

Wednesday,
18th June, 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

VOL. XXIII



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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 Wednesday, the 18th June, 1884.

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 Honour the Lieutenant-Governor of the Panjáb, K.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., C.I.E.

The Hon'ble D. G. Barkley.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT introduced the Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Barkley and the Mover. He said :—

“ This small Bill occupies part of the same ground which is occupied by the Burma Local Self-government Bill, and the provisions of the two Bills will have to be adjusted to each other. The precise mode in which the adjustment should be made will be a matter for the consideration of the Committee to which the Bill will be referred.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration might think fit.

The Motion was put and agreed to.

[*Mr. Ilbert ; Sir Stewart Bayley.*]

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VALIDATION OF MARRIAGE LICENSES BILL.

The Hon'ble MR. ILBERT also introduced the Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864, and moved that it be circulated for the purpose of eliciting opinion thereon.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also 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.

SINDH INCUMBERED ESTATES BILL, 1884.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Sindh Incumbered Estates Act, 1881, be taken into consideration. He said :—

“ When I had the honour to introduce this Bill in November, 1882, I explained that it had for its object a very small amendment of what was obviously an omission in the definition of the word ‘ zamindár ’ in the original Act of 1876, by which the heir of a jágírdár who had ceased himself to be a jágírdár and was for all practical purposes a zamindár yet could not come under the definition of ‘ zamindár ’ as given in the Act because his estate had not paid revenue previous to the passing of the Act. The present Bill was originally drafted merely with the object of remedying this defect, and was sent to the Bombay Government for criticism. The Government of Bombay, in replying, said that the Bill would meet that purpose perfectly well, but added that they had several other points upon which they would soon have to come up again with a view to the further amendment of the Bill. In considering this it appeared to us in Select Committee very undesirable to tinker an Act of this kind frequently, and accordingly we requested the Bombay Government to consider the other points upon which the Bill seemed to require amendment, and to send their views to us, so that we might be in a position to amend the Bill once for all. That has now been done, and that is the reason for the delay that has occurred in the matter and which has caused the Bill to hang fire.

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[*Sir Steuart Bayley.*]

“The points on which the Bombay Government suggested that the Bill should be amended have all been noticed in the Report of the Select Committee, and it will be obvious to anybody reading that Report that those points are none of them of great importance, and that we are only amending methods of procedure and leaving the scope of the Bill as it stood before.

“The first point is the amendment of the definition of ‘zamíndár,’ which, as I have explained, will now let in not only those heirs of jághírdárs but also the zamíndári tenants of ex-jághírdárs who would otherwise have been excluded. The other alteration made in the definition is one which I fear has given the Legislative Department a good deal of trouble. It refers to the method of dealing with joint-proprietors’ estates. The question is a difficult one, and is fully explained in the Report of the Select Committee. The outcome of the deliberations of the Select Committee has been this, that the property of joint-proprietors paying an aggregate revenue of Rs. 300 may come under the Act, but in dealing with proprietors the law will deal with them as individuals; that is to say, in order to render an application for bringing under the Act one of these joint undivided estates, successful, all the proprietors will have to be represented, and, if successful, then the property, whether separate or joint, of each proprietor will be liable to come under the scheme of liquidation. This is in accordance with the ordinary law, and really it is the only way out of the difficulty, for it would be monstrous that a man who has separate and joint property should be at liberty to get the benefit of the Act for his separate estate while his joint property should not be available for the satisfaction of his creditors, or that his joint property should be administered under the Act and his separate property be left at his own disposal. Practically, therefore, we leave matters very much as they were, except that we remove all doubts as to the possibility of bringing a joint estate paying Rs. 300 as its aggregate revenue under the Act.

