

**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

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1877.

*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.*

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The Council met at Government House on Thursday, the 14th September 1876.

P R E S E N T :

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

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Jágírdárs and Zamín-dárs in Sindh be taken into consideration.

He said that the Report of the Select Committee which he had the honour to present on the occasion of the last meeting of the Council, would speak for itself; but there were three or four matters upon which, perhaps, it was desirable for him to say a few words. In section 15 of the Bill the Committee had provided that when the Manager had determined the amount of the several debts, he should, if they could not be paid at once, rank them according to the order in which they should be paid, and fix the interest, if any, to be paid upon them, respectively, from the date of the final decision to the date of the payment and discharge. They had made that provision because there might possibly be some cases in which it might be proved to be necessary; at the same time, he trusted that the Bombay system which was adopted in other parts of the Presidency, of advancing the funds necessary for the liquidation of the debts, and afterwards recovering those funds from the pro-

ceeds of the estate, would be followed in Sindh. That system was better for the estate, because creditors would accept less in a lump sum down than if they were to be paid by a long series of instalments. It was also fairer to the creditors, as when their interest was, in many cases, cut down, they ought not, in addition, to be kept waiting for their money. And, finally, there could be no harm, and no risk to the Government from this system, as long as the liquidation-scheme had been carefully and properly considered.

Another point he would mention was that the Committee had struck out the old section 17, which gave power to reduce the amount of interest in all cases where it was found to be too high; but they had done this merely because the subject was rather a large one, and they thought that it would be better provided for in Rules than by the somewhat bald terms of the section as it stood. They had, therefore, inserted in section 30 of the Bill, as amended, a clause taken from section 19 of the Chutia Nágpur Act. This change was made merely for the reason which he had alleged, and not with the slightest intention of preventing the cutting down of the interest, as might, perhaps, be supposed by some persons, on account of the omission of the section.

Another point he would refer to was that in the new section 23 there was not the proviso which would be found in the old section 26, forbidding the sale of property under management except with the consent of the owner. No doubt there were cases in which the only way to effect a liquidation of the estate was by selling some portion of the property, and it was necessary in such cases that the Manager should have the power of effecting such sale, and should not be hampered by the prejudice and opposition of the owners of land themselves; but at the same time, he himself felt a great aversion to any such sales of land, and he only hoped that the Sindh officers would follow the example of those who had worked the previous Acts in Ahmedabad and Broach, and who had been able to bring about, without sales, the very favourable results which he had laid before the Council in April last, on the occasion of the discussion of the Chutia Nágpur Bill.

The fourth point which he would mention was that the Committee had made a separate chapter for appeals and revisions; the Bill now expressly gave an appeal against all the more important orders which the Act contained, and further provided a general power in the Commissioner to call for the proceedings in any case and to pass orders upon them. He trusted that those provi-

sions would be a sufficient guarantee to the public that the creditors would be fully and fairly and completely heard in all cases in which their interests were involved.

He would also notice one or two points which he had observed in some very intelligent criticisms to which the Bill had been subjected in certain quarters. One of those was to the effect that he had not mentioned, in his previous speech, that any measures had been taken to reform the Revenue administration to which he had in some measure attributed the misfortunes in which the Jágírdárs and Zamíndárs found themselves involved. He had not done so, because in Bombay, as he trusted in every part of India, to know of an evil was to Revenue officers synonymous with taking every possible measure to redress it. In this particular case, no sooner were the settlements found not to be working well than they were carefully revised, and he believed that no further difficulty had been found with regard to them up to the present time. Again, he was asked how it was possible to manage petty estates of Zamíndárs paying only Rs. 300 per annum, many of which were under cultivation by the owners themselves. With regard to that, in Bombay, the practice had been for the officers charged with the management to avail themselves very largely of the owners themselves. It was generally found that those men, when once relieved from the pressure of debts, and the terror of arrest and imprisonment which had hitherto followed them, were most willing to give every assistance in their power in the management of their own lands. The arrangement was an exceedingly economical one, as regarded the management, and an exceedingly beneficial one to the men themselves; for of course it was better to keep them employed in the management of their own lands with the view of ultimately clearing themselves, than to turn them on one side to lead an idle life. He had no doubt that this system which was adopted in Bombay would also be largely followed in Sindh, and with a view to facilitate that object a proviso had been put into section 8 of the Bill expressly to state—

“that nothing contained in this clause shall be deemed to preclude the Manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act, as may be agreed upon between the parties.”

