COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

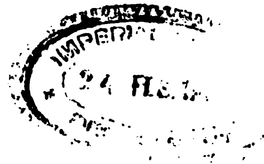
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1880.

WITH INDEX.

VOL. XIX.



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1881.

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 6th August, 1880.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., P.C., G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir J. Strachey, G.C.S.I., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I.
The Hon'ble C. U. Aitchison, LL.D., C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble C. Grant.

TÁJ MAHAL'S PENSION BILL.

The Hon'ble MR. COLVIN introduced the Bill for the determination of claims to Táj Mahal's pension, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Aitchison and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh,* in English and in such other languages as the Local Government thought fit.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. GRANT introduced the Bill to consolidate and amend the law relating to agricultural tenancies in the Central Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Aitchison and Colvin and the Mover. He said that in the exposition of a Tenancy Bill, it was scarcely possible to avoid trespassing on some of the most uncertain and bitterly contested questions of Indian Revenue History. The

landlord—at any rate in his present form—was our own creation, and the standard which we had in view in shaping him—that of the free European proprietor—involved the concession to him of rights and privileges to which most of his class could never have aspired under Native rule; and which it was only possible to grant to him at the cost of some sacrifice of other interests. The State deliberately abandoned many of its rights, limiting its demand, lengthening its leases, and resigning its power of resumption, in order to build up a proprietary class. In the words of Thomason, the father of the Upper Indian Revenue system—"It is the true interest of the Government to limit the demand to what is just, so as to create a valuable property in the land and encourage its improvement."

But though this generous ideal had never been lost sight of—perhaps, indeed, because it had been too exclusively kept in mind—there had been times when the proprietary position had been fostered, not only by the concession of State-rights, but also in the opposite direction, by unconscious acquiescence in encroachments on the ancient rights of the cultivating peasantry. The first great example of an oscillation of our revenue-policy towards landlordism was in the famous Permanent Settlement of Bengal, when Lord Cornwallis, whilst investing the newly-created proprietary class with privileges before, and indeed since, unexampled, set down their tenantry as entitled to no rights which they could not acquire from them by contract. But what between the cautious spirit of compromise, in which the Regulations, embodying Lord Cornwallis' Settlement, were framed, and the protection which cultivators owed to the then great demand for them, they remained for long almost unaffected by the pressure of the new system. Indeed, in Upper India an almost democratic sentiment grew up in favour of the tillers of the soil as against the mere consumers of the produce. In the words of Mr. Mertins Bird—

"Many persons hesitate not to take for granted the rights of Zamíndárs and Talukdárs, and all the host of unproductives, of whom, till our Government called them into existence, and associated with them all the ideas of landed property which prevail in our country, no trace was ever found in any authentic record but as executive officers of Government * * * * Our Government is bound to maintain that right of the raiyat, which boasts a far higher origin, and stands on a far firmer foundation."

It was not, Mr. Grant believed, until after the disturbances of 1857 that an opposite wave of feeling gathered strength enough again to turn the scale in favour of landlords. The almost universal manifestation of anarchy, as soon as the pressure of authority was momentarily relaxed, was attributed by many to the leaderless condition of the people, which left them a prey to the persuasions of every petty adventurer, and from the famine experiences of 1860-61 was derived the further argument that, without a strong proprietary class, it was impossible to oppose efficiently organised resistance to general distress and starva-

tion. He did not mean to say that these theories were allowed—consciously at any rate—to affect the principles on which the great rent-law of the time, Act No. X of 1859, was framed. That was essentially a measure intended to benefit the raiyat. It was described by one of its strongest supporters, Mr. Harington, as seeking "the greatest happiness of the greatest number," and, in conveying his assent to it, Lord Canning styled it—

"a real and earnest endeavour to improve the position of the raiyats of Bengal, and to open to them a prospect of freedom and independence which they had not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the powers of the Zamíndárs, such as ought long since to have been provided."

