

Thursday,
2nd November, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

Jan.-Dec., 1882

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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.

1882.

VOL. XXI.

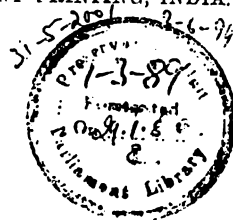
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*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House, Simla, on Thursday, the 2nd
November, 1882.

P R E S E N T :

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

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

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

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble W. O. Plowden.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. CROSTHWAITE introduced the Bill to consolidate and amend the law relating to loans of money for agricultural improvements, and moved that it be referred to a Select Committee consisting of Major the Hon'ble E. Baring, the Hon'ble Mr. Ilbert, the Hon'ble Sir Steuart Bayley and the Mover.

Major the Hon'ble E. BARING said:—"My Lord, I should like to make a few remarks, both on the Bill which my hon'ble friend has introduced and also upon the connected subject to which my hon'ble colleague, Sir Steuart Bayley, alluded at the last meeting of the Council,—I mean the establishment of Agricultural Banks in India. The latter subject, especially, is one of great interest and importance, and it is one to which, I trust I may be allowed to say, I have paid a great deal of attention both before I came to India and since my arrival in this country.

"As regards the Bill which my hon'ble friend has just introduced, my remarks will be very brief. I cannot say that I anticipate that any very highly beneficial results will accrue from this measure. In addition to the

arguments adduced in this direction by my hon'ble friend, Sir Steuart Bayley, last Thursday, I may mention one further consideration of general application,—that is to say, it is a consideration which applies to all cases where the Government attempts to exercise the functions of a Bank, an Insurance Office, and so on. It is that, in cases of this sort, the agency of Government is radically defective.

“If a raiyat, under the existing Act, requires an advance for agricultural improvements, he applies to the Collector or other officer charged with the duty and the Collector performs—and I have no doubt zealously and efficiently performs—whatever is required of him by the law and by the executive orders of the Government. But the Collector does not—and, indeed, considering his multifarious duties, he cannot—go about from village to village inquiring what cultivators wish for advances, how much they require, what is the value of the security they have to offer, and explain to them the conditions under which the Government is prepared to make advances. He cannot do what the agents of any private establishment would consider it their duty to do, that is to say, endeavour to attract as much business as possible to the institution with which they are connected. In order to ensure this object we must employ private enterprise,—that is to say, we must enlist into the service self-interest and a degree of local knowledge which can hardly be acquired by any English officer, however zealous, intelligent and efficient. For these reasons, I do not think it probable that the Act, even when amended, will produce any very beneficial results. That, however, is no reason why certain defects which have shown themselves in detail should not be remedied, as is now proposed in the Bill introduced by my hon'ble friend.

“I now turn to the connected—and, as I think, more important—branch of the subject. I mean the establishment of Agricultural Banks in India. In dealing with this question we have, in the first place, to consider what privileges may legitimately be conferred by the Government upon these Banks; and, in the second place, we must consider the conditions to which the Government may reasonably demand compliance in return for those privileges.

“The first and most important privilege which the Government may legitimately confer upon any Bank is, that the advances made by the Bank should be recovered through Government agency. I am aware that there are certain very obvious political objections to the adoption of this course, inasmuch as it would place the Government to a great extent in the position now occupied by the money-lender. Whether those political objections are of such a nature as to more than outweigh the economic advantages to be expected from the establishment of these Banks is a matter of opinion. My own opinion is that the balance of

advantage lies on the side of allowing such Banks to be established, and, indeed, that the Government should give every legitimate encouragement to their establishment.

“There is, however, one further point to be noticed in connection with the advances through the agency of Government. When a famine occurs, the recovery of land-revenue demands of the Government will, in many cases, be suspended, and even, in extreme cases, will be remitted altogether. The members of this Council are probably aware that a recent very important Resolution of Government was published on this subject, from which it results that, in so far as Land Revenue is concerned, the Government will, in fact, to a certain extent, step into the place which, up to the present time, has been occupied by the money-lending classes; that is to say, that when the Land Revenue demand is suspended, the Government will charge $6\frac{1}{4}$ per cent.,—being a much lower rate of interest than that ordinarily charged by the money-lending classes,—and thus to some extent obviate the necessity of the raiyat applying to those classes. I will not dwell any further on this Resolution now, because it is only incidentally connected with the point to which I wish to draw the attention of the Council. That point is, that it would be obviously undesirable, at a time when the Government was suspending its own Land Revenue demand, that officers of Government should be obliged by law or contract to recover advances made by private Banks. A way may, I think, be found out of this difficulty. We cannot, of course, expect that the Banks will under any circumstances remit the whole, or any part, of their demands on their debtors, but we may, I think, legitimately require that, when the Land Revenue demand of the Government is suspended, the privilege that the advances of the Banks may be recovered through Government agency should, for the time being, be suspended also.

“There are two minor privileges which may also, without objection, be conferred upon these Banks, and which were suggested, I think, in the first instance, by my hon’ble friend Mr. Crosthwaite. These are, in the first place, that the whole or a portion of the stamp-duty on bonds given by the Banks should be remitted; and, in the second place, that the whole or a portion of the court-fees for suits brought by Banks for the recovery of advances should also be remitted.

“I turn now to the second and more difficult branch of the question, namely, the conditions to which, in return for these privileges, the Government may demand compliance on the part of the Banks. The first of these is, that the articles of association of the Banks should, in all cases, be submitted for the approval of Government. This is obviously a reasonable condition.

