Friday,
22nd February, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1884

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

The Council met at Government House on Friday, the 22nd February, 1884.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.

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

The Hon'ble J. Gibbs, 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 Sir A. Colvin, K.C.M.G.

The Hon'ble H. S. Thomas.

The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble H. J. Reynolds.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives be taken into consideration. He said:—

"When I introduced this Bill last year, I explained that it was based on the English Explosives Act, 1875, but was much shorter and simpler in its details. I justified this difference by reference to the comparatively limited operation which a measure of this description might be expected to have in India, and to the circumstance that the wide differences between various parts of the country made it necessary to provide by a simple power to make rules for many matters which in England would be included in the Act. The papers which have been received since the Bill was introduced have confirmed the views in accordance with which the Bill was prepared, and indeed, go

further, and show that, though an Act of this sort has become indispensable for some purposes and in some parts of the country, the extent to which it is likely to come into practical operation will in all likelihood be for a long time extremely limited. This being so, we have thought it advisable to make the Bill still shorter and simpler by substituting, on some additional points, powers to make rules for direct enactments, and by omitting certain ancillary provisions which can hardly be considered essential to the measure in its reduced form.

"The Bill as amended by the Committee is in all its main provisions a purely enabling measure, and merely empowers the Governor General in Council, or the Local Governments with his sanction, to make rules imposing restrictions and making regulations, and to enforce their observance by fine within certain maximum limits. This power is given both to the Governor General in Council and to the Local Governments, because it seems clear that, while the rules relating to some matters can best be made by a single central authority, the rules regarding others will best be left to the Local Governments. Thus, rules regarding transport by railway can obviously be made only by the Government of India in consultation with the various railway administrations concerned, while, on the other hand, the rules relating to the storage of explosives in towns can be best dealt with by the Local Governments in consultation with the municipal authorities.

"It will be observed that we have added to the Bill power to make regulations for the 'use' of explosives. We think this additional power may be found convenient in some cases in which it may be necessary to use the more dangerous explosives in mining or quarrying or road-making under superintendence of a less trustworthy character than would be available under similar circumstances in Europe.

"The Bill gives very extensive powers, but I need hardly say that we do not contemplate their being used, except when a real necessity for the exercise of them exists. Nothing, for example, is further from our intention than to impose any stringent system of control over the manufacture and use on a small scale of the fireworks ordinarily used by the Native population. So far as I know, the amount of control at present exercised over their manufacture and use has been found amply sufficient. I say this, not because I have any fear that the powers given by the Bill are likely to be abused, but merely with a view to prevent any misapprehension on the point. And, in order still further to remove any such misapprehension, I propose, by an amendment of which I have given notice, to insert in the Bill a provision expressly enabling

the rule-making authorities to make exemptions from the operation of the rules made by them.

"Chapter VII of the original Bill gave the Governor General in Council unrestricted powers with regard to specially dangerous explosives. We have retained this power, but have limited it to the importation, possession and transport of explosives. It may at times be essential for the public safety to act in the case of such explosives at once, and without having to resort to the somewhat elaborate procedure laid down in the Bill for the making of rules under section 5.

"Sections 7, 8 and 9 of the amended Bill are intended to provide for the matters dealt with in Chapter VIII of the Bill, so far as it seems necessary under present circumstances to provide for them.

"Section 7 provides, in the shape of a power to make rules, for the matters of inspection, search, seizure, detention, removal and the taking of samples, and sections 8 and 9 reproduce, with certain modifications, the provisions of sections 34 and 35 of the original Bill, requiring notice to be given of accidents, and conferring power to enquire into them.

"Then, to avoid the inconvenience which might arise from a person being required to take out licenses both under this Bill and under the Arms Act in respect of the same matter, we have provided a means by which a license granted under the Bill may be made to operate likewise as a license under the Arms Act.

"As the Bill has now been reduced to a mere enabling measure, we have thought it better to leave untouched the enactments of a merely local nature contained in the repealing schedule to the original Bill. These enactments are all of the class which it is within the competence of the local legislatures to repeal or amend, and it will thus be fully open to those who are most competent to form an opinion on such a point to determine how far these enactments shall continue to be applied, and how far the provisions of this Bill shall be resorted to in matters covered by both.

"I have given notice of three amendments. The first I have already explained. As to the second, which deals with the liability to forfeiture, it has been represented that this liability may work hardship in cases where it happens that the person who commits the offence is not the owner of the explosive. I do not see any way to make strict proof of ownership a condition precedent to

forfeiture, but I propose to make the section a little less stringent by making it clear that, where forfeiture is adjudicated, it need not extend to the whole of the explosives in respect of which the offence is committed.

