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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.

1873.

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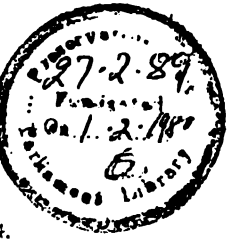

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1874.

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 Tuesday, the 18th February 1873.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C.B.
The Hon'ble A. Hobhouse, Q.C.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.
The Hon'ble R. E. Egerton.
His Highness the Mahárájá of Vizianagram, K.C.S.I.
The Hon'ble J. F. D. Inglis.
The Hon'ble R. A. Dalyell.
The Hon'ble Rájá Ramánáth Thákur.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to provide for the appointment of Municipal Committees in the North-Western Provinces and Oudh. He had a very few observations to make. Oudh stood thus in respect to Municipal Committees. By an Act (XV of 1867) which was passed to establish Municipal Committees in the Panjáb, it was provided that the arrangements then made for the Panjáb might be extended by the Government of India to any town in Oudh. The term for which the Act, when extended, was to run was five years from the date of extension. In the Panjáb the Act was to run for five years from the date of the Act, but in Oudh the date of extension was to be the commencement of the term of five years. Several orders had been made extending the Act to various towns in Oudh, and the terms of extension were now in the course of running out. Now the Council would remember the manner in which they had dealt with the Panjáb. The Act was further extended for one year; a term which would expire on the first of March next. So we had taken the Panjáb Act, made

some alterations in it, and perpetuated it, but for the Panjáb alone. Now the Government of Oudh found that, in so far as the municipal law of the North-Western Provinces differed from the municipal law of the Panjáb, the law of the North-Western Provinces was more suitable to the circumstances of Oudh. Of course the geographical connection of Oudh with the North-Western Provinces was much closer than that with the Panjáb; and it seemed that the political and social condition of the country also resembled that of the North-Western Provinces more than it resembled the Panjáb. And the Oudh Government therefore thought that their municipal law had better be assimilated to that of the North-Western Provinces. It would be observed that the notice of motion included the North-Western Provinces as well as Oudh. In the North-Western Provinces, their Act (No. VI of 1868) had worked, he believed, in a very satisfactory manner. But it had been at work for some five years, and as was always the case when a new Act was brought into actual operation, experience had shown some small matters in which alteration or amendment was required. The opportunity would be taken to pass a single Act for the two Provinces. He need not say anything more of the contents of the Bill than that it would be the same as the law which existed in the North-Western Provinces, with one or two small alterations suitable for those Provinces and for Oudh also.

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide for the appointment of Municipal Committees in the Central Provinces. He said that the Central Provinces bore precisely the same relation to the Panjáb in point of municipal law as Oudh did, and several orders had been passed under the Panjáb Municipal Act for the purpose of extending that Act to places in the Central Provinces, and therefore there were municipal institutions in many places to which the Act was thus extended for five years, and which were now in the course of running out. The Government of the Central Provinces found that the Panjáb municipal law was suited to the state of the Central Provinces. It had been at work there for different periods of time in different places, and the Government found that it worked in a satisfactory way. They had therefore come to the conclusion that it would be best to apply the new Panjáb Municipal Act to the Central Provinces, and that would be the nature of the Bill for which he now moved for leave to introduce.

The Motion was put and agreed to.

BURMA PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE asked the permission of His Excellency the President to postpone the motion for leave to introduce a Bill to amend the law relating to Paper Currency in British Burma. Since the motion had been placed on the paper, a doubt had suggested itself to him on an important point, and he therefore must ask for further time before bringing in the Bill.

Leave was granted.

BILLS OF LADING BILL.

The Hon'ble SIR RICHARD TEMPLE regretted that he must also ask leave to postpone the introduction of the Bill to authorize the use of adhesive stamps for Bills of Lading. In the speech he had intended to make in support of this Bill, it would have been his duty to reply to the remarks made on the Bill by His Honour the Lieutenant-Governor. But, as he saw that His Honour was not in his place, and was not expected to be in his place that day, he believed it would be hardly suitable to reply in His Honour's absence. Therefore he must forego the satisfaction he had anticipated; and as there was no special urgency, he believed His Lordship and the Council would willingly permit him to postpone the motion.

Leave was granted.

NORTH-WESTERN PROVINCES RENT BILL.

The Hon'ble MR. INGLIS introduced the Bill to consolidate and amend the law relating to Rent in the North-Western Provinces, and moved that it be referred to a Select Committee with instructions to report in a month. He said that this Bill consolidated the law relating to rent in the North-Western Provinces, now contained in Acts X of 1859, XIV of 1863 and XXII of 1872, and amended some of the provisions of Act X of 1859 which experience had shown were unsuited to that part of India. The amendments proposed related to the classification of tenants having a right of occupancy; to the rules for the determination of the rent payable by them; to the resumption by the proprietor of an estate of rent-free grants made by himself or his predecessors; to the payment of compensation to a tenant, who might be ejected from his holding, for the value of any improvement made by him; and to the jurisdiction of the Courts established under the Act.

