessity for legislation on this subject. As the Council well knew, famine now threatened a considerable portion of the North-Western Provinces, and in some parts of the country that great calamity had actually already fallen on the people. In great tracts of country, at the present moment, it might be said that almost the sole remaining hope of obtaining any crop at all at the coming harvest lay in the digging of temporary wells for irrigation. If within a short time no rain should fall, except where canal irrigation had been introduced, the digging of wells would really be the sole means in some districts of saving the people from the extremity of absolute famine; and as MR. STRACHEY knew from an eye-witness, such wells were being at the present time dug literally by thousands —he might probably say by hundreds of thousands. He might ask whether any thing could be more preposterous than this—if he thought that this state of things was going to last, he would say could anything be more wicked—that we should have such a state of the law that the digging of wells, on which it

was not too much to say that the preservation of thousands of lives might depend, should be treated as a criminal offence. The mere digging of a well might render a tenant liable to ejectment from his holding, to the practical confiscation of his property and to utter ruin, at the very time when the Government had declared it to be one of its first duties to give the means of irrigation for protection against famine, and had expended or was about to expend millions in the construction of the greatest works of irrigation ever undertaken in the world. It was now actually a penal act for a tenant or even sometimes for a proprietor of land, as would be presently shown, to dig a well for the irrigation of his fields: and it ought to be remembered that this well irrigation was of almost greater importance to the country than any irrigation we could ever hope to give from canals. When all the great works already constructed and which were contemplated by Government had been completed, and when every drop of water which could be made available from the great rivers of Northern India had been used, he believed there would only be sufficient water to irrigate one-fourth part of the cultivated area of the country: the remaining three-fourths must continue to depend on natural resources, that was to say on the rainfall and on wells.

He said just now that not only tenants but proprietors of land might incur those penal consequences if they dug wells for the irrigation of their fields; for, as everybody admitted, so-called tenants with rights of occupancy in the North-Western Provinces—and he supposed that of such tenants there must be several millions in those provinces—were in fact co-proprietors in the land with the superior landlord. He did not say anything on the question whether such tenures were economically good or bad, but every one would admit that they existed, and that they constituted actual rights of property in the soil. He did not suppose that any one would be found to assert that such rights should be liable to be swept away in consequence of the performance of acts which might be essential to the cultivation and protection of any crop at all, and the performance of which tended most powerfully and directly to save the people from perishing by famine—acts which were really not only highly beneficial to the community at large but to the superior landlords themselves. And in regard to this question, where tenants with rights of occupancy were concerned, he might observe that there could not properly arise any question as to the propriety of requiring that the tenant before digging a well should obtain the consent of the landlord, or give the landlord the option of making the improvement himself. For the right of the landlord in such a case was really confined to his right to receive rent from the tenant with right of occupancy, who was in fact a co-proprietor, and so long as

he received that rent the superior landlord had no power to interfere in any way with the land, nor indeed could he have any object in so doing. The case of a tenant who held under a lease was hardly, he might say not at all, less strong. It might be argued—although MR. STRACHEY thought the argument altogether mistaken—that the tenant-at-will ought not, in the absence of any agreement on the subject, to receive compensation from his landlord for the cost of improvements made by him without the landlord's previous consent; but MR. STRACHEY wished to point out that the law as interpreted by the High Court in the North-Western Provinces went further than this. Not only did it say that the tenant could not claim compensation for improvements, but that the mere fact of making improvements such as digging a well, rendered the tenant liable to the cancellation of his lease and ejectment from his holding. MR. STRACHEY ventured to say that if that had not actually been declared by the High Court to be the law of the land, no one would believe it possible that such a law could exist in a country which had been for more than half a century under British Government. He did not think there could be much difference of opinion in regard to what he had now said. He believed there had been and would be a general agreement, at any rate up to this point, that the principle laid down in section 9 of the Bill was a proper principle, namely, that—

"no tenant shall be liable to have his lease cancelled, or to be ejected from the land in his occupation, merely on account of improvements made by him on such land."

