

Thursday,
18th May, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

Jan.-Dec., 1882

Not to be taken away.

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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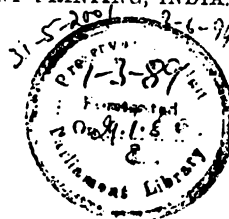


Published by the Authority of the Governor General.

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.

1883.



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 18th May, 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 Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.

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

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

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

The Hon'ble C. P. Ilbert.

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

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

The Hon'ble W. C. Plowden.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

JHÁNSÍ ENCUMBERED ESTATES BILL.

The Hon'ble MR. CROSTHWAITÉ presented the final Report of the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhání Division of the North-Western Provinces.

The Hon'ble MR. CROSTHWAITÉ also applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said:—"My Lord, I think I may state briefly why we make this request, and why the passing of this measure has been so long delayed. The Bill has been a long time before the Council. It was first introduced by Mr. Bazett Colvin in 1880; but the measure then brought forward differed very materially from that now presented to the Council. The principal feature in that measure was a system of management under which the Revenue-officers undertook to manage the encumbered estates and to pay off the claims that might be proved against them from the profits. Now, I believe I am right in saying that my hon'ble friend Mr. Colvin himself never thoroughly approved of this measure, and that in the Select Committee it did not meet with entire assent. The consequence was that some correspond-

ence ensued between the Legislative Department and the Government of the North-Western Provinces, and during that correspondence Mr. Colvin, taking up the lines suggested by the Government of India itself in the letter written to the North-Western Provinces Government in March, 1879, drafted a new Bill, which he submitted to the Local Government. The Local Government approved of this Bill and sent it up here. This was the beginning of the present measure.

“Then, Mr. Colvin did not come to Simla to attend the Council in 1881, and the consequence was that the Legislative Department had no one to whom they could refer for the details regarding the substantial part of the measure; and so the matter drifted on until December of last year, when I took charge of the Bill from the Hon’ble Mr. Rivers Thompson with his and Your Excellency’s consent. The passing of the Bill has thus been delayed for a considerable time.

“Now, when we consider that one of the essential parts of this measure is to call in claims, to cut down interest and to go behind present compacts and agreements, it will be evident to the Council that any delay in the matter must be very injurious and hurtful. The persons concerned have long known—for the matter has been under discussion for the last six or seven years—that such a proposal is contemplated; and we have lately received a letter from the North-Western Provinces Government, enclosing a report from the Commissioner of Jhānsí, from which it appears that the money-lenders are pressing their claims and doing their best to anticipate the Bill by selling up the very men whose interests we wish to secure.

“It appears to me that no more need be said to shew the necessity for departing from the usual course and for passing the Bill today.”

His Excellency THE PRESIDENT said:—“I think that quite sufficient grounds have been advanced for suspending the Rules of Business in this case. There is an additional circumstance which has led to some delay in the matter to which my hon’ble friend did not advert, namely, that it was necessary in the last stage of the Bill to refer it home for the sanction of the Secretary of State. We have now received that sanction by telegram; and, as everything connected with the measure is completed, and all the persons interested appear to be agreed to it in its present form, and as, moreover, it deals with circumstances so exceptional and so difficult, I think we are justified in passing the Bill without delay. I may explain that some of the defects of the Bill as it was originally introduced struck my hon’ble friend now the Lieutenant-

Governor of the Panjáb when he was a member of Council ; and a note of his on the subject led me to look carefully into the matter, when I certainly agreed with the view of it which His Honour then took, namely, that the Bill as introduced into the Council early in 1880 was not framed in a manner which was likely to secure its satisfactory working. My hon'ble friend Mr. Colvin also shared the same opinion. Under these circumstances, the whole of the Bill was recast—an operation which took a considerable time, especially as it involved financial considerations of no small importance. I am very glad, however, that the matter has now been brought to a satisfactory conclusion, and I have therefore no hesitation in declaring that the Rules are suspended."

The Hon'ble Mr. CROTHWAITE then moved that the final Report be taken into consideration. He said :—

"I need not occupy the time of the Council by discussing the necessity of this measure. For some years past the Government of India has admitted in the plainest manner that the state of the Jhání Division was a discredit to the British Government and a blot on the administration. The Bill now before the Council is substantially the same as that drafted by Mr. Bazett Colvin in 1881, and Mr. Colvin followed as closely as possible the suggestions made by the Government of India in the Revenue Department in a letter to the North-Western Provinces Government, No. 152, dated 14th March, 1879.

"I will explain in a few words the character of the measure which I am asking the Council to pass. The main provisions of the Bill are three—

"The Bill provides, in the first place, for the calling in and investigation of all claims against the embarrassed zamíndárs.