MR. INGLIS had already explained fully, in connection with the Revenue Bill now before the Council, the reasons which had led the Government of the

North-Western Provinces to advocate the recognition of ex-proprietary cultivators as a separate class of occupancy-tenants, and need not repeal them now; but it might be as well to state more clearly than he did on that occasion, that there was no intention whatever of proposing that a tenant should be allowed to claim any abatement of the rent previously paid by him, on the ground that he had been classed as a privileged tenant. All that was proposed was, that those ex-proprietary cultivators who, in accordance with the ancient custom and feeling of the country, still held at a rent somewhat lower than the prevailing rent should be saved from the enhancement they were now liable to, in consequence of the mistake made in Act X of 1859, of including all tenants with a right of occupancy in one class, thus making no distinction between the tenant who had a right of occupancy based on ancient custom, and the tenant who had acquired a right of occupancy by mere lapse of time under section 6 of Act X. Sections 7, 18 and 19 of the Bill he had now to introduce related to this class of ex-proprietary tenants, and were the same as section 75 of the Revenue Bill which was now under consideration.

The next section MR. INGLIS had to notice, was section 20, which related to the determination of the rent payable by tenants who had acquired a right of occupancy by prescription. This section differed somewhat from section 17 of Act X of 1859. Under that section, the rent payable by a tenant of this class might be enhanced, if it were below the prevailing rate of rent paid by tenants of the same class for similar land with similar advantages in places adjacent; or, if the value of the produce, or the productive powers of the land had been increased otherwise than by the agency, or at the expense, of the tenant.

MR. INGLIS believed that very few suits for enhancement, if any, had been brought in the North-West on the second ground, namely that the value of the produce or the productive powers of the land had been increased otherwise than at the expense of the tenant, at all events there were no rulings of the High Court on this clause of the section. But in Bengal considerable discussion, with no very satisfactory result, had taken place as to the manner in which the principle laid down in this clause should be applied; it was, in fact, a rule which it was utterly impossible for the Courts to work. It was proposed to omit this clause and to make the rent paid by tenants of the same class for similar land the standard in all future cases. This standard would be kept up to the fair value of the land by the constant acquisition of occupancy rights by tenants at will, under the twelve years' rule. In order to set at rest the questions that

had been raised as to the meaning to be attached to the word "class," it was proposed to lay down distinctly that it did not include caste, unless it could be proved that, by local custom, caste was taken into account in the determination of rent. For the same reason, instead of requiring that the land for comparison should be taken from "places adjacent"—words which had caused so much difficulty—it was provided that, when the settlement officer should have formed the villages of a district into circles for the purpose of assessment, the land for comparison should be selected from similar villages, with similar advantages, in such circle; and that, in the absence of any such guide, the standard villages should be selected from the same tahsíl or from some tahsíl immediately adjacent.

In consequence of no term being laid down in Act X of 1859 for the duration of rents fixed under its provisions, tenants were now subjected to yearly suits for enhancement, and much hardship and injustice had been thereby caused. It was therefore proposed that the rent of a tenant having a right of occupancy, having been once fixed by a competent Court, should not be liable to further enhancement for a period of ten years from the date of the decree, unless the productive powers of the land in the tenant's holding had been increased otherwise than at his expense, or unless the area of his holding had been added to In such cases the rent paid for similar land, with similar advantages, might be applied.

Section 36 related to rent-free grants made by proprietors of land to their dependents or others. Regulations XIX of 1793, XLI of 1795, XXXI of 1803, and VIII and XII of 1805, declared all such grants illegal and invalid, and empowered any proprietor of an estate to resume them of his own authority, to dispossess the grantee, and to collect the rent himself. Section 28 of Act X of 1859 repealed so much of those Regulations as enabled the proprietor of an estate to resume these grants of his own authority, and made it necessary for him to apply to the Collector of the District, leaving untouched the sections which declared all such grants to be illegal and invalid. The clause at the latter part of the section, however, which laid down that every such suit should be instituted within the period of twelve years from the time when the title of the person claiming to assess the land or dispossess the grantee, or of some person claiming under him, first accrued, had the effect of making all grants of this nature permanent rent-free holdings, not even responsible for the payment of revenue, except in case of a sale for arrears, should the proprietor from neglect or ignorance fail to sue within the time allowed. This result was altogether opposed

to the custom of the country. These grants were constantly made by the proprietors of estates to Brahmans, servants, retainers and others, on the full understanding that they were resumable at the will of the donor, or that some service or duty in return was to be performed. It would seem, indeed, from the fact that the provisions of the Regulations Mr. Inglis had just now named, which declared all such grants illegal and invalid, and therefore liable to resumption at any time, had been left unrepealed when Act X of 1859 was passed, that the limitation-clause added to the concluding part of section 28 of that Act had had an effect not intended. It was proposed to modify the provisions of this section so as to bring them more into accordance with the general custom of the country, as in section 36 of the Bill he now introduced, which, while securing the rent-free holding to the tenant for the term of the settlement, if he held under a written grant or in perpetuity if he had held for fifty years, including two successions, gave to the proprietor in all other cases, at each fresh succession to the property, power to resume, within twelve years, lands granted rent-free by his predecessors; but maintained in all cases the liability of the land to the payment of land-revenue.