But there were other questions with which this Bill dealt which were much more difficult. It seemed to him that while we said that a tenant should not be liable to penal consequences merely because he made improvements, it was also right to give the landlord a remedy against the tenant in case of injury to the land through bad cultivation or otherwise. With that object section 4 was introduced. It said—

"Every tenant shall cultivate and manage the land in his occupation in a good and husband-like manner, according to the custom of the country in reference to lands of a like nature, except so far as such custom is varied by this Act, so that the land shall not be injured or deteriorated, or its annual letting-value diminished."

MR. STRACHEY had said in introducing the Bill that it seemed right that, as the Bill was intended to facilitate the general improvement of the land, the law which encouraged the making of improvements by tenants should also protect the landlord against injury to the land on the part of the tenant. It had, however, been objected to this provision, and in this objection His Honour the Lieutenant Governor of the North-Western Provinces had expressed his concurrence, that such a provision was not actually required. His Honour said—

"Section 4 appears to the Lieutenant Governor unnecessary; and it might lead to complications and unnecessary litigation, while it is difficult to see that any practical advantage would accrue to proprietors from the same."

Although MR. STRACHEY thought as a matter of principle that that section was right and proper, and although he was strongly inclined to keep it in the Bill, he admitted that it might be a question whether the actual advantage to the landlord would be worth much, and he thought that was a question which would form a proper subject for consideration by the Select Committee and the Council afterwards. Again the Bill, following the Acts lately passed for Oudh and the Panjáb, proposed to allow all tenants, including tenants-at-will, to claim, under certain conditions laid down, compensation for certain improvements executed by them in the land, if the landlord should determine to eject the tenant from his holding, although such improvements might have been made without the landlord's previous consent. MR. STRACHEY had stated on more than one occasion that he had no doubt that that principle was correct. The principle was one which had not only been recognized in the Acts to which he had just referred, but which had also, as the Council would remark, been recognized as properly applicable to tenants-at-will in the Bills relating to tenures of land in Ireland which had been introduced into Parliament not only by the liberal Government, but in the last session by the Conservative Government also. It seemed to him that it was impossible that such provisions, if properly interpreted by the courts, should lead to injury to the landlord. He believed that they must necessarily prove as beneficial to the landlord as to the tenant, and that it was the duty of the Government so to frame the law as to encourage the improvement of the land. In India, and especially in Northern India, this was a duty of unusually high importance, because almost the only important works of improvement were works of irrigation, and it seemed to be folly, and worse than folly, to discourage in any way the execution of works which tended to increase the wealth and prosperity of the country, and to protect the people against the calamity of famine. Some persons, however, whose opinions were of great weight, believed that although it was proper to give the right of compensation to tenants with right of occupancy, the same benefit should not be given to mere tenants-at-will, and that view had been taken by the Lieutenant Governor of the North-Western Provinces. In the letter lately received it was said—

"In respect of section 12, the Lieutenant Governor concurs with the Board that the right of claiming compensation should be confined to occupancy ryots. It would not be fair to saddle the landlord with claims of the kind, unless the liability were admitted at the time of giving the lease. If the custom of long leases were prevalent, the case might be different, and

if the provision is maintained, the Lieutenant Governor would limit it to cultivators who have held without lease, or on lease, or succession of leases for a continuous period of say not less than twelve years."

Although MR. STRACHEY could not personally concur in that view, he did not think it necessary that he should enter further into that part of the question, but thought that it was a subject which, after discussion by the Select Committee, ought to be further considered by the Council.

There were other points in the Bill which were very important, and which would require careful consideration, but he did not think it necessary to take up the time of the Council by entering at present into further detail; his only object now being to satisfy the Council that legislation was necessary, and that the present Bill might properly be referred to a Select Committee for consideration of the details which a legislative enactment on this subject ought to contain. The papers which had been received from the Government of the North-Western Provinces would of course be laid before the Council, and they would give to the Committee valuable aid in bringing the Bill to a shape which could be recommended with confidence to the Council for adoption.