"A special Judge is to be appointed for this duty, and to him are given very large powers in dealing with the claims. In this part of the Bill the provisions of the Dekkhan Agriculturists' Relief Act have been followed.

"There is no doubt that contracts and agreements of old standing will be interfered with in an arbitrary manner, very much being left to the discretion of the Judge. Speaking for myself, I think that such a measure needs to be supported by very strong reasons. One of the main objects and the best result of a system of law is the education of the people in habits of honest and upright dealing. Nothing can be worse than to give men to understand that whatever engagements or compacts they enter into may be set aside at the will of a Judge—who will relieve them from burdens they have voluntarily undertaken, and save them from the just consequences of their own reckless-

ness. There are, however, conditions in which every Court of equity will interfere, and I think the circumstances of the present case justify the course of action which we contemplate.

“In the first place, it is clear from the reports before us that the parties have never been on equal terms. The Jhānsī peasant is a very ignorant man, and intellectually far inferior to the Marwāri money-lenders with whom he deals; and I am afraid it must be admitted that these latter gentlemen have not always shown a due regard to the interests of their clients, but have been too ready to take advantage of their weakness, ignorance and need.

“In the next place, the peculiarity of the present case is this: A great part of the embarrassment of the zamīndárs is due to old debts contracted when there was no such thing as property in the soil, and when the money was advanced on purely personal security, and carried therefore a very high rate of interest. Now, it is well known that an Indian money-lender—or, indeed, any money-lender—dealing on such terms seldom calculates on recovering his principal directly, but trusts rather to what he can squeeze out of his debtor in the way of an exorbitant interest year by year. The money-lenders did not care to take ulterior measures. In fact, there were no ulterior measures to take, as, even if under the Native Government they had ousted the raiyat and taken his land, they would have merely gained a right to cultivate at an assessment or rent which left little profit.

“What happened is thus described by Mr. Jenkinson, an officer of high reputation in the North-Western Provinces, who settled the district in 1867. He says:—

“‘The money-lenders kept the names of their clients on their books, allowing the original loans to increase year by year by the addition of interest and compound interest and by renewing the bonds from time to time. In this way sums which have been originally insignificant have swollen into enormous amounts; and now’ (that was in 1867) ‘the money-lenders, seeing that a settlement has been made on liberal terms, and their property is secure, are eager to get the estates of their debtors into their own hands.’

“I think that statement is sufficient to justify the interference we contemplate.

“Well, having reduced the claims against the zamīndár in this arbitrary but, as I trust you will think, not inequitable manner, the next step is to deal with the residue of them.

“My Lord, the Government has been ready to acknowledge its responsibility in this matter; and it has come forward in a liberal manner to do what is possible for these unfortunate men.

“It has been decided to advance to the zamíndár a sum equal to six times the annual profits from his land, on the security of his rights in the land. If that sum is enough to pay the claims certified against him, they will be paid off, and the money recovered from the zamíndár with five per cent. interest by instalments extending over ten years.

“If it is not enough, then his rights in the land must be sold. Unless there is a higher bid—a thing very unlikely to happen in Jhánís—the Government will purchase the property at a sum equal to ten times the annual profit. The zamíndár will then be a tenant of his sir-land, holding under the auction-purchaser, whether Government or a private person, at a beneficial rent.

“It may be asked, why does the Government propose to purchase the land, since the position of the zamíndár as an ex-proprietor will be the same whether Government or a private person purchases his rights? This is a question I am bound to answer.

“There are several reasons for the course we have adopted. In the first place, it is evident that, as many estates will be thrown into the market, the value of this kind of property would fall; and the creditors would perhaps get only a portion of their dues. As the Government has determined to deal somewhat arbitrarily with the claims, it is perhaps only fair to take measures to prevent the depreciation of the value of the property which is to satisfy the just debts. That is one reason.

“Another reason is that the Government intends to do much more for such of the zamíndárs as are intelligent and deserving than appears on the face of the Bill. If the property is bought, as we hope in most cases will happen, by the Government, it is intended to use the zamíndár as an agent for the management of such land as may be in the hands of tenants, and for the collection of their rents, and to degrade him as little as possible. He will, in fact, be restored as near as may be to his former position either of headman and Government agent in the village, or of a raiyat cultivating under Government. His income may be nominally somewhat less than it was before, and he will have no property in the soil which he can sell or mortgage; but he will be free from debt, and will only be responsible for his own rent and so much of the rents of others as he may collect.