But the Act was primarily devised for Bengal, in which proprietors had attained a far stronger relative position than in Upper India; and there it undoubtedly served to check abuses almost, if not quite, unknown elsewhere. And whatever may have been the feeling of its framers, it may be questioned whether the prevailing state of public opinion did not create a tendency to apply the new law in a spirit tinged with Western ideas of proprietorship. In his judgment in the leading case of *Thákuráni Dási*, Sir Barnes Peacock spoke of the tenant's possession as "from the first a possession with the consent of the landlord," and as "permissive only, however long it may continue"; and he went on to remark how much it would surprise English landowners to find themselves subjected to such restrictions as the Act would impose on them in favour of tenants, thus clearly showing that he made little or no distinction between the tenures of the East, which had grown up by custom, and the tenancies of the West, which had their origin in contract. Similarly, one of the best known text-books of the time on the Law of Landlord and Tenant in the Bengal Presidency commenced with the words:—

"The relation of landlord and tenant arises from a contract, express or implied."

Now, as Mr. Jones in his (Mr. Grant's) opinion very conclusively showed in his Note printed as Paper No. 2, it argued an entire misconception of the relative position of headman and cultivator, in the pre-British era, to assume that the tenant's "status could be defined in terms of a contract to which he and the headman were sole parties * * * * . In reality there was a third party privy to the contract (if, indeed, it could rightly be termed a contract), namely, the State." The headman was in fact no more than a *primus inter pares*, all paying alike their quota of revenue to the State; with no temptation to enhance the demand on them, because all enhancements benefited the State and the State alone; and with little inducement to eject, because the main motive to ejectment, namely, the hope of increasing his receipts by it, did not exist for him; and because it was as much his own interest, as it was part of his engagement with the Government, to keep together those who shared with him the weight of the public burdens,

Now Act No. X of 1859 not only contained several provisions directly injurious to the cultivating class—such, for instance, as the increased facilities which it afforded for enhancing rents, but, (again to quote Mr. Jones)—

"with the inevitable tendency of written, to drive out unwritten, law, it spread among all ranks of officers in the Province a more or less definite impression that it was not very necessary to enquire what right tenants had before its introduction, and that they could have no rights except those which it recognizes.

"An Act which was intended to confer rights on tenants was construed as if it had demolished rights which before its introduction they possessed."

As MR. GRANT had explained, in asking leave to introduce this and the Land-revenue Bill, the position of an established cultivator in the Central Provinces, before the award of proprietary right at the recent settlements and the introduction of Act No. X of 1859, was almost as secure as it was undoubtedly easy. Tradition was in his favour, because he had borne the burden of a not yet forgotten day on almost equal terms with the village-farmer; authority was in his favour, because its object was to secure the Government revenue by establishing a strong resident tenantry; and he had not even to contend against the ideal held out by that tempting phrase "the magic of property," for property in land, in the English sense, was then unknown in the Central Provinces.

Since then the struggle had been intensified to him by the general definition of tenures, which had not only widened the gulf between landlord and tenant, but had dispelled the doubtful atmosphere of custom, and had opened out to landholders clear paths for the assertion of their rights. In so far as our own acts had ignored the traditional relations to each other of the agricultural classes, it might not be too late to restore—partially at any rate—the balance, but it was to be feared that the substitution of sharp and easily-wielded rules for a custom, not only in itself so indefinite as to be embarrassing to free movement, but jealously guarded by authority, could not but place the more ignorant classes at a disadvantage in their relations with persons better qualified to see and seize the benefits held out by the law; and no legislation could restore to the peasantry the vantage-ground which they had long owed to their comparatively small numbers and to the consequent demand for their services.