In conclusion, he had only to express his belief that this Bill, which embodied the working experience of some fourteen years in different parts of India, and also the legislative experience acquired by the framing of the four Acts already passed, would prove well suited to the purpose in view; and he

would also add his hope that the Jágírdárs and Zamíndárs brought under the Bill, would, by efficient management, be speedily restored to unencumbered estates, and that they would live long to enjoy them under the very salutary restrictions against getting themselves involved again, which the Bill provided in section 27.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

### BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the law relating to the transfer of Bombay Municipal Debentures be taken into consideration. He said that he had explained on a previous occasion that the objects of this Bill were very simple, namely, to validate the transfers of debentures which had been made by simple endorsement instead of by deed duly stamped, to exempt from penalties such persons as had thus contravened the law, and to admit of transfers being made by simple endorsement in future.

The Committee had not made any alteration in the Bill so far, but had added a clause at the suggestion of the Municipal Commissioner of Bombay, and with the concurrence of the Bombay Government, enabling debentures to be consolidated, and also to be subdivided again, if necessary, and to be renewed when worn out. Thus a man who happened to hold fifty thousand rupees worth of debentures, all in separate notes of a thousand each, could get one debenture for the whole fifty, and so would not be obliged to endorse separately; and, again, if at some future time he wished to sell, he had only to take his note to the Municipal office, and get it divided into as many portions as he required. All those provisions existed at present with regard to Government Promissory Notes, and would, on the one hand, save a good deal of trouble, and on the other, improve, it was believed, the value of the security.

The Motion was put and agreed to.

The Hon'ble MR. HOPE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

## CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the further Report of the Select Committee on the Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

Leave was granted.

## MADRAS HARBOUR RATES BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved for leave to introduce a Bill to enhance the rate of dues leviable on vessels entering the Port of Madras. He said that he wished to introduce this Bill in connection with the works which were now in progress at Madras for the construction of a harbour for that Port. The Council were aware of the great and pressing want of a harbour on the Coromandel Coast and of the great loss of life and property which had too frequently occurred owing to that want. After very considerable delay, many reports, and numerous suggestions, Her Majesty's Government had adopted a design framed by Mr. Parkes, the eminent Civil Engineer, who constructed the harbour at Karachi, and, last year, the works, according to that design, were commenced, and were now in progress at an estimated cost of £628,000. It was to supply the interest on this capital sum, and to provide for the working expenses, that it became necessary to increase the port-dues levied, under the existing law, on the shipping of Madras, and it was with that view that he asked for leave to introduce the Bill. Should the permission, which he sought, be granted, he would take occasion, when introducing the Bill, and explaining its provisions, to enter more fully into the details of the entire subject.

The Motion was put and agreed to.

## STRAITS SETTLEMENTS EMIGRATION BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to regulate the emigration of Native labourers from the Presidency of Fort St. George to the Straits Settlements, and moved that it be referred to a Select Committee with instructions to report in three months. He said—"The subject of emigration is one on which I have had occasion to address this Council so often that I feel almost ashamed to speak of it again. Nevertheless it is a subject which has many ramifications, in regard to which the different circumstances of different localities require different laws, and which therefore comes before this Council in different aspects. We have one law for emigration from India to British,

French, Dutch and Danish Settlements in the West Indies, in South America, and in the African seas. We have another law for emigration from Peninsular India to British Burma: another for emigration from Bengal to Assam, and again another for emigration from Madras to Ceylon. It happens therefore that those who are not constantly obliged to attend to these things find it difficult to keep in mind what are the peculiar features of each case to suit which our law should be moulded.

"Now the case of the Straits Settlements has some peculiar features of its own. The most important of them is that the practice of emigration thither from Madras is an old one, one which has sprung up spontaneously among the people, and extends back eighty years or more. This fact yields two results. First, there is a substantial Tamil Society in the country, and the Tamil emigrant finds himself not wholly a stranger in his new home. Secondly, since the practice of advancing money to assist emigration has grown up, a system of labour-contracts has grown up with it, which differs from the system generally prevailing under the General Emigration Act. Another feature is the distance between Madras and the Straits Settlements. That distance is short compared with the distance from Demerara or even from Mauritius; and the arrangements and precautions which are suitable to the longer passage are an useless encumbrance and expense when applied to the shorter one.

"In respect of the passage, the emigration to the Straits Settlements resembles that to British Burma, but it has these material differences; that in British Burma the emigrant's contract is made with the Government, whereas in the Straits Settlements it is made with a private employer; and the emigrant to the Straits Settlements leaves our dominions, whereas in British Burma he is still under our laws and authority. Moreover the kind of labour required for British Burma is different and leads to a different kind of contract.