“Last, but not least, we have other people to think of besides the zamíndár. There are the tenants or cultivators of the land. There is nothing in the reports to show what proportion of land is cultivated by the zamíndárs themselves, and what proportion by tenants under them. The average area of the properties with which we have to deal is said somewhere in the reports to be

about 40 acres. It is not probable, therefore, that the tenantry are a very numerous body, but there will, nevertheless, be perhaps two or three for every zamíndár, and it is necessary and right to look after their interests. Until we took their headmen and interposed them between the cultivators of the soil and Government, the cultivators were the raiyats of Government, paying their rent to Government. There is no doubt that in making landlords out of the village headmen we degraded the raiyats, and subjected them to the demands and caprices of a needy landlord. By purchasing the property it will be possible to restore the raiyats to their old position, to fix their rents for the term of settlement and give them a more secure tenure of their holdings.

“ I think, My Lord, these reasons are sufficient to justify the unusual action of Government in coming forward to purchase these properties.

“ For my own part, I think it is a course which has a great deal to recommend it. It is a course which I should like to see adopted elsewhere, and on a larger scale, and which I have long advocated as the best method of preventing the evils which too commonly arise in this country from the transfer of land from the old agricultural to the commercial classes.

“ I think I have now sufficiently explained the scope of the measure. The Bill, it cannot be denied, is a confession of error. We propose to spend a large sum of money, not to improve the land or open communications or add in any way to the wealth of the country, but merely in order to place these Jhání zamíndárs back in the same position in which we found them when we annexed their country. And in the meantime, during the five and twenty years which have elapsed, have these men of Jhání had a happy time? Have they had cause to bless us? I am afraid not. The interim has been chiefly spent in making them pay revenue when they had not the means, and in harassing them for arrears which they could not pay. It is written in the records of the Board of Revenue.

“ But if the Bill is a confession of error, it is also an attempt to repair the mistake and to atone for an unintentional wrong. And that is why I dwell upon this matter, because I am afraid that the Bill, if the matter is left to it alone, will not be successful. I will not enter into a discussion as to the causes which have led to such disastrous results. Such a discussion, although of great practical value, would take a long time, and could hardly be brought to an issue here. But I feel bound to say this much, that, having seen the flourishing state of the Central Provinces, where the same system existed under Native rule, and where we pursued exactly the same course, I cannot admit that those persons are right who attribute the greatest share in the effects which we

deplore to what they call 'the fatal gift of proprietary right.' The possession of the proprietary right, no doubt, was a condition which enabled these men to obtain money. But it was not the cause of their requiring it.

"We ought to look to our revenue system and our revenue administration. It is on record that after the Mutiny we compelled these men to pay again to us the revenue which had already been collected from them by the rebels. It also appears that, in 1868-69, when there was a severe drought and a scarcity approaching to famine, scant consideration was shown to them; and if this was done under such circumstances, what chance is there that they met with more liberal treatment when suffering under minor and less conspicuous difficulties? It is quite true that, during the last decade, since their state has become known, and their inability to pay has been recognised, the Government has dealt with them in a liberal manner. But it is a fault in our system that such knowledge comes too late, and that we hardly ever remit revenue or revise an assessment until the mischief has been done.

"The truth is that agriculture in Jhání is a precarious business; and this fact should be recognised. In introducing the Bill, Mr. Bazett Colvin said:—

"In conclusion, I have only to say that the importance of modifying the revenue system of Jhání and of adjusting it for the future in some way to the variations in the annual produce of the harvest has not escaped the attention of the North-Western Provinces Government, and the question, I believe, is now under consideration and discussion. Personally, it seems to me that no scheme for relieving the distress of the proprietors in Jhání can be permanently successful which does not provide for this.'

"This was said by Mr. Colvin in February, 1880.

"In conclusion, I have to say exactly what Mr. Colvin said. I believe that, until the revenue-system is altered, there is no security against the recurrence and extension of the Jhání difficulties; and I believe also that the matter is still under the consideration of the Local Government."

The Hon'ble Mr. PLOWDEN said:—"I should experience very unqualified satisfaction in aiding in the passage of this Bill through the Council, were it not for the fact that I cannot but deplore the great delay that has taken place in putting the Bill before the Council. The Hon'ble Member in charge of the Bill has stated that, of these two Bills which were brought before the Council, the first was brought forward in 1880; and he has referred also to the fact that the consideration of this measure of relief for the embarrassed zamindárs in the Jhání Division has been before the Local Government and the Government of India for some six years. In turning to one of the Revenue Administration Reports of the North-Western Provinces for 1876-77, I

find that the Deputy Commissioner of Jhání, who was responsible for the administration of the district, remarked, so far back as 1876, that the transfer of property in his district 'was probably checked to some extent by the inquiries which had been made into the indebtedness of the landholders, these inquiries having, it appears, led them to hope that a scheme for the liquidation of their debts was under consideration.'