“The next point on which the Bill has been amended is that the protection given to estates brought under the Act may now be given, if the Commissioner desires, from the day of the inquiry made upon the application, instead of waiting till the inquiry is completed and the order of management passed. This seemed obviously necessary, and the Bombay Government recommend it. The protection will bar revenue-process as well as civil process. We have also allowed six months as the period within which persons who have under the old law not been able to come in under the Act, but who under the new definition of ‘zamíndár’ will be at liberty to come in, may bring their applications instead of leaving the time indefinite. We have also decided that an order of management once passed shall be conclusive as to its own validity. This appeared to be very desirable, and the necessity for it was recently illustrated

[*Sir Steuart Bayley; Sir A. Colvin.*]

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by the case of a man whose estate had been brought under management, and it appeared that although, as it stood in the books of Government, the estate was rightly brought under management, yet in reality the owner had parted with a portion of his estate but had not registered the transfer. Discoveries of this kind might render the whole process of liquidation null and void. It is, therefore, obviously more convenient that the scheme of liquidation once begun should be completed, and, with the consent of the Bombay Government, we have decided that this is the best way out of the difficulty. We have also provided that a liquidation-scheme may be amended at any time, saving the rights of the creditor; that is to say, that money adjudged to be due to any creditor must, under the liquidation-scheme, be paid during the period of liquidation.

"There is only one other point to which I need refer. It is a condition of some of the jágírs in Sindh that a definite fractional share of the jágír shall be resumed on the death of the incumbent, but it is left to the heir of the incumbent to decide what portion of the estate shall represent the fractional share that is to lapse. Of course, in the case of such estates being brought under liquidation, this custom must cause great difficulty to the manager in leasing or otherwise disposing of the land, because he does not know what land he has to deal with. To meet this difficulty we have arranged that, if an estate is brought under management of this kind, the manager shall, after consulting the persons interested, decide what portion of the land will come under the resumption-clause. He will then be at liberty to deal with the rest without any difficulty arising from that cause."

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.

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the Indian Salt Act, 1882. He said :—

"The reasons for making the Motion which I have the honour to bring forward are explained in the Statement of Objects and Reasons, and it is scarcely necessary for me to add much to what is said in that Statement. I may, however, briefly explain that it is thought desirable, on grounds which it is at present unnecessary to enter into, to exclude Sindh from the operation of the Salt Act, and to legislate in Bombay with the object of making one Act applicable

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[*Sir A. Colvin.*]

both to the Province of Sindh and to Bombay itself; and therefore it has been thought necessary to take measures to prepare for the repeal of so much of the Indian Salt Act as applies to the Province of Sindh. Opportunity has been taken of this necessity to clear up a point on which some doubt has recently been thrown with regard to the importation of salt into Sindh. Under the Inland Customs Act of 1875, a notification was issued by which the Governor General in Council prohibited the transit of salt into any part of Sindh unless under certain conditions. Section 27 of the Indian Salt Act of 1882 provides that 'the Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories' (including Sindh) 'or any part thereof.' It was held by the Judicial Commissioner of Sindh that the notification, to which I have referred, was inconsistent with section 27 of the Indian Salt Act, in so far as 'it prohibits the transit into Sindh of salt from foreign territory, whereas the section empowers the Governor General in Council to prohibit absolutely or conditionally the importation of salt into, and the transit of salt over, the territories referred to in it, and that importation applies only to salt brought as merchandise for the purpose of commerce and in merchantable quantities, not to small quantities brought for other purposes.' When this ruling was brought to the notice of the Government of India, it was of opinion that the interpretation given to the Act was neither in itself correct, nor consistent with the intentions of those who framed the Act; and as a temporary measure the Government issued a notification, laying down, in supersession of the notification of the 18th November, 1880, to which I have referred, that the Governor General in Council was pleased to prohibit absolutely the importation into, or the transit over, the Province of Sindh, or any part thereof, of salt produced or manufactured in foreign territory or in any Native State, or brought from foreign territory or from a Native State. Advantage has been taken of the present occasion to insert in the Bill, which I have now the honour to ask leave to introduce, the word 'bringing' instead of the word 'importation,' so as for the future to place the matter on a definite basis, and to exclude the possibility of further doubt arising."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th June, 1884.

SIMLA ;
 The 20th June, 1884. }

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