The Hon'ble MR. COCKERELL said that as to the main object of this Bill for the improvement of land in the North-Western Provinces he entirely concurred in the remarks which had fallen from the Hon'ble Mover of the Bill. He went quite as far as Mr. Strachey in deprecating the maintenance of the present state of the law which admitted of what that Hon'ble Member had justly designated as the *penal* consequence of improvements made by tenants without the sanction of their landlords; and he thought Mr. Strachey was justified in assuming that the Council, generally, would admit the necessity of giving protection to tenants in the matter of improvements made by them, by not allowing them to continue, as they were at present in many cases, liable to be ejected in consequence of acts by which their landlords' property was substantially improved. MR. COCKERELL fully concurred in the opinion that in this matter the present state of the law was obstructive and opposed to sound policy, and that some remedial legislation had become absolutely necessary.

But some of the provisions of the Bill went beyond the mere protection of the tenant in his exercise of a just right. He referred to the provisions of section 12, which not only gave a claim to compensation for improvements made by a tenant having a right of occupancy, but conceded a similar privilege, in regard to improvements made by them, to tenants who had no right of occupancy. It would be said, perhaps, that the principle of the equity of such a concession had been already adopted by the legislature in the enactment of the Panjáb

Tenancy Bill. MR. COCKERELL was one of those who had doubted the expediency of what had been done in this direction ; but he observed that the present Bill went farther even than the Panjáb Act. In the latter, a tenant without a right of occupancy, who had himself made some outlay in the improvement of his land, was entitled to compensation in the event of his ejectment by his landlord ; but if the present Bill were to become law, such a tenant would not only be entitled to compensation for his own improvements, but also for such as had been made by his ascendant or predecessor in the occupancy of the land, and this moreover not only in the case of his ejectment by his landlord, but also when his tenancy had determined by effluxion of time. Under this rule, a leaseholder would have a claim to compensation, on the expiration of his lease, for improvements of the land held by him which had been made during that lease, although the land might have been leased to him for such a period and on such terms as to have given him a certainty of reimbursing himself in his outlay from the profits of such lease.

Such a tenant, he conceded, would have already, even by his own calculation, fully recovered the value of his disbursements, and to make provision, as this Bill would, for the further compensation of the lease-holder for his outlay, was much more than the equity of the case required.

If this Bill were proposed merely to apply to cases in which improvements had been made after the passing of the Act, MR. COCKERELL would even then think its provisions inexpedient, but he had looked through the Bill carefully and had found nothing which could make him suppose that the Mover proposed to confine its provisions to improvements effected after the passing of the Act, and therefore, as an instance of *ex post facto* legislation, he thought the Bill was, in regard to the provisions to which he had specially adverted, justly open to serious objection, and if those provisions were not modified in Committee, he certainly would feel himself bound to oppose the passing of the Bill. He thought the principle involved in the provisions to which he had objected a very important one, and therefore deemed it right to make these remarks before the Bill was referred to a Select Committee.

The Hon'ble MR. SHAW STEWART said that he had carefully studied the Bill by the light of the remarks with which the Hon'ble Mover had introduced the Bill, and of the Statement of Objects and Reasons, which he regretted to state were the only documents placed before the Council. When the Panjáb Tenancy Bill was introduced a year ago, the Council by a large majority affirmed the principle that no Bill affecting the landed interests of any large district should come up for discussion until all the documents received from the local authori-

ties were placed before the Council. No such documents in this case had been submitted to the Council, and he would therefore appeal to the Hon'ble Mr. Strachey to adjourn his motion until the letter of the Lieutenant Governor, to which he had referred, had been circulated to all the members. To a certain extent the Hon'ble Mr. Strachey had removed this objection, and had read some quotations from the letter of the Government of the North-Western Provinces, but those were not sufficient to enable MR. SHAW STEWART to estimate what was the opinion of that Government in regard to this Bill.

The Hon'ble Mr. Cockerell had anticipated much of the objections which MR. SHAW STEWART had intended to take to the Bill, and it was unnecessary for him to repeat what had been already said. It appeared to him, from what he had already seen of the measure, that it would have the effect of very unjust *ex post facto* legislation, and unless the Hon'ble Mr. Strachey was able to explain away the objections taken by the Hon'ble Mr. Cockerell, MR. SHAW STEWART was not prepared to vote in favour of the present motion.