Again, the books of the Banks should be kept in a prescribed form; they should be open to inspection by Government officers, and liable to outside audit at the expense of the Banks themselves. Again, the bonds given by the Banks should be kept in a prescribed form. Further, loans made by Banks should be registered at some convenient Government office. Again,—and this is, perhaps, one of the most important conditions—the maximum rate of interest to be charged by the Banks—say 12 per cent.—should be regulated by the Government. Some further details would, no doubt, require consideration before any matured scheme of this sort could be introduced. For instance, it would have to be decided for how long loans were to run; what proportion of the money paid by the debtor should be credited to principal, and what to interest; whether the Bank should be allowed to advance on moveable property, and so on. I may mention, incidentally, that I myself,—and, I think, most others who have considered this question,—are adverse to the principle of Banks being allowed to advance on moveable property. I will not, however, discuss this question on the present occasion.

“There is, however, one important point of principle to which I wish to make some allusion. Shall any limitation be imposed upon the objects for which a Bank is allowed to make advances? In other words, is a Bank only to be allowed to advance for land improvement, properly so-called,—that is to say, the construction of wells, tanks, and so on; or is no limitation to be placed on the objects for which advances may be made? In dealing with this question we have to remember that the raiyat in India is in the habit of borrowing for other purposes besides land improvement—notably for marriages. If, therefore, the object of the Government is to keep the cultivator from the state of hopeless indebtedness into which he has too often fallen, I do not see why, provided the security is good, an advance from one of these Banks should not be allowed for one purpose quite as much as for another. If advances are only allowed for land improvement, we shall, indeed, have done something to facilitate capital outlay on the improvement of land, but we shall have done little or nothing towards attaining one of the objects of Government, which is, I take it, to keep the raiyat in as solvent a condition as possible. I think, therefore, that we may advantageously follow the system adopted in France and Germany, where the Land Bank system is very extended, and where it has been very successful. That system is to proceed on the principle that very rigid rules should be made in respect to the security on which any advance is made, but that no enquiry should be made as to the objects upon which the loan is spent. If we proceed on this principle, we almost necessarily arrive at the adoption of the two following rules, first, that the Bank

should only occupy the position of first mortgagee; secondly, that advances should only be allowed up to a certain fixed proportion of the full value of the security pledged. In saying that the Bank should only occupy the position of first mortgagee, I do not, of course, mean to say that, when any prior encumbrance exists, the Bank may not buy up that encumbrance, and so, *ipso facto*, enter into the position of first mortgagee. Nor do I mean to say that where any prior encumbrance exists which cannot be bought up, the Bank may not even enter into the position of second mortgagee, provided always that the full amount of the debt for which the property is held in pledge does not exceed the fixed proportion up to which the Bank is allowed to advance. All I mean is that, generally speaking, and except under the special circumstance, to which I have already alluded, of a debt existing which under contractual right is for the time being irredeemable, the Bank should always occupy the position of first mortgagee.

“If these rules were adopted two further practical questions of very considerable difficulty would arise. The first is, how are we to ensure the Bank occupying the position of first mortgagee? Secondly, how are we to ascertain the validity of the title offered by the mortgagor? If we only contemplated advances being made for land improvement, no difficulty would arise as to prior incumbrances. We might then proceed upon the theory of the English system. The theory of that system is that, inasmuch as the advance made will improve the security of those who already have a pecuniary interest in the property, the institution or Bank which makes the advance may legitimately step into the position of first mortgagee, over the heads of other mortgagees. I would, however, observe that, in India, there would in any case be considerable practical difficulties in giving effect to this system. We should be dealing with a large number of small proprietors. The sums advanced would be very small. In such cases it would be very difficult to ascertain with certainty that the money given to the raiyat had been *boná fide* applied to the object for which the advance was made.

“I have, however, already observed that, for general reasons, I am inclined to the opinion that no such limitation should be made, and that advances should be allowed for general purposes and not only for land improvement.

“If this be the case, it is at once manifest that full enquiry must be made into prior incumbrances; otherwise very great injustice might be done to those who have already a pecuniary interest in the land given in pledge. The question, therefore, is, how to get out of these two difficulties—one connected with prior incumbrances, the other with validity of title?

“The difficulty may, perhaps, be solved by adopting the following system. The Bank should give public notice that it has received an application from a certain person for the loan of a certain sum of money, giving in pledge a certain property as security; and that it proposes to advance the money, supposing no objection to be raised, within a certain time, which time would probably have to be fixed by law. If during that interval no objections were raised, either by prior mortgagees or by persons claiming a title to the land, the Bank would give the advance, and all objections raised subsequently would be time-barred. If, on the other hand, any prior mortgagees came forward, the Bank might buy up the claims of those mortgagees, and thus step, *ipso facto*, into the position of prior mortgagee; or, if the debt of the prior mortgagee was for the time being under contract irredeemable, the Bank might advance the money, provided that the total advance—that is to say, the advance made by the original mortgagee *plus* the new loan conceded by the Bank—did not exceed the proportion of the security fixed by law, above which the Bank would be incapable of advancing money.

“As regards title, the question is, no doubt, somewhat more difficult. I should hope that many cases would arise in which the title would be undisputed, and hence that there would be no difficulty in giving the advance. Even in cases of joint ownership, and where there would presumably be the greatest difficulty, it may reasonably be hoped that in some cases the applicant for a loan would have already arranged with the co-proprietors before any application was made, and that thus no difficulties would be raised by any of those co-proprietors. If, on the other hand, any disputes as to title should arise, the Bank would then say to the applicant that he must clear his title in a Court of Law, and that, until he had done so, no advance could be made.

“Such, therefore, my Lord, are the broad features of the plan for establishing Agricultural Banks which at present commend themselves to Government.