The points in which the present Bill sought to redress the inequalities and supply the deficiencies of the existing law would be best explained in commenting on the appropriate sections in detail. In all that had been proposed it had been necessary to remember that proprietary rights having been conferred, rightly or wrongly, we were no better entitled to nullify them by indirect encroachments, than to confiscate them openly, even if it were good policy, after subjecting the land to the drawbacks inherent in a Western system of

land-tenure, to give up the undoubted advantages which it promised, such as its simplicity, the impulse which it gave to cultivation, and the facilities which it afforded for orderly and systematic administration. No universal creation of occupancy-rights would, therefore, now be expedient; and indeed it might be that so sweeping a measure would go beyond the just claims of the cultivating classes, for probably at all times, certainly under the Marátha rule, headmen had considerable influence, if not always direct power, and the authority which they justly had, and should have, would be paralysed under our inelastic system, by conferring practical independence of them on the whole village-community. All that we could now hope for was, by a compromise here and an adjustment there, to introduce into the fabric, which we had raised up, something as nearly as possible approaching to the equilibrium which self-protection tended to maintain when all classes of villagers were obliged to band themselves together against the crushing pressure of despotism. The points for which a system of reasonable protection to the cultivator might properly provide were—

(1) sufficiency of notice before ejectment;

(2) compensation for improvements;

(3) closer assimilation of the rules for retaining occupancy-right to ancient customary practice ; and

(4) security against harassing enhancements of rent.

As would be seen from the remarks on the leading provisions of the Bill, which he would then proceed to offer, each of these questions had been considered in its appropriate place.

The first section to which he need draw the attention of the Council was No. 10. The section was based on section 9 of the North-Western Provinces Rent Bill of 1880, which was an amendment on section 23 of the North-Western Provinces Land-revenue Act of 1873. It provided that, when the Government revenue was remitted or suspended on account of drought or other natural calamity, the Local Government might take means to ensure to the actual cultivators of the soil their fair share in the indulgence granted, by directing that tenants might plead the damage to their crops in answer to suits for rent, and that the Courts might grant them relief accordingly. The North-Western Provinces Act went further, and extended the boon to all tenants, whether they sought it or not; but so wide a measure of relief would involve an immediate field-to-field examination on a very minute scale, which, with the limited staff and the extensive areas of the Central Provinces, would sometimes be very difficult to undertake.

The twelfth section of the Bill imposed certain restrictions on freedom of contract as between landlords and tenants in the Chánda and Nimár districts; and, as in other parts of the Bill similar peculiar provisions with regard to these two districts, and to the district of Sambalpúr, would be found, he might as well avail himself of the first appearance in the Bill of anything of the kind to explain briefly why these districts should be regarded as needing exceptional treatment. Chánda and Nimár were two of the western border-districts of the Central Provinces. Nimár was only added to the Province in 1864, and until then was under an entirely separate and peculiar revenue-administration. Chánda was a thinly inhabited outlying tract, in which land-tenures were still in a very rudimentary condition when the settlements were undertaken. Many authorities considered that a raiyatwárí settlement, somewhat on the Bombay model, would have been the most suitable system in both districts, but, even before the creation of the Central Provinces, a proprietary settlement had been determined upon, in the case of the Nágpur Province (including Chánda) by the Governor General in 1860, in the case of Nimár by the Government of the North-Western Provinces so far back as 1847, and, when opinion began to turn towards a raiyatwárí settlement, we had gone too far in the opposite direction to reverse our policy. It was not, however, too late to modify it, in a sense favourable to the cultivating body, by introducing into the settlement conditions preserving as far as possible their ancient privileges, and accordingly it had been determined that—

"the tenure of all cultivators should be a fixed and permanent one so long as the revenue or rent was paid, and that the payments should, as a general rule, not be liable to enhancement except at the time of settlement."

Various other principles were laid down, of which he need only notice here, in order to explain the first part of this section, the rule regarding waste, which was that resident cultivators, that was to say cultivators of three years' standing, were entitled, when taking up waste-land with the consent of the proprietor, to hold it at certain rates fixed at the time of settlement.