HIS EXCELLENCY THE PRESIDENT said, he should be very sorry if the motion of this day was adjourned in consequence of what had fallen from the Hon'ble Mr. Cockerell. Whatever might be the objections which could be fairly urged against any of the clauses of this Bill, the proper time for the consideration of those objections would be in Select Committee. All that was now asked of the Council was to affirm the general principle of the Bill, namely, that it was right and wise and politic that every encouragement should be given to certain classes of the tenantry to make improvements in the land. The Hon'ble Mr. Strachey had wisely and appositely alluded to the present state of things in the North-Western Provinces as illustrative of the great advantage which would accrue by the passing of the Bill. HIS EXCELLENCY would consider it an honour to his administration if this Bill could be passed during his incumbency as Governor General. But such could not be the case; and this being so HIS EXCELLENCY held it his duty to give, while holding his present position, such force and weight as he could to the proposition of the Hon'ble Mr. Strachey. For his own part HIS EXCELLENCY could not conceive any reasonable objection to the main principles of the Bill. If it was wise and necessary for the State to expend large sums of money in improving the productive powers of the soil, and guarding and securing the country from the ruinous consequences of droughts, did it not behove the Council to encourage individuals to do what they could in furtherance of the same object? It would take years, he might say generations, to carry out the irrigation works which were in progress or in contemplation, and that at an enormous cost; but a

great deal could be done by individuals at an inappreciable cost, mainly by labouring with their own hands.

On the question of compensation for improvements, it seemed to HIS EXCELLENCY that the provisions in the proposed Act carefully and reasonably guarded the interests of the landlord. In the first place the Bill proposed to provide in the second portion of section 3, that in no case should the provisions of the Act affect cases where special agreements had been made, or should be made, between landlords and tenants. That being the case, unless the lease had provided that compensation should be given for improvements, he presumed that no improvements would be made during the existence of such a lease. Again, where there was no lease, the last clause of section 12 seemed carefully to protect the landlord: the words were—

"the tenant, or his representative, as the case may be, shall be entitled to compensation for the outlay in money or labour, or both, expended in making such improvements by him or the person from whom he has inherited, or whom he represents, within thirty years—"

Now take the case of the chief improvements which the tenant would make. Beyond reclaiming jungle, beyond cultivating waste land, which would cost him considerable labour, the improvements for which the Bill intended to provide were described in section 13, and were such as must improve the letting-value of the land. They were described as—

"the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells, the reclaiming, clearing and enclosing of waste lands and jungles, and other works of a like nature;

"the renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value."

Now it appeared to HIS EXCELLENCY that if it was right and just to give a man who made improvements coming under those limitations and conditions compensation for what he had done, it would be equally incumbent on us to give compensation to his heirs within a reasonable time. What man of sense or foresight would spend much money or labour in the construction of wells or *kuls* or cuts from canals and streams, if, at the day of his death, all would be lost? HIS EXCELLENCY could not conceive any possible distinction between the man who made such improvements and the heir who succeeded to the land. For his own part, without attempting to lay down rules as to what particular tenant should or should not be entitled to compensation, HIS EXCELLENCY must say his own view after all agreed with that of the Hon'ble Mr. Strachey that compensation should

not be confined to occupying tenants. It seemed to HIS EXCELLENCY that if a tenant-at-will had the enterprise and spirit to make improvements, he ought, under the limitations proposed, to be entitled to compensation for those improvements. He believed the Hon'ble Mr. Strachey had said that such a rule would in the long run be advantageous to the landlord. HIS EXCELLENCY believed that every man who had had much dealing with agricultural matters, at any rate in Northern India, would agree with him in saying that, in the great majority of cases, improvements were made either by the cultivating proprietor or the landlord, and that where the landlord did not cultivate, he rarely ever made any improvements. Such being the case, HIS EXCELLENCY thought it would be a broad and wise policy to encourage improvements for the cultivation of the land in one way or another.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to facilitate the improvement of land in the North-Western Provinces—The Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, and the Hon'ble Messrs. Cockerell, Gordon Forbes and Shaw Stewart and the mover.

The Council adjourned till Monday, the 11th January 1869.

CALCUTTA,
The 4th January 1869.

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

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