"Lastly, the original Bill contained a provision which was based upon a corresponding provision of the English Act, and authorized the arrest without warrant of a person committing an offence likely to cause explosion by fire in or about a place where explosives are manufactured or kept. We had proposed to omit the section from the amended Bill, but it has been pointed out that in certain cases it might be very useful, and, therefore, I propose to restore it."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 5, sub-section (*2*), after clause (*e*), of the Bill, the following be inserted, namely :—

"(*f*) the exemption absolutely or subject to conditions of any explosives from the operation of the rules."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 10 of the Bill, after the word "committed," the following be inserted, namely :—

"or any part of that explosive, ingredient or substance."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that after section 12 of the Bill, the following section be inserted, namely :—

"13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested, and conveyed as soon as conveniently may be before a Magistrate."

Power to arrest without warrant persons committing dangerous offences.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CHUTIÁ NÁGPÚR ENCUMBERED ESTATES ACT, 1876, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Chutiá Nágpúr Encumbered Estates Act, 1876, be taken into consideration. He said:—

"Last year, when I had the honour to introduce the Bill before the Council, I explained that its scope at the time was exceedingly limited. It was simply to amend a defect, which was common to that Act and the Oudh Taluqdárs' Act. It was found, as the Act stood, that should Government have lent money to the estate, yet the owner might claim release of the estate as soon as the scheduled debts were paid off, without any reference to the debt which was incurred to Government. It was to amend that particular defect, and also to amend a small error which had crept in in regard to the time within which mortgages should be given out in the estate, and it was only for these two purposes, that the Bill was introduced. It was then referred to the Select Committee last year. In the meantime, two or three memorials from bodies of mahájans (money-lenders) in Chutiá Nágpúr were received, and some attention was called to the fact of this Bill being before the Council in the Native Press. The objections taken generally were not in reference to the particular scope of the amending Bill, which, as I have said before, is an exceedingly small one; they were directed against the policy of the original provisions of the Act, VI of 1876, and they seemed to be of sufficient force to justify the Select Committee in not going on at once with the Bill; the work of the Select Committee was accordingly postponed until the Government of Bengal had an opportunity of making enquiries and submitting a report on the working of the Act as it stood. This report has now come in, and the objections taken might briefly be summarised as follows. It was complained that it was nowhere laid down clearly, so that people may be aware beforehand, what classes of estates came under the Act. The memorialists also complained that, in the first instance, on an application being made, it was often accompanied by exaggerated statements of income and insufficient statements of liability, and, as it was the interest of the owners no less than of the manager to have the estates brought under the Act, full enquiry was not made, and that, consequently, estates which might be hopelessly insolvent were too readily brought under the scope of the Act, and so protected from the clutches of the creditors. In the course of the proceedings, when the case came before the Courts, it was asserted that the evidence of bonds was not accepted with that stringency which was the rule in ordinary Courts, but the word of the

debtor was taken against the creditor, and accordingly the debts were cut down too readily. Then they complained that, even the debts which were cut down were not at once paid, the creditors were liable to be kept waiting for many years—twenty-five years, I think, I recollect in one case. They also complained that there was no power of releasing an estate from the operation of the Act even should it be found that it obviously was an insolvent estate, and that no benefit could be derived from going on. And they pointed out one or two other defects in the law which hampered the liquidator in giving effect to its intentions. One was that he could not sell the estate without the consent of the owner, and another was that he could not give a lease for more than twenty years. I think I have fairly summed up the objections raised; and many of them seemed reasonable. The Government of Bengal directed an enquiry, and the result of the enquiry, which appears to have been carefully and satisfactorily made, has now been circulated with the papers of the Bill. It consists of a report from the Deputy Commissioner, another from the Commissioner, and a letter from the Government forwarding the report of the Board of Revenue; and I think these reports quite justify our action in not going on with this Bill at once but giving time for further enquiry. The general result of the reports is to show that the Act of 1876 practically introduced nothing which was very new. It systematised what was formerly the custom; in fact, since 1832, when the Koel rebellion broke out and caused Chutiá Nágpúr to be taken out of the effect of the ordinary regulation law, landed estates in this district have never been subject to sale in execution of decree, and have, as a political measure, always been exempted from sale. When the Act of 1876 was introduced, it was intended to systematise the procedure, and bring it under control; but some of the estates previously protected from sale were, it is admitted, transferred to the operation of the Act without sufficient enquiry as to the possibility of their ever becoming solvent. But the reports showed that, of late years, full and careful enquiries were made in every instance. They showed that the procedure was very much the procedure of the Civil Courts; that the parties were called together, and it was only when the creditors would not bring their books into Court for examination, that the Court was forced to take the debtor's statement; they showed, no doubt, that the Courts went behind the bond, but that was the principle and essential policy of the Act, and that there was necessity for doing so, because, according to the custom of the money-lenders, after every two or three years a fresh bond was taken, in which interest is added to principal and fresh interest accumulates on both; the process is again repeated, so that ultimately interest is demanded three or four times over on the original sum; and, though the man may have paid the principal with a fair rate of interest, yet in a few