"In respect of the kind of labour required, the emigration to the Straits Settlements resembles that to Assam, where also it is the practice for the emigrant to contract with a private employer; but there is a different kind of passage, and also the important difference that the emigrant passes beyond the reach of our laws.

"In fact it will be found on comparison that of the various branches of the emigration which takes place from India there is not any which does not differ in material respects from the emigration to the Straits Settlements.

“Well, such being the state of things, it was discovered some five years ago that, owing to circumstances not observed at the time,—circumstances which I have recounted before and need not recount again,—the whole of the assisted emigration to the Straits Settlements was contrary to law, and that its promoters were subject to penalties. The Council may remember that consequent upon that discovery, in the year 1872 we passed a short Act to relieve the emigration from the ban under which it was placed, and to leave the matter to be dealt with after negotiation between the Colonial Government and ourselves. Legislation was found to be required on both sides, and there has been a considerable amount of discussion respecting the terms in which the laws should be framed.

“When I moved last year for leave to introduce this Bill, I stated that the Government of the Straits Settlements had framed an Ordinance satisfactory to the Government of India. There were however some alterations to be made in it regarding the right of emigrants to the price of a return-journey and regarding some other things, and a fresh Ordinance was passed in the month of February last. It is with reference to that Ordinance, whose operation is suspended for the present, that we have now to frame our law. I need not detain the Council by going into the several matters on which there have been differences of opinion. Several proposals have been made on our side in the interest of the emigrant, which it is our especial duty to protect. Some of those proposals have been embodied in the Ordinance, and some have not. It is sufficient to say now that matters have been put on such a footing by the Straits Settlements Legislature that there is no reason why we on our side should any longer delay to place the emigration on a permanent legal basis.

“In the first place the Ordinance provides that a Protector of Immigrants shall be appointed on the nomination of the Madras Government. Now that seems to me to be an alteration of great importance. What we want more than anything else is accurate and trustworthy information about the condition of our emigrants. In some instances we are able to get it, but in many we are not, or are not able to get it with regularity. If this proposal of the Straits Settlements enables us to get such information and reports as we from time to time desire, and I conceive it will enable us to do so, it is well worth our while to postpone the settlement of many details, even important details, until the working of the new machinery has placed us in a better position to understand the matter.

"In the second place the Ordinance has been so framed as to subject to penalties in the Straits Settlements any person who promotes emigration thither contrary to our laws. It has, therefore, in effect left it to us to say upon what terms emigration from hence shall be legal in the Straits Settlements.

"Now I said that it is worth while to postpone discussion on many details until our knowledge is more thorough. But there are certain palpable benefits which it is found possible and not difficult to secure for emigrants who go to other countries, and which we think ought to be secured for those who go to the Straits Settlements.

"One of these benefits is that the emigrant's maximum term of compulsory labour should be fixed by law. The Ordinance fixes no such term. In the countries to which the General Emigration Act applies, the term is generally five years. But the emigration to those places is much more expensive than that to the Straits Settlements; and we have reason to think that the contract wages given to emigrants in the Straits Settlements are, as compared with the market-price of their labour there, substantially lower than elsewhere, so as to leave a larger margin of profit to the employer. We are informed that the usual term which has hitherto been contracted for in the Straits Settlements is no more than two years. We may assume therefore that two years of contract labour have under existing conditions been found sufficiently remunerative to employers. The machinery of the new laws both here and in the Straits Settlements will impose some additional expense on the employers, and it may be right to fix for a maximum some term exceeding the present customary term. But it would not be right, when we are sending people to work under a stringent penal law, to omit all security that the term of their compulsory labour shall be a moderate one, or to fix a term much beyond that which suffices fairly to remunerate their employers. The Madras Government have advised that the maximum term shall be three years, and we have adopted that advice in our Bill.

"Another benefit to the emigrant is that a minimum wage shall be fixed. This has been put at 12 cents a day for an able-bodied male adult, being the amount which we understand to be now customary in the two-year contracts.

"I need hardly say that the figures inserted in our Bill, whether as regards the maximum term of labour or the minimum of wage, will be altered in Committee, if on further information alteration appears to be desirable.

