

Friday,
19th February, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
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ASSEMBLED FOR THE PURPOSE OF MAKING
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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 21 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th February, 1886.

P R E S E N T :

The Hon'ble C. P. Iibert, C.S.I., C.I.E., *presiding*.
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.
Major-General the Hon'ble T. E. Hughes, B.A.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

BENGAL TENANCY ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. EVANS moved that the Bill to amend sections 12 and 13 of the Bengal Tenancy Act, 1885, be taken into consideration. He said :—"I do not think I need make any further remarks on the provisions of the Bill. The wording has been carefully considered by the Hon'ble the President, the Hon'ble Peáry Mohan Mukerji and myself, and there has been no objection found that requires consideration."

The Motion was put and agreed to.

The Hon'ble MR. EVANS also moved that the Bill be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to amend the North-Western Provinces Rent Act, 1881. He said :—

"The changes proposed are not of a revolutionary character. They do not touch substantive law, and relate merely to the provisions respecting appeals in cases under the Rent Act."

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“ These cases are classified as applications and suits. In certain classes of applications, decisions passed by a Collector or Assistant Collector of the first class, when the value of the subject-matter exceeds Rs. 100, are declared to be final, subject to revision by the Commissioner of the Board ; the obvious intention of the law being to stop further litigation after the first judicial decision, leaving to the superior revenue-authorities power to correct errors in exceptional cases. The effect of these provisions has, however, been very different. Petitions sent by posts are received and acted on by Commissioners and the Board of Revenue ; and under the Court-fees Act applications to those authorities require a stamp of only one rupee. Advantage has been taken of these facilities to work, to an extent never contemplated, the provisions respecting revision to which I have alluded, and the result is that a large number of cases come before Commissioners and the Board in which no action is called for, and that two appeals are given in cases where the law says there should be no appeal at all. In the year 1883-84 the number of these applications received by Commissioners was 2,594, and by the Board 1,044, the latter being in fact second appeals. Nearly 67 per cent. of these petitions were dismissed, as there appeared no ground for interference with the orders. The disposal of such cases, however, encroaches very materially on the time of Commissioners and the Board, and fosters gambling litigation. It is proposed therefore to sweep away altogether the revisional powers of the Commissioners and the Board in such cases, and to substitute for them one regular appeal, irrespective of the value of the subject-matter, to the Commissioner ; a second appeal to the Board being allowed only when the Commissioner reverses or modifies the order of the Court of first instance. These appeals will bear the stamp provided by the Court-fees Act in analogous cases, which is an *ad valorem* duty calculated on one year's rent. We believe that this will in some parts of the country at least check the practice of filing groundless applications which has grown up under the present law, while it will offer no serious deterrent to applicants whose cases require a remedy.

“How far the alterations will produce this effect is of course uncertain, and some time must elapse before the effect manifests itself. Meanwhile, however, in at least two divisions the judicial work of Commissioners under the Rent Act has become so great as to cause unreasonable delay to suitors and to embarrass the administration in other departments. The Bill therefore proposes to give to Commissioners a power, to be exercised under the control of the Local Government, to transfer to Collectors appeals from the orders of first class Assistant Collectors pending in their Courts, and to Collectors power to

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dispose of such appeals. As set forth in the Statement of Objects and Reasons, this power is analogous to one conferred on Judges by the Bengal Civil Courts Acts to transfer for disposal to Subordinate Judges appeals from the decisions of Munsifs pending in the Judges' Courts. Collectors already dispose of appeals from certain classes of orders of Assistant Collectors of the first class, and as the power will be exercised under the control of the Lieutenant-Governor precautions will be taken against any inconvenience arising to suitors from its use. It is not expected that the number of appeals transferred will be such as to overburden Collectors. There are seven districts in the Benares division, where the measure is likely to be first put in force, and the number of cases that would fall to each Collector by transfers from the congested file of the Commissioner would not constitute an addition to his work of which he could reasonably complain. In the divisions where the judicial work of the Commissioner is not excessive the powers will not be put into operation.

"So much as regards appeals from applications. In the provisions of the Act respecting appeals from *suits* the Bill proposes to make only one change.

"The Rent Act, as it stands, allows of an appeal from the decisions of Collectors, and Assistant Collectors, first class, in rent-suits only when the value of the subject-matter is over Rs. 100 or some question of title is involved. Rent-suits have, however, this peculiarity, that the decision in a single case may govern rents throughout an entire village where the question disputed is the rent to which a tenant is liable. The decision on this point may be of the utmost consequence, not merely to the parties concerned but to a great number of other persons also. It is therefore very desirable that there should be an opportunity for correcting by an appeal erroneous decisions of this nature. If the value of the suit does not exceed Rs. 100, no such remedy now exists; and in the North-Western Provinces the value of the subject-matter in the great majority of rent-suits does not exceed Rs. 100. There is a further inconvenience, too, arising from the present state of the law on this point. A landlord, let us suppose, sues two tenants in the same village before an Assistant Collector of the first class for arrears of rent, the arrears being in one case Rs. 99 and in the other Rs. 101. In both cases the same plea is raised, that the rate at which rent is sued for is in excess of that payable, the holdings are similar in character, the plaintiff and the evidence adduced in both cases are the same, and there are numerous holdings in the village in which the same dispute exists. The Assistant Collector finds that the pleas are bad and decrees at the higher rate. In one case his decision is final and the higher rate is payable ever after so long as the tenancy continues; in the other an