Sections 37 to 40 provided for the payment of compensation to a tenant, who might be ejected from his holding, for the value of any improvement made by him. Under the law at present in force, a tenant who might have received an advance of two or three hundred rupees from Government under the Land Improvement Act, and sunk a *pakka* well in his holding, was liable, should he fall into arrear with his rent, to be ejected without receiving anything for the improvement he had made on the land. It was proposed that, in future, the tenant should be entitled to receive from the landlord compensation calculated on the present value of the improvement, and that the Collector should have power to refer disputed cases to arbitration.

Sections 102, 103 and 104, in chapter 5, laid down the powers of the Courts constituted under the Act. At present an officer invested with powers under Act X of 1859, and placed in charge of a sub-division, had power to try and determine suits of all and every kind under the Act. It had, for the last ten or twelve years, been the practice in the North-West to place an officer, when first invested with power, in charge of a tahsíli, restricting him to the trial of the simpler classes of cases. It was proposed to legalize this practice. Accordingly, all suits coming under the Act had been divided into three classes. The first class would be tried by officers of the second grade under the Act. The second class, in which were included the more difficult cases, would be

heard by officers of the first grade; while the most important and difficult suits, namely, those relating to the enhancement and determination of rent, would be triable only by officers specially empowered by the Local Government to entertain them.

The other chapters of this Bill, 3, 6 and 7, relating to distraint, procedure and execution of decrees, re-enacted the provisions of Acts X of 1859 and XIV of 1853, and therefore needed no comment.

The Hon'ble RÁJÁ RAMÁNÁTH THÁKUR said it was true that Act X of 1859 had not worked satisfactorily in the North-Western Provinces, because the circumstances and the position of those Provinces were quite different from those of Bengal, and therefore an alteration in the law was necessary. The Bill, no doubt, was substantially the same as Act X of 1859, but there were several new provisions which ought to be taken into consideration by the Select Committee, such, for instance, as the provision in section 7, which gave too much indulgence to ex-proprietors, whilst it gave very little consideration to the rights of the present proprietors. One might suppose that there was something repugnant to sound principle in that provision; but he should think that when the hon'ble Mover of the Bill had introduced that provision, there must be some good reason for doing so. He had no doubt the subject would be carefully discussed in Committee, and if there was anything wrong in that provision of the nature he had described, it would, he hoped, be remedied. Then, again, by section 8, clause 2, a tenant holding under an ex-proprietor, who is called in the Bill a privileged tenant, would not acquire a right of occupancy. This provision, he was of opinion, should also be considered by the Committee, for if the law was that an ordinary tenant or tenant-at-will acquired an occupancy right after twelve years' possession at the same rate of rent, he did not see why the same right should be denied to him under an ex-proprietor. He had thought it proper to bring these important points to the notice of the Council, because he had no doubt that the gentlemen who would be appointed on the Committee would take them into consideration.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM wished to say a few words in regard to this Bill, though perhaps it was premature to say anything on the subject, as the matter would be amply discussed, and justice done to the various provisions of importance in this Bill, which was brought in at the instance of the Government of the North-Western Provinces. It struck THE MAHÁRÁJÁ that this Bill, and the other Bill relating to land-revenue which had been recently introduced, were very nearly related to each other; and although the settlement of the Lower Provinces of Bengal was permanent,

and it was not so in the North-Western Provinces, still one of the most important points in the Bill was the distinction between an occupancy tenant and a privileged tenant. But, as he had said before, these important matters would be carefully considered in Select Committee. He thought that the improvements which had been suggested in the Bill (although he had not had time to go carefully through it, but had only taken a cursory view of it), were of a most beneficial character, and well worth the attention of the Council. In expressing these views he entirely concurred with his hon'ble friend Mr. Inglis in all that he had said with regard to the several provisions of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS moved that the Bill and Statement of Objects and Reasons be published in English and Hindústání in the Gazette of the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS also moved that the Bill be referred to the same Select Committee as that which was sitting on the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Rájá Rámánáth Thákur be added to the Select Committee on the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal and to that on the Bill to consolidate and amend the law relating to Rent in the same Provinces.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 25th February, 1873.

CALCUTTA;
The 18th February 1873.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

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