In the Sambalpúr district, the relative positions of headman and cultivator approached even less nearly than in Chánda and Nimár to the ordinary conception of landlord and tenant. The *Gaontias*, or headmen, not having attained anything approaching to a proprietary status under the Native Government which had preceded our rule, their privileges had been sufficiently maintained by the allowance to them, free of assessment, of the land occupied by their home-farms, and by certain powers of control over the village-community, in return for which they would continue to be responsible for the collection of the revenue and other duties attaching to their office. In so far as these privileges fell short

of the proprietary status, the rights of cultivators were correspondingly enlarged; and the Sambalpúr raiyats would practically enjoy fixity of tenure subject to payment of a fixed rent.

In sections 17-22 would be found defined the landlord's lien on the produce of a tenant's holding. This was Mr. Jones' substitute for the right of distraint of the tenant's standing crops, which was generally throughout Northern India conceded to the landlord for the security of his rents. Briefly described, the system provided for in these sections was as follows. An attachment of standing crops made in execution of a landlord's decree had priority, in respect of arrears of rent falling due within the twelve months immediately preceding such attachment, over all other attachments and assignments; and if the landlord chose to apply for attachment even before judgment, within the fourteen days next after the date on which an instalment of rent fell due, the Courts were bound to make the attachment and maintain it up to judgment, in order to prevent the produce from being removed or assigned away, and thus to put the landlord in a position to assert his right of priority as soon as he had obtained a decree in his favour. There were also other ancillary provisions to prevent the sale of such produce after attachment by creditors other than the landlord, and before the landlord's prior claim was satisfied.

This system was advocated by Mr. Jones on the ground that—

"while the power of distraint is always liable to great abuse, it is peculiarly dangerous in the Central Provinces, where landlords are strong and tenants weak, and where anything like combined action among tenants in defence of their rights is unknown; second, that, as experience conclusively shows, it can be safely dispensed with. Distraint is practically, I might perhaps say entirely, unknown in these Provinces, yet no málguzár complains that his rents are insecure."

To this reasoning it had been objected that—

"the distraint-sections operate as a penalty. It is no argument against the maintenance of a penalty that it is seldom enforced. Distraint is seldom used, but the landlord knows that he can use it, and, if the tenant will not pay, he does use it."

MR. GRANT's own opinion so far was in favour of these sections. They were much simpler and less likely to sanction oppression than the corresponding power of distraint, which indeed was never used, so far as he was aware, in the Central Provinces. Enquiries were however now being made in the Central Provinces, and the Chief Commissioner would no doubt be able to advise further on the subject when the Bill was sent to him for report.

His Excellency THE PRESIDENT inquired whether, under those sections, the landlord had to apply to the Court before he could attach the crops.

The Hon'ble MR. GRANT replied that under section 18 the landlord could only apply for attachment in execution of a decree; and that under section 22 he could only apply after institution of a suit. In either case the intervention of a Court would be necessary.

He then continued. In sections 39 to 44 (inclusive) was set forth the proposed manner of dealing with improvements made by tenants and compensation therefor. These sections proceeded in the main on the principles of the English "Agricultural Holdings Act," allowing, of course, for the peculiarities of Indian tenures, and for the great difference in the agricultural development of the two countries. Improvements were divided into two classes only, instead of into three, as in the English Act; and, in respect of the first class, landlords were given a preferential right to improve, except in land held by the specially privileged kinds of occupancy-tenants. As no occupancy-rights could accrue in the landlord's *sír* or home-farm, compensation would not be claimable for improvements executed by tenants on such lands without the express consent of the landlord.

As "by the custom of the country," to quote the Commentary on the Bill, "improving tenants retained the right to improvements after they lost the land on which they were made, * * * the power conferred on tenants by section 23 is a necessary and equitable equivalent for the abolition of an ancient and universal, but most inconvenient, custom."

Section 56, which provided that even an ordinary tenant should be entitled to six months' notice before ejectment, would be a very important safeguard against arbitrary evictions. The term "ordinary tenant" (he explained) had been substituted throughout this Bill for the old misleading expression "tenant-at-will." Equity and the custom of the country always secured tenants against sudden ejectment whilst their crops were on the ground; and therefore they were not in the proper sense of the term tenants-at-will. Mr. Jones' explanation of this provision might here be suitably quoted. He said,—

"the six months' notice is intended to give the tenant ample time to contest the ejectment, and to permit of any proceedings taken by him being terminated before the end of the agricultural year. In the Agricultural Holdings Bill, a year's notice is provided, and Mr. Gladstone once declared that a two years' notice was really required. In India, with all the tradition in favour of the right of the tenant to remain on his land, six months' notice is little enough."