“I may mention—as was stated by my hon’ble friend Sir Steuart Bayley last week—that we have been in personal consultation with Sir William Wedderburn on this subject, to which he has given great attention. We have also had the advantage of learning the views of a distinguished Native gentleman of Bombay, Mr. Javári Lál Yajnik, who has also given great attention to the subject, and whose advice has been exceedingly useful. At the same time, I wish it to be fully understood that I do not now put forward any definite scheme on behalf of the Government for the establishment of these Banks. The whole plan is at present in a crude shape; we must consult the Bombay and other Local Governments before anything final can be done, and before we can hope to arrive at a satisfactory conclusion. In the meantime, I have made these observations

with a view to giving some further impetus to the discussions which have already taken place in the Press on this subject. We may thus hope to learn the views of qualified persons upon it.

“There are, however, two further points to which I should like to allude briefly. My hon'ble friend Sir Steuart Bayley mentioned last week that it would be difficult to apply any plan of this sort to Northern India, the main reason being that in Northern India the raiyat has no transferable right of property, and that his crops are already hypothecated in the first instance to the landlord. It may be, therefore, that a plan of this nature will be found to be inapplicable to Northern India. There is, however, greater hope of being able to move in the proposed direction in Western and Southern India, where no such obstacles exist as those to which I have alluded as existing in Northern India.

“Even regarding the Dekkhan, however, in respect to which part of India the project has been particularly discussed, a very considerable obstacle arises in the way of putting the plan into practice. It has been brought to our attention that in many cases the Dekkhan raiyats are already so deeply in debt that no scheme of this sort could be successful unless some means were found of clearing off the debts which they have already contracted. This, no doubt, presents a very great—but I hope not an insuperable—difficulty in the way of introducing the scheme. I do not propose at present to deal with the manner in which it would be possible to solve this difficulty, because we are about to consult the Bombay Government on the subject. I will only say that I hope it may possibly be found that a voluntary composition between creditors and debtors may in some cases be made, and that thus a fair field may be left to the operations of the Banks. At any rate, our present idea is to try an experiment of this sort in one taluqa. Our further action will necessarily be guided by the result of that experiment.

“I have only to add that I very much hope the experiment will be successful. If it should be so, I cannot doubt that a very great boon will be conferred upon the cultivators of Western India.”

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITÉ moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

MADRAS FOREST ACT VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Bill to confirm the Madras Forest Act be taken into consideration. He said :—“ With reference to the remarks which fell from your Excellency last week, perhaps I may be permitted to explain that I have been proceeding under Rule 18, which provides that—

“ When a Bill is introduced, or on some subsequent occasion, the member in charge of it shall make one or more of the following Motions :—

“ That it be referred to a Select Committee, or

“ that it be taken into consideration by the Council either at once or at some future day to be then mentioned, or

“ that it be circulated for the purpose of eliciting opinion thereon”;

and under Rule 31, which provides that—

“ If no amendment be made when a Bill is taken into consideration by the Council, the Bill may at once be passed.”

“ Under these circumstances, it is not necessary for me to ask, and I do not ask, for any suspension of the Standing Orders of the Council. With your Lordship's reluctance to suspend those Orders I fully sympathise, and even in cases like the present, where no suspension is necessary, I entirely appreciate the importance of giving the public ample time for considering and criticising such measures as are brought before them; and, if it had not been for the purely formal and technical character of this Bill, I should not have asked that it be taken into consideration on the present occasion.”

His Excellency THE PRESIDENT said :— “ I stated my reasons on the last occasion for concurring in the view taken by my hon'ble friend Mr. Ilbert with regard to the expediency and propriety of passing this Bill with unusual rapidity, and therefore I have only to add that I fully concur with what he has now said, that, although no suspension of the Standing Orders is necessary in this case, still it is very undesirable, except in the case of Bills of a purely formal and technical character, such as this Bill is, to resort to a method of passing Bills so rapid as that which we are adopting on the present occasion.”

The Motion was put and agreed to.

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

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, AMENDMENT
BILL.

The Hon'ble MR. HOPE moved for leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and the Motions that the Report be taken into consideration and the Bill be passed. He said :—" At the request of my hon'ble friend the Law Member, I have consented to give a brief explanation of the reasons which have led to this postponement. The case simply is that the Select Committee agreed upon their Report about a fortnight ago and prepared their Bill accordingly, but thought it desirable that this Bill should be seen finally by the Bombay Government before it was actually passed. At the same time, having before them a telegram from the Bombay Government, urgently requesting that the Bill might be passed without delay, they thought that it would be proper to make all arrangements for the passing of the Bill on the present occasion, in the event of a completely satisfactory answer arriving from the Bombay Government in time for their consideration. As a matter of fact, however, now the time is extremely short, as the Bombay Government have had some little difficulty in collecting the opinions of the officers whom they thought it desirable to consult, and, in consequence, the Bombay Government's reply was only received at a late hour last night. That reply gives, I may say, a general and complete concurrence in the proposals of the Committee ; but, at the same time, it expresses a desire that the passing of the Bill should be deferred, provided it can be guaranteed that it will be passed in December next, when the Council meets again at Calcutta. The reason for this request, I may mention, is that it is considered highly undesirable not to take advantage of the cold weather season, when both judicial and revenue officers are travelling, to introduce a measure of this kind requiring some personal explanations. So much for the reasons for requesting leave to defer the presentation of the Report to-day.