years the original amount which had been borrowed was found to have increased four-fold: on the whole, it might be said that the report fully justified not only the policy of the Act but the administration of it. They did, however, admit that there was a good deal in what the memorialists said, and that there were several other points in which the law required amendment. These proposals have been sent up by the Government of Bengal, and the Select Committee have taken them into consideration, and it was to meet these points that the Committee now proposed to alter the Bill in the way which was shown in their report. The principal recommendations of the local officers are, first, that the Local Government should be empowered by the rules to lay down to what classes of estates the Act should be applicable. It was obviously impossible to do this by law, because, in the first place, as I have said before, the principal consideration will always be political expediency; and, in the second place, because anybody who has read the report will see when you go to reduce it into a system, how very complicated and difficult the matter is, and how inevitably it would lead to frequent tinkerings of the Act in order to cover unforeseen cases. But apparently the general consideration would be the size of the estate, and the Bengal Government say that in general the working of the Act should not be applicable to estates under Rs. 2,000.

"The next proposal in order of time and procedure which the local officers made and which we have embodied in the Bill was that the applicant should file a verified statement of the assets and liabilities of the estate; and a verified statement means, of course, that the applicant would be liable to the penalties for false evidence if the assets and liabilities were wrongly stated. So that there should not be the same probability and risk as heretofore of bringing an estate under the operation of the Act when it was of no use to do so.

"Then, a small point I may mention was the time within which the creditors are to send in their statements. In the first instance it was three months, and under special circumstances claims may be admitted within a further period of nine months. This latter period would now be reduced to six months.

"Then, when the adjudication was made on the claim, we came to a point upon which the objection made seemed really serious. It was that the law contained no provision for the amount decreed being paid off at once. On the recommendation of the Government of Bengal, a provision has now been introduced under which the Government may make loans for the payment of liabilities, to be recovered, with small interest, from the assets of the estate. The delay in this case will be transferred from the creditors to the Government.

"We have not been able to meet a proposal of the local officers, which was not accepted by the Local Government, that an estate should be released at the option of the manager after it has once been brought under liquidation. The objection to that was that it would lead to less caution than was desirable in taking estates under management. It was also clear that under such an arrangement great complications would ensue when leases or mortgages had been given, debts had been cut down and payments had been made, and the confusion would be absolutely bewildering. Neither the Select Committee nor the Local Government saw their way to adopt that, and the result of the Bill as it stands will be that the liquidation, having been once undertaken, must go on till all the debts had been paid off, or the estate sold, or the parties came to some arrangement which the Commissioner considered satisfactory and unobjectionable.

"But here we come to another arrangement. In order to enable them to put an end to the management of an insolvent estate, we have had to amend the Bill in another point, which, as I have explained before, has given rise to some dissatisfaction. In the law as it stands, an estate could not be sold without the consent of the owner. This provision does not occur in any other similar Act, and it seems obviously unreasonable that, where a public officer has been called in to manage an estate, because a man is incapable of managing his own property, that public officer should be unable to sell a portion of the estate to save the rest without the owner's consent. Accordingly, to meet that, we have now given power to sell the estate without the owner's consent.

"There was one more point, on which I have given notice of an amendment, which does not come into the report of the Select Committee; but, with the permission of Your Excellency, I will explain what the amendment is now, instead of doing so when moving the amendment. Under the Bill as it stands, a lease could only be given for twenty years, and the only alternative was to sell the property with the consent of the owner. The local officers had objected that it was difficult to get a purchaser, because a great number of these estates were not held directly from the Government, but were jághírs, —assignments held under the superior landlord,—and the peculiarity of these tenures is, that in default of direct male heirs they lapsed to the superior landlord, and could not therefore be transferred without the assent of the superior landlord. This leads to a difficulty very obvious and palpable in the way of sales outright, and the custom of the country consequently is, instead of selling,

to give permanent leases. The permanent lessee, subject to the payment of rent, was able to protect his interest from sale by his superior landlord under the ordinary law, and he is more able to get a transfer sanctioned and approved of by his superior landlord on paying a *nazráná* than to get his sanction to an outright sale. Accordingly, Mr. Power, who found considerable difficulty in applying the Act to a sale outright, strongly recommended, amongst other things, that the manager should have power to grant permanent leases; and the Government of Bengal, after giving the matter very full consideration, had recommended that it be provided for in the Bill."