His Excellency THE PRESIDENT presumed that under the old system an ordinary tenant could be turned out without any notice at all.

The Hon'ble MR. GRANT replied that in one part of the Province it was held that he could; in another that notice was required—a notice of about three months.

He continued. In passing on to section 58, we came upon more uncertain ground. As would be seen, this section practically created a new class of privileged tenants, intermediate between ordinary tenants and tenants who had acquired a right of occupancy by twelve years' continuous possession. Thus, any resident cultivator of five years' standing on whom a notice of ejectment had been served might, provided that he had not in that year, or in either of the two years next preceding, received from his landlord any assistance in his cultivation, apply for an order of protection from ejectment, and the Court to which he applied must grant the order, "unless the landlord satisfies it that hardship will be caused thereby." He (MR. GRANT) felt that he was himself to some degree responsible for these provisions; for he had proposed that the standard of rights of occupancy should be reduced from twelve years' occupation to five, and Mr. Jones, though unable to go so far with MR. GRANT, had adopted the plan above described "as a reasonable and equitable compromise between the rights of landlord and tenant."

MR. GRANT had therefore the less hesitation in saying that he thought these sections should be very carefully considered by the Special Committee. It was true that they would not convert the protected tenant into an occupancy-tenant, for he could not sublet, and, if he died, such rights as he had acquired would expire with him. But they would create a new class of privileged tenants, and so not only trench materially on the gift of proprietary right, but would further complicate the already complicated tenure of land. A vigorous exposition of the evils which they might occasion would be found in Mr. Crosthwaite's Note, which had been printed as Paper No. 4 to the Bill.

MR. GRANT then passed on to the important question of rents. He said that, in the determination of rents of ordinary tenants, the Courts would not, as a rule, interfere. By the old law (Act No. X of 1859, section 13) landlords were empowered to serve a notice of enhancement on such tenants in the Spring; and unless they did so, they could not recover from the tenant any higher rent than he had paid in the preceding year. But in the next section the tenant was authorized to contest his liability to pay enhanced rent in defending any suit brought against him to recover it, and thus the Courts were placed in the anomalous position of determining the rent of a tenant who could only retain his tenancy with the landlord's consent. The notice of enhancement was further open to the objection that it was often regarded by the tenant as an order of Court, and, secondly, that it tempted tenants, who had no hope of being able to pay the rent demanded, to remain on in the delusive hope of being able to contest it successfully. In the present Bill landlords and tenants would be left to settle rents between themselves. But if the landlord wished to enhance, he must come to terms, or

else serve a notice of ejectment, before December, so that both parties would be brought face to face with their position in good time, and harassing litigation would be avoided.

The Courts would only intervene when it happened that a tenant had been allowed to take up land without any stipulation regarding rent, and, it being the first year of his tenancy, no test of the amount properly payable could be sought in the previous demand, or when the holding of a tenant had been diminished, by diluvion or otherwise, during the year of tenancy.

To complete the subject of rent he must here go on to sections 86 to 93, which regulated the rents of tenants with rights of occupancy, passing over, for the moment, those of the intermediate sections which needed consideration.