"Another point of importance is to take care that contracts made by emigrants shall be labour-contracts, a kind of contract on which it is possible to engraft equitable terms and adequate protection for them. A mere contract to pay money provides for nothing of that kind. If a Tamil peasant goes to Penang upon a simple contract to pay so many dollars to some person who has advanced, or who alleges that he has advanced, them on account of his emigration, he will have no money when he gets there, he will be helpless, he will be at the mercy of his creditor, and he may be pressed into a much more onerous labour-contract than is fair to him, or than he would have entered into at his own home. We are told that there is danger of this, and the Ordinance provides no security against it. No doubt the institution of a Protector of Immigrants will, if properly worked, do much to prevent hardships and oppression of all kinds. But there seems no reason why labour-contracts containing fair terms should not be made in every case in which a man is induced to leave his home at the instance and for the benefit of some other man who provides the expenses.

"To meet the objects I have stated, we propose to declare that contracts for the mere repayment of money advanced to procure emigration, and also contracts omitting the important particulars of a maximum term of labour and a minimum wage, shall be illegal according to our law. That declaration will, as I have explained, make them illegal according to Straits Settlements law.

"Now those are the special peculiarities of the Bill I am introducing. I need hardly explain the general machinery of emigration contained in it, which is of the usual kind, and is now very familiar to the Council. There is a system of recruiting, a written contract, an examination by Magistrate and Doctor, a registration, an embarkation under the auspices of the Protector of Emigrants. The only difference in these respects between this Bill and our General Emigration Law is that some observances and safeguards thought necessary for the general law have been omitted here. In this matter also we have been advised by the Government of Madras.

"I have only to add that as the special circumstances affecting emigration to the Straits Settlements apply only to emigration from Madras, it is proposed to repeal the Act we passed in 1872. The effect of that operation is that the Straits Settlements will, so far as regards the rest of India, be on the same footing with other places to which the General Emigration Act has not yet been extended by order of the Governor General in Council."

The Motion was put and agreed to.

The Hon'ble MR. HOBBHOUSE also moved that the Bill be published in the *Gazette of India* in English, and in the *Fort St. George Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

### INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE introduced the Bill to consolidate and amend the law relating to Railways in India, and moved that it be referred to a Select Committee with instructions to report in five months. He said that the primary object of this Bill was to make it clear that certain sections of the Railway Act applied to lines under construction or not opened for public conveyance of passengers and goods. These sections dealt respectively with the following matters:—reports of accidents: power to make rules for working the line: carriage or delivery of dangerous goods: drunkenness or breach of duty on the part of Railway officers: acts endangering the safety of passengers: passengers entering carriages in motion or riding on the steps: unauthorized riding on engines or tenders or in luggage-vans: obstructing Railway officers: injuring carriages: trespass: cattle-trespass within railway fences: offences connected with gates.

Besides this, the Bill would consolidate and arrange in a compact and convenient form four out of the five Acts through which the Railway law of India was now scattered. The fifth (Act LII of 1860) would be dealt with by the Presidency Magistrates Bill, now before the Council.

It was thought unfair that Companies should be liable for loss or injury to luggage unless where it had actually been made over to the charge of a Railway officer. Section 5 of the Bill contained a provision to that effect.

The present Railway Act (XVIII of 1854) contained a section (10) copied from the English Carriers Act, which specified certain valuable articles for losing or injuring which Companies would not be liable except in case of special engagement. To this list the present Bill proposed to add certain other articles, such as cloths of which gold or silver formed part, opium, ivory, ebony, sandal-wood and musical instruments. This addition was suggested by the Schedule to Act No. III of 1865.

It had been found that coolies employed in loading and unloading goods at certain Railway stations were in the habit of receiving, and indeed exacting, bribes; and as they could not, strictly speaking, be deemed Railway servants

within the meaning of Act XXXI of 1867, the law as it stood was powerless to put a stop to these practices. The Bill accordingly in section 23 provided that not merely Railway officers, but every other person employed by or on behalf of a Railway Company to do any act upon a Railway should be deemed a "public servant" within the meaning of sections 161 to 165 of the Penal Code.

The only other change which the Bill proposed to make was to raise to some extent the fines for giving a false account of goods carried, or to be carried, on a Railway.

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE also moved that the Bill be published in the *Gazette of India* in English, and in the Local Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to regulate the emigration of Native labourers from the Presidency of Fort St. George to the Straits Settlements:—The Hon'ble Sir A. J. Arbuthnot, Colonel the Hon'ble Sir Andrew Clarke, and the Hon'ble Messrs. Hope and Cockerell, and the Mover.

On the Bill to consolidate and amend the law relating to Railways in India:—The Hon'ble Mr. Hobhouse, the Hon'ble Sir W. Muir, and the Hon'ble Messrs. Bullen Smith and Cockerell, and the Mover.

The Council adjourned to Thursday, the 21st September 1876.

SIMLA;  
The 14th September 1876. }

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