The Hon'ble MR. REYNOLDS said:—"I wish to say a few words on this Bill, as I have had some experience of the practical working of the Act both as Secretary to the Government of Bengal and as an officiating Member of the Board of Revenue. The Bill before the Council, which is merely an amending measure, does not raise the question of the principle of legislating with the object of affording special assistance and protection to embarrassed proprietors of land. I am not personally an advocate of such legislation; but the principle having been accepted by the law already in force, it is the object of this Bill to improve the administrative machinery, and to rectify such errors as the experience of the last seven years may have shown to exist in matters of detail.

"But, though the question of principle is not raised by the Bill, either in the form in which it was originally introduced or in the form in which it is now submitted to the Council, some of the papers which have been considered by the Select Committee do raise issues which are of a fundamental character. It is contended in some memorials received from money-lenders of the Chutiá Nágpúr Division, and in some articles which have appeared in the public Press, that the Act is unjustly framed and unfairly administered. The memorialists complain that the laws of evidence, of contract, and of procedure, are ignored; that estates are admitted to protection without due enquiry as to their solvency; that the just claims of creditors are summarily cut down; and that there is unreasonable delay in paying off even those debts which the authorities admit to be valid. These charges really fall under two main heads, one of which touches the principle of the Act, and the other is concerned with its administration.

"As to the former, it appears to be the contention of the memorialists that the duty of ascertaining the claims, and the duty of paying them off, should be assigned to two different sets of officers, that the claims should be ascertained by judicial officers under the strict rules of law which govern ordinary transactions, and that the property should then be handed over to the executive

department for the liquidation of the debts. If this had really been the intention of the legislature, the Act of 1876 would have been very improperly described as an Act to relieve certain landholders in Chutiá Nágpúr. Its proper title would have been an Act to enrich certain mahájans. What was the position of these creditors before the passing of the Act of which they now complain? For more than 40 years past they had been restrained from proceeding against landed property, for no sales could take place without the express consent of the Commissioner. If execution of a decree was taken out against a landholder, his estate was sequestrated, and was managed in what was termed the Political Department. The difference is that, whereas this procedure was formerly general, management by Government officers is now confined to those estates which are specially protected under the Act. Against all other landed property the creditor can proceed in the ordinary course of law.

"Then, with regard to the complaint that the managing department goes behind bonds and decrees, it is certainly the fact that this is done, and it was undoubtedly the intention of the legislature that it should be done. The object of the law was to grant equitable relief; and this object would have been defeated if the officer charged with the settlement of the claims had been required to confine himself to ascertaining whether a certain bond had been signed, or a certain decree obtained, and had been precluded from enquiring into the circumstances under which the debt had been incurred, and into the whole series of the transactions between the parties. So far, therefore, as these objections impugn the principle of the Act, I think they admit of a complete answer.

"As regards its actual administration, I am willing to confess that there may have been some grounds for complaint during the first two or three years that the Act was in operation. I do not admit that claims have been unjustly cut down. Some alleged instances of this are put forward in the memorials, and, I suppose, we may fairly assume that these are the strongest instances which would be adduced. But the explanations given in the papers before the Council show conclusively that these cases (to use the words of the Board of Revenue) were not arbitrary reductions of equitable claims, but cases of equitable relief from extortionate contracts. I do not deny that, when the Act first came into operation, some estates, which had no valid claims to protection, were brought under its provisions, and that the enquiries into the solvency of an estate were not always so complete as they should have been before the issue of the vesting order. But I do not think that for some years past any example of mistakes of this kind can be adduced.

"The matters of reasonable complaint which still remain are—first, the delay which takes place in the liquidation of admitted claims; and, secondly, the provision which forbids the sale of an estate without the consent of the proprietor. These will be remedied by the Bill now before the Council. I understand it to be intended that, when the schedule of debts has been finally settled, a loan shall be advanced by Government at moderate interest to clear off all incumbrances, and that the estate shall remain under management till the loan has been repaid. The Bill also gives power to sell the property with or without the consent of the owner, and to withdraw at any time from the management if a satisfactory composition is made with the creditors. These amendments, and the minor improvements which are introduced by the Bill, will, I think, remove all reasonable ground of complaint as regards the working of the measure."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that, after section 6 of the Bill, the following section be inserted, namely:—

Amendment of section 17.

"7. In section 17, for the words 'not exceeding twenty years absolute,' the words 'or in perpetuity' shall be substituted."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the law relating to the Survey, and the examination and grant of certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels.

INDIAN STEAM-SHIPS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on

the Bill to amend the law relating to the Survey of Steam-ships and the grant of certificates to Engineers of those ships.

The Council adjourned to Friday, the 29th February, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 28th February, 1884.

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