It had been found impossible to devise any new and satisfactory standard for the fixation of occupancy-rents. In some cases the average rent-rates, calculated by the Settlement-officer to aid him in assessing the land-revenue, might also be of service in determining rents at a subsequent period, and, accordingly, the Courts had been empowered to take them into account for the purpose. Where these rates were inapplicable, as they often would be, owing either to their being of too general a character, or to their having been superseded by the progress of events, we must fall back on the customary rates paid for similar land in the neighbourhood by tenants of the same class. This, of course, always must be a somewhat laborious and intricate process ; but it would only take place once for all during the term of the settlement. After that, suits for enhancement or abatement would be entertained only on the ground that the value of produce, or the productive power of the land, had changed, or (in the case of enhancement) that the rent was originally fixed below the proper amount for some reason which had ceased to exist. He (MR. GRANT) omitted here the case of alteration of rent on account of alluvion, for that would not amount to enhancement on the existing holding, but would really be an addition to the rent on account of an increment to the land ; and a similar remark would apply to cases of abatement for diluvion. It was only necessary to add that, much objection having been made to allowing enhancement on account of increase in the value of produce, owing to the practical difficulties which had been found in working the rule, it had been provided that this plea for enhancement should only be permitted when the Chief Commissioner made a special direction in that behalf. The effect would, it was hoped, be to obviate any need for intricate statistical enquiries in each case. The idea was that such investigations should be made once for all by the Chief Commissioner when he promulgated the rule. By this means the chief objection to this ground of enhancement would be removed ; and it seemed indispensable to retain the rule in a hitherto backward but now advanc-

ing tract of country such as the Central Provinces. Indeed, even in the North-Western Provinces, though it was excluded in the first draft of the Bill relating to those Provinces, and at first condemned in debate, it was eventually incorporated into the law.

MR. GRANT said he must now revert to the seventy-fourth section, to explain the position and privileges of absolute occupancy-tenants. This class had been originally recruited from among cultivators having exceptional claims to remain on, and enjoy the produce of, their holdings, whether owing to unusually long occupation, or connection with the person selected as proprietor, or execution of works of improvement, or former possession of the village as farmers. At the time of settlement, when tenants having such claims as these were separately classed, it was anticipated that provision for their rights would shortly be made in the law; but, as that expectation had not been realized, express recognition of their privileges had been made one of the conditions of settlement. The chief distinctive rights then conferred upon them were fixity of rent for the term of settlement, and the power of alienation. The former they would retain, except when there had been a change in the productive power of their land, caused by or at the expense of the landlord. The object of this exception would be obvious. If the landlord were debarred from obtaining increased rent in return for improvements effected by him, his main inducement for outlay on the land would be removed. As to the power of transfer, it had been found to be a positive disadvantage in many cases to the tenant. To quote Mr. Jones—

" absolute occupancy-tenants have used the power of transfer chiefly to get into debt; the Civil Courts have laid hands on tenures possessing a saleable quality; and, above all, landlords have shown a disposition to get this class of tenants into their power, in order to purchase out their rights."

As the status of these absolute occupancy-tenants had not yet been validated by legislation, the opportunity had been taken, in giving it for the first time legal definition, to abrogate the exercise in future of this somewhat anomalous right, making due provision, of course, to save all transfers or mortgages already effected under it.

His Excellency THE PRESIDENT inquired if the sections as they stood pervented mortgages.

The Hon'ble MR. GRANT replied that under section 82 transfers and mortgages were placed on the same footing. That was to say, they could only be made to the person to whom the right of occupancy would descend at the death of the tenant.

Sections 76 and 77 were intended to provide against a very real hardship which resulted from a change in the law made by Act No. X of 1859. In the North-Western Provinces, including the Saugor and Nerbudda territories, Revenue Courts were only authorized to entertain suits for ejectment in the case of cultivators who had not held their fields, or, by well-established usage, *other fields of equal value*, for twelve years. These sections provided that, when there was a custom of redistribution, a tenant might acquire or retain occupancy-right, notwithstanding such redistribution, and that, even if there was no such custom, a tenant might retain occupancy-right when he exchanged lands presumably with the consent of the landlord. A somewhat similar provision was even now in force in the Chhattísgarh Division of the Central Provinces, as part of the compact with the Government under which landholders owned their estates; and its general reintroduction would be a return to the ancient custom of the country.