" As to the contents of that Report, and the proposals which the Committee would have requested the Council to convert into law, it may perhaps be as well for such of the outside public as take an interest in this matter that I should allude to one or two of them. One of the most important of the provisions contemplated by the Bill as introduced was one which substituted a revision for appeal in all cases under Chapter II of the Act. This provision was inserted, as we understood, on the recommendation of the Bombay Government, and it seemed desirable in order to avoid the anomaly of suits identical in nature being subjected to a totally different control according to the amount which happened to be involved. And, moreover, it appeared

from the statistics of civil suits that the number of cases above Rs. 500 are extremely small in proportion to the remainder. The addition we considered to be comparatively unimportant. The Bombay Government, however, on further consideration, have withdrawn their original suggestion. They think that it would be better to leave that portion of the matter as it stands, partly on general grounds and partly because the change might augment and interfere with the work of the supervising officers. So, in accordance with this recommendation of the Bombay Government, the Committee propose to withdraw that provision altogether. The next point which perhaps is of some importance relates to suits for an account. The Bombay Government have always been anxious from the first—and, indeed, the idea originated from the Dekkhan Riots Commission—that the raiyat should be able to bring a suit for an account as distinct from an ordinary suit for redemption. The effect of a suit for redemption is that ordinarily a decree is passed, and a time is perhaps fixed for payment; but if there was default, a foreclosure would then follow. On the other hand, what the Bombay Government appear to have wished was that a man should be able to bring a suit for an account simply in order to learn how he stood, and then that he should have the option of afterwards proceeding on the same suit to secure what the redemption suit would have given to him, or of dropping the whole matter. Originally, the Committee thought that a provision for a redemption suit would meet all the necessities of the case; but the Bombay Government still appear desirous that the alternative proceeding should be provided for also, and, therefore, the Committee were prepared generally to defer to their wishes; but at the same time they considered that it would not be equitable to give the mortgagor a right to demand that, when the account had been ascertained, the decree should be one for redemption, without conferring the corresponding right upon the mortgagee in any case in which he would be entitled himself to sue for the redemption; that is to say, that if the mortgagor was allowed to take advantage of the suit for an account in order to pay off the liability, the mortgagee should be entitled to foreclose, supposing he was so entitled. These points were therefore referred to the Bombay Government, and their reply, which is not very clear from the telegram, will, of course, be considered by the Committee when the Bill comes forward in the regular course. I mention the matter now in order to draw general attention to the subject.

“As far as the Bill goes, I think those are the only two points which need special remark. But I may also state that the Committee proposed to make two further amendments in the original Act which the Bill as introduced did not contemplate, both of these being on the suggestion of the Bombay Government. The Bombay Government have very urgently represented that the

new definition of 'agriculturist' introduced in the Act of 1881 was contrary to the recommendation they made at the time,—was not, as they considered, at all suitable or just, and that it had in practice given rise to great inconvenience. The Committee, in deference to their wishes, considered the matter, and proposed to substitute the definition recommended by the Bombay Government this time last year, with the alteration of a word or two which the Bombay Government now in their telegram fully accept and say that they consider will be perfectly good. It may, perhaps, be convenient that I should, with your Lordship's permission, read the section as the Committee would have amended it, so that, if difficulties should occur to any persons outside, they may be able to know what is coming :—

“ ‘Agriculturist’ means a person who earns or derives, or who, when his liability being the subject of any proceeding under this Act was incurred, earned or derived, his livelihood wholly or principally by, or from, agriculture carried on within the limits of the said districts; and an agriculturist shall be deemed to ‘reside’ where he so earns or derives, or earned or derived, his livelihood.”

“ And to this four or five illustrations are appended, as follows :—

“ ‘(a) A farm-labourer is an agriculturist.

“ ‘(b) A tenant or lessee of lands of others is an agriculturist.

“ ‘(c) An inámdár who derives his income from lands cultivated by himself, his servants or his tenants is an agriculturist.

“ ‘(d) A mere assignee of Government assessment, as such, or a mere mortgagee, as such, is not an agriculturist.

“ ‘(e) A person who, having mortgaged his lands or through an accidental circumstance has temporarily ceased to be a cultivator without any intention of changing his essential status, is an agriculturist.’

“ The second change is comparatively of an unimportant nature. In the Bombay Presidency there are certain jághírdárs, that is to say—small Native Chiefs, who are invested under Bombay Regulation XIII of 1830 with civil powers in their own territories. As the law at present stands, the raiyats within these jághírdárs' territories, which in some cases are comprised in the four districts to which the Act applies, are now deprived of all benefit of it. This was represented last year when the Bombay Government were in correspondence with us about the provisions of the Bill, and it was considered by them a sort of grievance, but nothing was done. Therefore the Bombay Government again suggest that a clause should be put in to apply the Act to the raiyats in those jurisdictions and to confer upon the jághírdár the powers of a Subordinate Judge under this Act, and we see no objection.

"I have now, my Lord, in conclusion, simply to say that the Committee propose to frame their further revised draft in accordance with the final suggestions that have been made by the Bombay Government, and to invite any further remarks they may have to make, in time to be submitted to the Council when it meets at Calcutta."

His Excellency THE PRESIDENT said:—"I should like to say, before the Motion is put, that I am very glad that this course has been adopted. It is quite impossible to proceed with the Bill after the communication we have received from the Bombay Government; but I must also say that I am glad that a further opportunity will be given to the public for the consideration of this measure, and that I think it very desirable that that should have been done and that it should not be open to any one to say that the Bill had been passed with undue haste."

Leave was granted.

The Hon'ble MR. HOPE moved that the Hon'ble Mr. Crosthwaite be added to the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to amend the Sindh Incumbered Estates Act, 1881. He said:—"The circumstances out of which the necessity for amending the Sindh Incumbered Estates Act of 1881 has arisen are as follows. That Act, which provides for the relief of jâghirdârs and zamîndârs in Sindh, enables the Revenue-authorities, on application being made, to bring under special management the estates of incumbered owners, and was doubtless intended to include all jâghirdârs and all zamîndârs with an hereditary estate assessed at over Rs. 300.