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appeal is brought to the Judge, who takes a different view and finds that the rate payable is that alleged by the tenant, which similarly becomes the rate binding on the parties. Two contradictory decisions on what is practically the same issue thus receive the stamp of finality, and the tenants in the village and the landlord himself are not sure of their legal rights. Attempts at exaction, unnecessary litigation and soreness of feeling necessarily ensue. Cases of this nature have already occurred, and the mischief done by the state of the law is not inconsiderable. The Bill therefore proposes to allow an appeal from the decision of a Collector or Assistant Collector, first class, in cases where the value of the subject-matter does not exceed Rs. 100, not merely where a question of title is involved, but where the rent payable is put in issue and determined.

“Opportunity has been taken of the preparation of this Bill to correct an obvious omission in the existing law from which inconvenience has already resulted. Act XXI of 1881 gives no power to the superior Revenue Courts to transfer or bring on their own files cases pending in subordinate Courts — a power conferred on the higher Criminal and Civil Courts by the Codes of Criminal and Civil Procedure respectively, and on the superior Revenue Courts in other provinces by the Rent or Revenue Acts therein in force. The consequence is that officers are sometimes forced by the state of the law to dispose judicially of cases in which they have been concerned in their executive capacity. A case came recently before the Board in which a party in a rent-suit tried by a Tahsildar prayed to have his appeal heard by some other officer than the Collector of the district, who was also, as President of the Municipal Committee, a party to the suit. The Board were unable to pass the order asked for, as the law gave them no power to transfer a case from one Revenue Court to another. I need not waste the time of the Council by dilating on the necessity for applying a remedy to such a state of things. The Bill proposes to effect this by conferring on the Board of Revenue the powers required for the purpose.”

The Motion was put and agreed to.

The Hon'ble Mr. QUINTON also introduced the Bill.

The Hon'ble Mr. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

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[*Mr. Quinton.*]NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMEND-
MENT BILL.

The Hon'ble Mr. QUINTON also moved for leave to introduce a Bill to amend the North-Western Provinces Land-revenue Act, 1873. He said :—

“ Here also I have no startling changes to announce. The revenue laws of the North-Western Provinces impose upon the Commissioner of a division certain duties which can be discharged by him alone. If therefore in any division the work arising out of these duties increases or accumulates to an unmanageable extent, the law affords no means of relieving the Commissioner short of breaking up the old division, constituting two new divisions and appointing a second Commissioner. The creation of a permanent appointment of this nature is generally more than the circumstances call for, and is a measure which in any case the Lieutenant-Governor would in the present straitened condition of the finances be very unwilling to recommend, and the Government of India and the Secretary of State still more unwilling to sanction. In the Bill which I have just obtained leave to introduce measures have been proposed, one effect of which we hope will be to lighten one branch of the Commissioner's duties. The operation in this direction of the alterations proposed in the system of appeal is uncertain, and in parts of the North-Western Provinces will not contribute very much to this result in consequence of the small size and low rent of the holdings. The plan of re-distributing the work when it bears heavily on Commissioners among the District Collectors is at most a temporary and tentative contrivance for adjusting the strain upon the Divisional Officers, and would be insufficient if the pressure were serious or prolonged.

“ In Bengal, Bombay, the Central Provinces and the Punjab the law allows of the appointment of Additional or Assistant Commissioners to meet cases such as those I have referred to, and relief of this nature has with advantage been not unfrequently afforded.

“ The Bill which I am asking leave to introduce proposes an analogous measure for the North-Western Provinces, and is drawn upon the lines of the Act passed by the Council last year, which authorized the appointment of an Additional Judicial Commissioner in Oudh—an appointment which I may say was made for a limited period now expired, and quite justified the reasons which induced the Council to pass the Act.

“ The power to appoint an Additional Commissioner in any division can be exercised only with the sanction of the Governor General in Council, who is

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little likely to approve of unnecessary or extravagant appointments; and there is no intention of putting it in force till the transfer of appellate work to Collectors has been seen and tested."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble Messrs. Goodrich and Quinton and the Hon'ble Rao Saheb Vishvanath Narayan Mandlik be added to the Select Committee on the Bill to amend the Code of Criminal Procedure 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

The Motion was put and agreed to.

The Council adjourned to Friday, the 26th February, 1886.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India,

Legislative Department.

FORT WILLIAM; }
The 25th February, 1886. }