Lastly, MR. GRANT offered some explanation of the judicial machinery by which the provisions of the Bill would be put into force. It would be observed that jurisdiction, in all matters which could be brought to the test of a judicial enquiry, was left to the Civil Courts. In this respect there was a departure from the system obtaining under Act No. X of 1859, and still observed in the North-Western Provinces. But the reasons, which elsewhere justified the relegation of suits between landlords and tenants to special Revenue Courts, did not obtain in Provinces organized on the so-called "Non-Regulation" system. In the Central Provinces, and other Provinces similarly constituted, the executive administration and civil jurisdiction were vested in one and the same body of officials; and there was no distinction, except in name, between the procedure of an officer on the "revenue" or "civil" side. Both classes of suits were tried with equal promptitude; and all Civil Judges, having had a revenue training, and being liable to, even if not actually engaged in, revenue-duties, possessed the special knowledge and the particular aptitude requisite for dealing successfully with litigation of a kind in which simplicity of treatment should always be a prominent characteristic. Even where circumstances had made the double jurisdiction necessary, it had always been difficult in practice to draw the line between civil and revenue suits; and, as Mr. Jones had pointed out,—

"the hundreds and thousands of rulings which have been given on the question, prove that no one has yet succeeded in separating them in a complete and satisfactory manner."

In the Central Provinces the existing system had always been considered an anomaly, and, but that the highest Court of appeal was fully alive to its absurdities in practice, and took all possible steps allowed by the law to obviate them, litigants might, after having to defend their suits through a series of Revenue Courts, have found themselves exposed to a fresh

course of litigation in Civil Courts, before the same Judges, and under practically the same procedure. The Bill now before the Council abolished this artificial distinction between so-called Civil and Revenue Courts, providing, however, two simple safeguards in order to prevent rent-litigation from falling into the hands of Judges not trained in revenue-administration. In section 100, clause (*a*), it was provided that—

" no Civil Judge shall hear any suit under this Act in his capacity of a Court of first instance, unless he is also a Revenue-officer or a Settlement-officer ;"

and in clause (*b*) power was reserved to the Local Government to declare that particular classes of suits under this Bill might be tried by particular Courts, and not otherwise.

Mr. Grant might add that, in making this change, we should only be following the example of the Panjáb, where the constitution of the Courts was in essentials the same as in the Central Provinces, and that, even in Bengal, where there was a separate judicial service, a similar system had been generally adopted.

Mr. Grant hoped that these explanations would be sufficient at the present stage of the proceedings. In seeking to devise a Code of agricultural law for a country in which agriculture was the life and the breath of the people, the framers of the Bill had not been unmindful of the vast importance, for good or for evil, even of the pettiest details; but they could scarcely hope to have been entirely successful in the attempt to adapt fixed rules to a rapidly-changing state of society, and to satisfy all the various interests which the inevitable substitution of competition for custom had forced into conflict with each other. The difficulty of the task had been enhanced by the hopelessness of obtaining real assistance from the classes which would be affected by the law. Legislation of this kind was almost like prescribing for a dumb patient—there was nothing to guide us but external symptoms; and, however anxiously they might be watched, we could not but know that all our treatment was merely empirical. Out of the silence of public opinion one sentiment alone had persistently and unmistakeably made itself heard, and that was, that abrupt and sweeping changes were feared, no less than disliked; indeed, that many would rather "bear those ills they have, than fly to others that they know not of." Even, then, if we were not forced by ignorance to feel our way, we should, in deference to these feelings, shun heroic remedies; and in this doctrine must be sought the justification of the Bill, in so far as it might appear to place caution and compromise above symmetry and vigour.

The Motion was put and agreed to.

The Hon'ble MR. GRANT also moved that the Bill be published in the *Central Provinces Gazette* in English and in such other languages as the Local Government thought fit.

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSES COURTS BILL.

The Hon'ble MR. STOKES asked leave to postpone the motion for leave to introduce a Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

Leave was granted.

The Council adjourned to Friday, the 20th August, 1880.

SIMLA;
The 6th August, 1880.

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

G. C. B. Press, Simla.—No. 278 L. D.—16-8-80—250.