"But the definition of zamîndâr in section 3 of the Act is very peculiarly worded. Under that definition the benefit of the Act is restricted to those zamîndârs who, or whose ancestors, had in any one of the five years prior to September 1876 paid land-revenue of not less than Rs. 300. The original law was passed in 1876, and the object, no doubt, was merely to confine the scope of the Bill and to exclude petty estates; but the result of the definition practically is to exclude a great deal more than this class.

“ Now, among the *jághírdárs* in Sindh there are various classes, but the class we are specially concerned with is one whose *jághírs* are held on the condition that, in the second generation from the original grantee, the holder should pay a small quit-rent to Government, but in the third generation the *jághír* should lapse, and the holder should become a simple *zamíndár*, paying ordinary revenue to Government for his holding.

“ It is in the case of these lapsed *jághírs* that the difficulty has arisen. Obviously the present holder is not a *jághírdár*, for his *jághír* has lapsed. Nor is he a *zamíndár* under the Act; for though he may now be paying more than Rs. 300 as Government revenue, he did not do so in any of the five years prior to 1876, when the original Act, which historically furnishes the explanation of the definition, was introduced. Consequently he falls to the ground between two stools, and it has been held both by the Commissioner of Sindh and by the learned Advocate General of Bombay, with whom the Bombay Government concur, that the estate of such a holder cannot be brought under management. The Government of India are advised that this opinion is correct, and that there is no remedy short of correcting by legislation the definition given of a *zamíndár* in section 3 of the Act.

“ The Government of Bombay think it necessary that the benefits of the Act should be extended to the estates of such owners of lapsed *jághírs* who cannot, under the existing law, be classified either as *jághírdárs* or *zamíndárs*; and it is in order to enable the Bombay Government to bring such estates under management that I apply for permission to introduce an amending Act.

“ I have omitted to mention that power is also given to extend the time within which applications can be made, for otherwise persons who, as above explained, have been hitherto incompetent to apply would still be barred by the limitation prescribed in section 4. I have now the honour to move for leave to introduce the Bill.”

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then introduced the Bill and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Ilbert and the Mover.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT BILL.

The Hon'ble Mr. Crosthwaite presented the Report of the Select Committee on the Bill to make letter provision for Local Self-Government in the Central Provinces. He said:—"My Lord,—The Select Committee have endeavoured to make the Report as full as possible and to explain thoroughly the scheme of the Bill; but I will ask leave to say a few words upon it, in order, if possible, to prevent misunderstandings as to the provisions which we have put into the Bill. In the first place, it will be observed that the Bill refers only to the Central Provinces, and that we have, in framing it, had special reference to the character of the people of those Provinces and the present condition of the country. I was talking—I need not hesitate to mention it in this discreet assemblage—to a lady yesterday, and she asked me why the Government had selected the Central Provinces, which she considered to be a most backward place, as the first scene for an experiment of this advanced nature; and as perhaps other people may ask the same question, I will explain it. Like many other things in this world, it was rather in the shape of an accident; it was necessary purely for other reasons to put the cesses which have been always levied on the land for local purposes in the Central Provinces on a legal basis, and for that purpose I was allowed by the Council, in December last, to introduce a small and at that time insignificant Bill. While we were considering this Bill, the Government of India published their Resolution of May last on the extension of Local Self-Government, and therefore we took the opportunity of embodying such local measures as might be necessary for the proper working of that policy in the present Bill. The Bill, therefore, which we now present to the Council with this Report differs in a very great degree from the Bill formerly published.

"Having said so much as to the origin of the Bill, I will say a few words as to the plan of it. And, first, as to the object of the establishment of the local Boards and Councils for which the Bill provides. I think from the papers before us, which I may mention contain only official criticisms on the Bill, it may be gathered that there have been misunderstandings on two points. First, I think that there is considerable misunderstanding as to the magnitude of the scheme which the Bill proposes to introduce, and secondly, I think there is very great misunderstanding on the part of many of the officers consulted as to the position in which it will leave the executive officers of the districts. As to the first point, it will be evident, from looking at the Bill and studying the sections on the duties of the Board or Council, that there is no reason to apprehend, what some of the gentlemen consulted seem to apprehend, great political danger arising from anything that we are doing in this respect. We propose to give the Local Boards and Councils the management of small

local affairs such as communications, dispensaries, buildings, schools and the like. We propose to place at their disposal the present funds which are applied to such purposes, and to enable the Government to assign to the funds at their disposal such contributions from time to time as the Local Government may think fit. That is all we propose to do, and I do not think that in proposing that, and in sitting on the Select Committee which has framed a Bill of this nature, I am in any material way contributing to subvert the British Empire. In the second place, as to the position of the district officers. I wish to say a few words on this point, because it is most important that those officers should understand that your Excellency's Government has no intention of setting them aside or putting them in a position in which they would have, as some of them appear to think, great responsibilities without any power of interference or control. I think if anybody impartially considers the sections we have drafted regarding the control of these local bodies, that they would come to the opinion that any reasonable or sensible district officer, with any sort of tact or skill in the management of men, will really occupy a much stronger position as the head of a body of comparatively independent men than he now occupies as the despotic head of a body of what I may now call, without disrespect, dummies.

