

Wednesday,
30th August, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1882.

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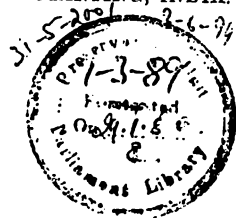
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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 30th August, 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., 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.

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

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

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

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

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

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

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble Mr. CROSTHWAITE asked for leave to postpone the presentation of the further Report of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces.

Leave was granted.

DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, AMENDMENT BILL.

The Hon'ble Mr. HOPE moved for leave to introduce a Bill to amend the Dekkhan Agriculturists' Relief Act, 1879. He said :—

“I think that the fact of this being the second application which it has been necessary to make to this Council for the amendment of the Act of three years ago is a very remarkable illustration of the capabilities of language for concealing our thoughts.

“The original Act was framed by draftsmen of unquestionable skill; it was hotly debated on, section by section, in some instances phrase by phrase, while the disputants on both sides understood thoroughly what the words about which they were disputing were intended to mean; and yet we find, when the Act has passed into totally different hands for the purpose of being carried out, that what we deemed plain is found to be obscure; that we are

told that when we thought that we were enacting white, we unmistakably enacted black ; and that some points which we deemed the Bill fully provided for are not provided for at all. No doubt we must accept this state of things with a certain amount of humility, perhaps, not unmixed with a slight sense of wrong. However, it would appear that the only course open to this Council is to introduce an amending Act so as to make the original intentions perfectly clear, and while doing this it may legitimately take the opportunity of making any minor improvements in wording and machinery, so long as these are in harmony with the intention of the original measure.

“The alterations which it is proposed to make in the Act, which I ought, perhaps, strictly speaking, to state now, when moving for leave to introduce the measure, are, in the main, three: The first consists of two or three provisions which deal with the subject of redemption. It is proposed that the provisions relating to suits for an account should apply to suits for an account and redemption where mortgaged property is concerned, and that redemption itself should be allowed to take place though the period fixed for it may not have arrived ; moreover, it is desired to carry out the intention of the original Bill, that the instalments contemplated by section 20 should be allowed in redemption-suits as well as in other suits.

“Under the second head is an amendment of sections 21 and 22, so as to carry out the original intention that they should be retro-active, and should apply to all the enormous number of old decrees which were then in existence. In consequence of their having been interpreted not to have retro-active effect, it has occurred first, that whereas we thought that we had put an end to imprisonment for debt, some sixty persons have been imprisoned during the last two years, besides which a considerable number of warrants have been issued but not executed ; and secondly, that management by the Collector, which is a suitable measure for dealing with such old cases, has been held to be in-applicable.

“Next, it is proposed to make clear what was always intended, that the Courts, when directing insolvency-proceedings to be instituted, should be able to do so of their own motion, and not simply when they were moved by the judgment-creditor in the suit, who perhaps would be a person interested in the opposite direction.

“These are the three principal alterations which it is proposed to make. Besides these, there are two or three minor alterations or improvements in the detailed machinery, by which it is proposed to make the Act more consistent and harmonious. The first is that of providing for a revision instead of an appeal in all suits to which sections 12 to 15 apply, so as to avoid the anomaly of different controlling authorities dealing with the same subject. Secondly,

we propose to allow the conciliators to summon either of the parties in a case who does not make his appearance, and also to limit the certificate which the conciliator gives to a certain fixed time in its operation, so as to prevent its being used as a means of intimidation for an indefinite period. Thirdly, it is proposed to give to the Special Judge power to refer any difficult case that may arise for the opinion of the High Court.

“I have only to say, in conclusion, that these imperfections have very seriously impeded the operation of the Act; more especially have they prevented the working of the compensatory powers it was intended to provide—that is to say, the giving to the creditor all that could reasonably be got out of the debtor’s estate by effective management, in lieu of the powers of annoyance and oppression of which he was deprived; and even the principal machinery was not in tolerable working order until last year.

“However, it may be said with confidence that experience has hitherto uniformly shown that, in every instance in which the Act has been able to work fairly, it has worked with great success. At the same time, until complete effect has been given to all its provisions by the amending Bill which I now have the honour to ask leave to bring before the Council, and until a year or two of experience of the whole amended Act has been actually acquired, it cannot be said that even an approach to a fair trial has been afforded to it.”

The Motion was put and agreed to.

BRITISH BURMA PILOTS BILL.

The Hon’ble MR. ILBERT moved that Major the Hon’ble E. Baring be added to the Select Committee on the Bill to provide for the grant of licenses to Pilots in British Burma and for investigating certain charges against them.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 6th September, 1882.

SIMLA ;
The 30th August, 1882. }

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