"In very singular contrast to this is the passage cited by my hon'ble friend, which may be seen in the paper submitted to the Council containing Mr. Kaye's remarks to the Board of Revenue not two months ago. He says :—

"The introduction of an Encumbered Estates Act for Jhání has been discussed for years. It is perfectly well known that such an Act may be passed any day. Similar Acts affecting other parts of the country have been passed, and the money-lending class thoroughly understand how their interests are likely to be affected when the Jhání Act becomes law. Naturally, they are doing all they can to protect themselves beforehand, and are foreclosing mortgages and executing decrees which would otherwise have been allowed to run on. For the same reason they are unwilling to grant fresh loans; and landholders, who at other times would have been able to raise money to stave off pressing claims, are unable to do so. So far, the action taken with reference to the contemplated Bill has had but one result, and that is to ruin a considerable number of the very class it is designed to serve.'

"Now, My Lord, I have noticed this matter, because I think that this measure cannot be considered to be a remedial measure: it is simply a measure of relief intended to put the landholders on a footing different from that on which they rest at present, and to place them on somewhat the same footing as they were before they began to borrow money to pay their arrears of revenue. But I think it necessary that some attention should be drawn to the fact that the position of these persons is due more to the pressure to recover the revenue for which they are responsible than to any other cause; and, this being the case, it is within the power of the Local Government to adopt a line of action which shall prevent a recurrence of the unfortunate results which the present Bill is designed to relieve.

"These results have, I believe, occurred simply because, in times of drought and scarcity, the landholders have not been able to pay their revenue, though they have been called upon again and again to 'stump up'; and it is impossible for these men, with the very small resources at their command, to yield to the Government pressure in this matter without at the same time encumbering their estates very largely. If now the Local Government will adopt the line of action of allowing revenue which from scarcity or any other cause the landholders cannot pay to lie over for a short period, at the same time taking interest while the payment is deferred, they will, I think, assist the landholders to a material extent.

“I shall certainly support the Bill, though, as I have said before, I am sorry for the delay which has occurred in placing it before the Council.”

His Excellency THE PRESIDENT said :—“With respect to the delay that has taken place, I should like to make one or two further remarks. I of course have no personal experience of the delay which took place before the time when I came out here two years ago. At that time the position of the matter was this.

“The Bill as originally brought in—which, as my hon’ble friend Mr. Crosthwaite has explained, was a very different Bill from the present one—was then before the Council. It was under reference to a Select Committee, who went into it very carefully, and, as I have already explained, towards the end of the time when we were at Simla in 1880, Sir Charles Aitchison spoke to me upon the subject, if I mistake not. At all events, he recorded a note in which he expressed doubts as to the propriety of adopting the Bill in the form in which it then stood. As soon as I was able to resume business at Calcutta after my illness, I looked carefully into the matter. It seemed to me that the views put forward by Sir Charles Aitchison were very just, and I conferred with Mr. Bazett Colvin upon the subject at the commencement of last year. He then said that he should himself have preferred a Bill upon the lines of the present Bill rather than upon those on which it was introduced under Lord Lytton’s Government, and I then requested him to draw up the Bill in the form which he thought that it should assume. That Bill involved a very important principle, that of advances upon the part of the Government—a principle which it is impossible to adopt all over the country, because of the enormous cost; and it therefore required to be considered with very great care, in order that we might see whether the circumstances of Jhānsí would justify the adoption of such a measure as clearly exceptional in its character. Well, Mr. Colvin prepared his draft, conferred with Sir George Couper on the subject, sent up the draft here, and it was then very carefully considered by the Financial Department. My hon’ble friend Major Baring very handsomely accepted the principle for this particular case, thinking that there were sufficiently exceptional grounds for doing so. The measure was, therefore, in fact, in a condition in which it might have been passed last session at Calcutta, if it had not been necessary, under the orders of the Secretary of State, to refer it home to him before passing it. He lost no time in considering the matter, and in conveying his sanction to it by a telegram; and it is on that telegram that we are now acting. I mention these facts merely to show that the subject is one of a very difficult character, requiring to be treated with very great care; and that, although there has been more delay than would have been desirable, the matter has not been neglected, and that the delay has not been the result of any carelessness

on the part of the Government in regard to it, but may truly be said to have arisen from the intrinsic difficulty of dealing with a question of this kind as we propose to deal with it in this Bill. I think the public should understand that that is the position of the case.

“With regard to the question of the alteration of the revenue system, referred to by my hon’ble friends Mr. Crosthwaite and Mr. Plowden, that is a question which I will not attempt to discuss upon the present occasion. I can only say that it is a matter of great importance, and that it is receiving the careful consideration of the Government.”

The Motion was put and agreed to.

The Hon’ble MR. CROSTHWAITE then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 1st June, 1882.

SIMLA ;
The 18th May, 1882. }

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