“We have provided for information to be given to the district officer, who has power to call for the proceedings of the Board; estimates of the Board are to be submitted to him; he has power to inspect works carried out by the Board; to cause those works to be inspected by professional agency; and if the Board does not carry out the works it is responsible for, the district officer has power to report the matter to the Local Government, and then, with the sanction of the Governor General in Council, the defaulting Board or Council may be completely set aside. It is also open to the district officer, when he finds that the work ought to be done, and that it is impossible to wait for the more deliberative action of the Board or Council, to cause the work to be done; all that we require of him is that, when he takes such extraordinary action, he must report to the Local Government. If, then, this is the case, I think there can be no question that we have not set the district officer aside. On the other hand, it may be said that we have given too much control to the executive, and that we really run the risk of injuring the independence which we wish to give to the Boards. In respect to this point, I wish it to be distinctly understood that we are dealing with the Central Provinces, one of the most backward provinces in India; a country in which the communications have been until a few years back entirely neglected; which consists of forests and mountains and impassable jungle. The people of the province are also in a backward state. Round Nágpur and Jabalpur they are as advanced,

probably, as in any place in India, but there are large tracts inhabited by the Khonds and other tribes who are entirely unfit for powers such as the Bill contemplates. We have therefore thought it necessary to take power which in the case of the more advanced provinces might not be necessary. Then, with the same object we have put in a section which will enable the Chief Commissioner to exempt from the application of the Bill such portions of his province as he considers unfit for it. I think that this section in the present case is absolutely necessary. I know of my own knowledge that there are parts of districts—and I may say whole districts—in which it will be almost impossible to collect sufficient members for a District Council; and in those cases I think it is better that the Bill should not be applied at all than that we should run the risk of having a certain failure and bringing discredit perhaps on the whole experiment. We have therefore given the Chief Commissioner power to exempt any portion of the province he thinks fit from the application of the Bill; and in doing that I think we have this great advantage, that my friend Mr. Morris is Chief Commissioner, and I believe I am right in saying that he is acquainted with every district in the province, and that we may trust him to make such a choice as experience will show to be just and wise.

“We have also dealt with the relations between the District Boards and Councils, and in this part of the Bill, as in every other part, our object has been to make it as elastic as possible. It is impossible for us to say what combinations of circumstances will arise, or what exact combinations of those local bodies will most fit those circumstances. We have therefore provided that, as a normal state of things, the District Councils will have authority over the smaller Boards; but we have also enabled the Chief Commissioner, if he finds that a local Board can manage its own affairs without control, to make that Board independent. I have left for the last an explanation of the manner in which these Boards or Councils should be constituted. I have stated the objects with which we want the Boards and Councils; we do not want these as full-blown representative bodies, but we want them to manage in a proper and reasonable way the small local affairs we propose to entrust to them. The first point therefore is to secure that there shall be on each board and council members from every part of the area which they represent, and that each part and each locality shall have a man on the Board who knows its wants and needs, and can, if he thinks fit, represent them. We therefore propose that the districts should be divided into small circles of villages. The areas of these circles will be left entirely to the local authority. They must vary with varying circumstances. Each of those circles we propose to allow to be represented on the Board by a member who will be one of the heads of the villages in the circle. The great majority of the Board will thus consist of landowners;

or, in those cases where the landowner is non-resident, it may be that the chief raiyat or resident of the village will be the representative of the circle on the Board. I think that, when we look to the character of the province and the fact that almost the entire population are connected either as owners or cultivators with the land, it is only right that the Boards and Councils should partake of that character and should largely consist of representatives of the landed interest.

“Then as to the trading classes. We have provided that representatives of the trading classes shall be appointed to the Board. In the first instance, it is presumable that the appointment will be by selection or nomination, but hereafter, no doubt, arrangements can be possible by which the large trading classes may be allowed to choose their own representatives. As to the number of the trade representatives we have not said anything; we leave that entirely to the local authorities.

“Then comes the question of the third element of the Board. It was strongly urged by some of the officers consulted that care should be taken that the official element should be largely represented, and, as a matter of fact, and from what I know of the character of the gentlemen who will be on these Boards and Councils, I believe that at present, and for some time to come, it would be necessary to have a strong official element on the Board or Council; but it does not follow that this will be always necessary, or necessary in all cases. We have therefore thought it best not to provide for any *ex officio* members. We have provided that a certain number of each Board or Council may be nominated by the Local Government, and in that way it will be open to the Local Government to appoint as many official members as it chooses within that limit; and I have no doubt that will be quite sufficient to enable any Board or Council to discharge its duties. It has also this advantage that it is a perfectly elastic provision; some of the Councils may have more officials, some fewer according to the character and capacity of the other members on the Councils. I think, my Lord, that I need not make any further observations upon the Bill. We have endeavoured to touch upon every matter of importance in our report, and I think that, with such observations as I have now been able to make, we have reason to trust that the Bill and the Report will not be misunderstood.”

The Hon'ble MR. PLOWDEN said :—“I should not ask your attention on this occasion, were it not that, as I leave India next week, I shall have no future opportunity of addressing this Council. When, ten months ago, leave was obtained by my hon'ble friend Mr. Crosthwaite for the introduction of a Bill to provide for the levy of local rates in the Central Provinces, I did not anticipate, nor was it at all probable, that such provisions would be en-

grafted on that Bill as would necessitate such a complete change of title as it has since undergone in becoming a Bill to provide for local self-government in the Central Provinces.

“I am not going to take up the time of this Council by considering the circumstances in which this change occurred, nor will I trespass upon their forbearance by attempting any discussion of the policy involved in this Bill. The much-belaboured subject of local self-government has been of late very largely dwelt on by the public journals, and, if not completely threshed out, has, at all events, been fully considered in the various official communications and resolutions which have from time to time appeared on the subject in the Government Gazettes.

“The articles in the public journals, and the publications in the official Gazettes, have shown us how very wide a difference of opinion exists in regard to this policy between those who advocate it and those who oppose it. I will not call it a new policy, for though it has received a quickening impulse from your Lordship’s Government, it had been proposed years and years ago—I believe prior to the late lamented Lord Mayo’s time.

“If any evidence on this subject—I mean these divergent opinions—were required, we have it at length in a file of correspondence lately circulated in connection with this Bill. This file contains the views of the Chief Commissioner of the Central Provinces, of some, if not all, of the Commissioners in that Province, and of many of the Deputy Commissioners.

“Now, my Lord, I am not one of those who take what I believe I may fairly call the desponding views which characterise the opponents of local self-government in the shape in which such self-government has been counselled by your Lordship’s Government.

“It is now more than thirty years since I entered the service to which I have the honour to belong. In fact, as I see my friend Mr. Gibbs is absent today, I have the longest service of any of the civilian members of this Council now present.

“The greater part of that service has been passed in the discharge of duties appertaining to district and divisional administrative offices, which, I venture to say, bring the official who discharges them properly into very intimate acquaintance with the people amongst whom he labours. One of the matters which has been most forcibly brought home to me in the course of these years has been our singular failure to use the material we have ready to our hand amongst our Native fellow-subjects for the better administration of the

country. As our system of administration becomes more highly developed,—and we know this has been done to a very marked extent in the last twenty years,—we hear on all sides the complaint that our officers are over-burdened with work. There is, I believe, a great amount of truth in this complaint, but the remedy for it is at our doors. We must give to the people themselves a share in their own administration. I do not mean merely by adding to the ranks of our paid officials, and making these additions from the Natives of the country. I yield to no man in advocating the employment of Natives in our administrative and other offices. But there is a limit to the money we can afford to pay for administration as for other purposes. This limit has, I believe, been already reached.

“It is for unpaid assistance in our local administration that I look to our Native fellow-subjects for really useful practical aid.

“I do not think it is necessary for me now to occupy your time by combating objections which I hear occasionally, but I am happy to say rarely and which are based on the supposed inefficiency, or worse, of such co-operation when we have secured it.

“We know that a well-administered Native State is quite as well administered as—I believe is really better administered, so far as popularity is a test of good administration, than—our own best administered districts.

“I remember several instances in support of this view, but I will not take up your time by recounting them.

“I believe, my Lord, that promise full of hope for the improved administration of this country is held out to us if we really adopt the principle which is at the bottom of the policy of local self-government—I mean if we not only really take the people of this country into our councils, but if we associate them with us, in no niggardly spirit, where circumstances permit us to do so, in the administration of their own local affairs.

“I am free to admit that I do not share the opinion of those who think such a policy, properly and carefully enforced, is full of danger to the welfare of this country. My only fear goes in a very different direction.

“I am apprehensive that on the very first introduction of the scheme, we may deal with it too timidly, and by so doing deal a blow to its success which may be full of evil consequences; and I think it is in this quarter that the present measure is likely to err. If it is to be really effective and really be of use, it must give some real power to those local authorities which it proposes to constitute and work with.

“ I venture to say that the powers now conveyed under its provisions are, in the case of the local councils, singularly small; and I believe they might be extended with very great public advantage.

“ At present, so far as I can see, you are providing a set of local councils, whose real business will be to undertake the management of a very infinitesimal portion of a very small income. They will look after your unmetalled roads in a small area in their neighbourhood, they will take some interest, perhaps, in the adjoining schools, and they will do very little more than that.

“ I have suggested that the Bill should make provision for investing these local councils with small magisterial and small civil powers—these [powers not to be used by individual members of such councils, acting independently one of the other, but by the body collectively, just as a bench of county magistrates is empowered at home.

“ I am convinced of two things,—

“ *First*, that in the northern provinces of India, those with which I am well acquainted,—the east of the Panjáb, and the upper districts of the North-Western Provinces,—such powers may be entrusted to a body representing a collection of village pancháyats, presided over by one of themselves, and that they will, as a rule, use their powers properly.

“ *Secondly*, that such an arrangement will greatly assist your paid local officers,

“ I also believe that, by holding out the offer of such investiture, you will go a long way towards securing a very desirable object, namely, that your local councils shall be bodies to belong to which will be a real and honest ambition amongst the classes whose co-operation in local government we wish to secure.

“ I do not press on this Council the immediate adoption of any wide rule which would necessitate the conferment of these powers in every case that a local council is formed under this Bill when it becomes law. But I trust the Bill will contain a provision which will authorise and enable the Local Governments to confer such powers on these local councils where they consider it expedient so to do.”

His Excellency THE PRESIDENT said :— “ I am very glad that my hon'ble friend who has just spoken has addressed this Council on this occasion, because he has given the weight of his authority in favour of the policy of the Government of India in regard to local self-government. He has most rightly

described his long and varied experience in matters of administration, and I am quite confident that the public will receive the testimony which he has given in support of the principles upon which the Resolution of the 18th of May was founded with the utmost satisfaction, and that it will go far to dispel any lingering doubts or suspicions which may be entertained as to the objects of that Resolution. There is really very little left for me to say after the discussion that has taken place in regard to this Bill; but there are one or two points on which I should like to make a few observations.

“My hon’ble friend Mr. Crosthwaite has pointed out that it is really due to an accident that this Bill is the first legislative measure brought forward in connection with that extension of local self-government which the Government of India are endeavouring to bring about; and it must also be borne in mind that this Bill is not to be taken as a model on which all further Bills will be framed for other parts of the country. It is a Bill for the Central Provinces only; it has been drawn up in accordance with what the Select Committee believe to be the special requirements of that part of India, and it does not at all follow that, either in the particular organization which it is proposed to establish in the Central Provinces under this Bill, or in regard to the powers of control to be exercised over the local bodies in the Central Provinces, or in regard to the extent of the powers to be entrusted to those bodies themselves, that the provisions of this Bill, and the system on which it is founded, would be the best which would be adopted for other parts of the country. In drawing up the Resolution of the 18th of May last, the Government of India very particularly pointed out that they had not the slightest intention of laying down hard-and-fast rules of a uniform character for the extension of local self-government throughout the whole of this vast peninsula. It would have been an exceedingly absurd idea if it had ever entered into the heads of the Government to do anything of the kind. The circumstances of different parts of India are most various. We have in this country races almost on the verge of the savage state, and we have, on the other hand, large populations marked by a very considerable advance, political and social, and counting among them men of very subtle and developed intellects. It is, of course, obviously impossible to deal with a country in that condition upon any uniform plan in regard to a system of local self-government.

“Therefore, what we proposed was that, laying down a few broad and general principles, those principles should be applied according to the peculiarities and requirements of the different parts of the country in different ways, so as to meet those requirements and to suit those peculiarities; and we especially and clearly pointed out that we thought it

was very desirable that the mode in which the principles of that Resolution were to be carried out should be varied, not only from province to province, but in the different parts of each province itself; because we wanted to make trial of various methods of procedure, various modes of composing the local boards and electing and controlling them, in order that, after experience, we might learn in the course of time what were the best methods of dealing with these matters, and what might be the system generally applicable at all events to the great divisions of the country. Now, with regard to the Central Provinces, as my hon'ble friend Mr. Crosthwaite has said, we deal with a part of the country to a certain extent backward; speaking broadly, as compared with other parts of India—such as Bengal, Bombay, and elsewhere—it may be said to be a somewhat backward district. Consequently, you must so frame your measure as to suit the condition of such a district, and to meet the wants and circumstances of a population by no means far advanced in the social scale. And, besides that, there are in the Central Provinces certain districts—in point of area, I believe, there are very considerable districts—inhabited by a population which may be almost described to be in the savage state. Of course in districts of that description no system of local self-government can be introduced; nobody ever thought of introducing it; it would be a very long time indeed before any measure of the kind could be introduced in parts of the country like that; and, therefore, the principle on which the Bill has gone is to leave to the Chief Commissioner the power of applying this Bill to such portions of the country as he thinks fit to receive it. Those portions of the country inhabited by specially backward populations will, of course, be omitted from the operation of the Bill; and, as my hon'ble friend Mr. Crosthwaite has pointed out, we have in Mr. Morris a gentleman so thoroughly acquainted with all the circumstances of the province which he has ruled for a long period with so much advantage to the public service, that we can fully trust him to apply this Bill in a cautious, wise and discreet spirit.

“There is one feature of this Bill to which I attach considerable importance; and it is that an effort is to be made to found the new local institutions which will spring up under it as much as possible upon the indigenous Native institutions of the country. The mukaddams or headmen of the villages are to form the basis of the local boards and councils, and I think it very desirable that here, as elsewhere, where there still may remain indigenous institutions of local self-government, that they should be made use of to the utmost possible extent; because what we want to establish is, not a system founded on English ideas or English ways, but a system consonant with the wants, habits and even the prejudices of the Native population.

“Now, allusion has been made by my hon'ble friend Mr. Crosthwaite to the remarks made upon this Bill by those who have seen it in the stage in which it now is. Those remarks contain only the criticisms of officials ; but the Bill will now be published, and we shall have the advantage, before it becomes law, of receiving such observations upon it as the public of the Central Provinces may favour us with. I am happy to say that the Bill as now drawn has received the cordial support of Mr. Morris, the Chief Commissioner. Mr. Morris' Secretary, in writing to the Government of India in respect to this measure, stated :—

“‘In the first place, then, I am to say that the Chief Commissioner cordially accepts the principles on which this Bill is based, and heartily concurs in the desire of the Government of India to do all that can be done to extend self-government ‘as an instrument of political and popular education’. This is a subject in which he has taken considerable interest in the past, although the sphere of operation has been very limited.’

“And then the letter concludes with these words :—

“‘The Government of India may rest assured that should such a measure as this Bill become law, it will be patiently and carefully, but also boldly and loyally, applied ; and the Chief Commissioner is persuaded that he will have the cordial co-operation of all local officers in carrying out the aims of Government.’

“You could not have stronger expressions of approval on the part of an officer than those contained in that letter from Mr. Morris, and I myself—and I am sure my hon'ble colleagues also—are very much gratified to find that our proposals do receive the cordial approval of a man of such long experience, and so well known as an able administrator, as Mr. Morris ; for what he approves of is not likely to be fraught with those dangers which, as my hon'ble friend Mr. Crosthwaite says, some people are of opinion that the policy of the Government in this respect is likely to produce. It must also be borne in mind that Mr. Morris is especially qualified to speak on this subject, because he has done more perhaps than any other head of a Local Government in India to introduce into his province some portions of a general scheme of local self-government long before this question was taken up by the Government of India. We have heard a great deal to-day about the backward condition of the Central Provinces. Well, my hon'ble and gallant friend near me (Sir Donald Steuart) remarked when that expression was used—‘but I have understood that in the matter of primary education the Central Provinces stand almost at the head of the provinces of India.’

“There is a great deal of truth in that remark; and so it has been in the matter of local self-government, so far as the principle of election is concerned; and therefore Mr. Morris knows very well from experience what he is talking about when he gives his sanction to the policy of the Government of India in this respect; and I think we may rely upon it with the most perfect satisfaction that the Bill when it becomes law will be applied by Mr. Morris in the spirit in which he says he will apply it, and which is precisely the spirit in which the Government of India wishes this measure of local self-government to be applied, not only in the Central Provinces, but throughout the country generally—that is, patiently and carefully, but also boldly and loyally.

“I do not think I need add anything more to what I have said about this measure; but I am very anxious to make it clear that the fact that it is the first Bill of this kind which has been brought before this Council is due to exceptional circumstances; that it is a Bill intended for the Central Provinces, and for the Central Provinces only; and that, while it fully embodies the principles of the Resolution of the 18th of May, we do not in any way require other Local Governments to adopt its special provisions for themselves.”

The Council adjourned *sine die*.

SIMLA;

The 2nd November, 1882.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.