

*Thursday,  
16th February, 1893*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XXXII**

**Jan.-Dec., 1893**

ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS,

1893

VOLUME XXXII



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1893

*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 Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.*

The Council met at Government House on Thursday, the 16th February, 1893.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

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

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

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

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble Raja Udai Partab Singh, C.S.I., of Bhinga.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble DR. Rashbehary Ghose.

The Hon'ble Mr. Palli Chentsal Rao Pantulu, C.I.E.

The Hon'ble Mr. Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

SUPPLY OF PROVISIONS TO GOVERNMENT OFFICERS ON TOUR.

The Hon'ble RAJA UDAI PARTAB SINGH of Bhinga asked whether the attention of Government has been drawn to the hardships to which cultivators and village shop-keepers are subjected under the present system by which tahsildars collect *russuds*, *viz.*, provisions, fodder and fuel, etc., for Government officers on tour ; and whether it would not be advisable to institute enquiries into the present arrangements with a view to relieve the cultivators and venders of the burdens now laid upon them.

The Hon'ble SIR PHILIP HUTCHINS replied :—

“The attention of the Government of India has not been specially directed to the hardships alleged by the Hon'ble Member in his question to be suffered

[*Sir Philip Hutchins; Dr. Rashbehary Ghose.*] [16TH FEB., 1893.]

by cultivators and village shop-keepers owing to the system of collection by tahsildars of supplies for Government officers on tour. There was indeed one petition received from certain 'ilakadars and raiyats' in Behar some months ago, in which it was stated, among other things, that the Sub-Divisional Officer brought 500 or 600 persons in his train, and that these people required things not usually found in villages and brought ruin on the villagers. It does not appear that any 'shop-keepers' took part in this representation: and, supposing them to be paid for their goods, it would clearly be to their advantage that their customers should be as numerous as possible. This petition was transferred to the Local Government for disposal. Complaints relating to this matter have occasionally been noticed in the Vernacular Press, but they have been for the most part of a general nature, and too vague to justify an order for enquiry. The subject is one within the province of the Local Governments to deal with, and the Government of India have no doubt that it has attracted their attention, and that in most, if not in all, provinces orders exist, in the spirit of section 8 of Bengal Regulation XI of 1806, requiring 'a just price for the provisions or other articles provided to be secured to the persons entitled thereto,' as well as forbidding requisitions for more articles than are actually required, and prohibiting the interference of the tahsildar at all where there are regular shops or markets at which the necessary supplies can be readily obtained. I may perhaps add my belief that officers on tour generally make it a rule either to pay for their supplies personally, or at least to satisfy themselves that the price of any supplies which have been procured through the tahsildar has reached the person from whom they have been obtained.

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"The Government of India will, however, have great pleasure in circulating the Hon'ble Member's question and this answer to Local Governments and Administrations, in order that their attention may be specially drawn to the matter, and that they may consider whether the present arrangements sufficiently provide for the avoidance of hardship to the furnishers of supplies, and, if not, in what way they should be supplemented."

#### PARTITION BILL.

The Hon'ble DR. RASHBEHARY GHOSE presented the Report of the Select Committee on the Bill to amend the Law of Partition. He said:—

"In presenting this Report I have very little to add to what is contained in the Report itself. We have made no change in the substance of the Bill, but

16TH FEBRUARY, 1893.] [*Dr. Rashbehary Ghose.*]

we have supplied some omissions ; for instance, in section 3 we say that the Court shall not only value the share or shares but proceed to a direct sale. We have also added a clause prescribing what is to be done should a shareholder or shareholders who have applied for leave to purchase ultimately refuse to do so.

“Some verbal alterations have also been made in some of the sections to avoid ambiguity, which is always a fruitful source of litigation, as every lawyer knows, and some suitors too by painful experience.

“We have omitted two sections of the Bill because the matters which were dealt with in those sections are sufficiently provided for in the Code of Civil Procedure, which will govern all proceedings in suits under the proposed Act.

“We have also in deference to a suggestion made by the Calcutta High Court altered the language of section 8 as the sections are now numbered. The section has been now so framed as to give parties a right of appeal from an order directing a sale under section 3 or section 4 which would include the valuation made by the Court.

“We have also extended, to a certain extent, the operation of section 10, the last section of the Bill, so as to make it applicable to all cases in which a final decree for partition has not been made.

“I ought perhaps to say a few words with regard to some suggestions made by the Local Governments but which the members of the Select Committee felt themselves unable to accept. The Bengal Government recommended that tanks, specially old tanks, should be dealt with in an exceptional way, and that the rule which requires the consent of at least one-half of the shareholders before the Court can direct a sale should be relaxed in the case of such tanks. The suggestion was, I think, made in the interests of sanitation, but the members of the Select Committee felt themselves unable to comply with the request because it was thought that a sufficient case had not been made out to entitle Court to deal with tanks in the way suggested by His Honour the Lieutenant-Governor of Bengal. I may also say, from my own experience, that such an amendment was not likely to be acceptable to the people, especially in the case of kirkee tanks, which are regarded as appurtenant to private houses and are used, for domestic purposes, by the members of the family, including women.

“Another suggestion of the same Local Government, apparently made on the recommendation of the British Indian Association, was that, having regard

[*Dr. Rashbehary Ghose.*] [16TH FEBRUARY,

to what is called the compulsory character of sales under the Act, something in the nature of compensation should be given to such shareholders as might be obliged to part with their shares on the lines of the Land Acquisition Act. It seemed to the members of the Select Committee, however, that the recommendation was based, to a certain extent, upon a misapprehension of the character of the provisions contained in section 3 of the Bill. That section authorizes no compulsory sale of any shareholder's share. It is only when a shareholder himself applies for the sale of his share that he may be bought up by the other shareholders, so that there can be no compulsory sale at all under the Act. The Government of the North-Western Provinces and Oudh proposed that certain words should be added to sub-section (4) of section 1 of the Bill so as to avoid what appeared to the Local Government to be a conflict between the provisions of this Bill as also those of section 265 of the Code of Civil Procedure and the local Act, XIX of 1873, dealing with the partition of estates actually paying revenue to Government or the land-revenue of which has been redeemed. It seemed to the members of the Select Committee, however, that there was no real conflict whatever in this matter. The present Bill does not in any way enlarge the jurisdiction of the Civil Courts, nor does it curtail in any way any jurisdiction possessed under local or other statutes by the Revenue Courts in any part of the country. The jurisdiction of the Revenue Courts is, moreover, amply protected and safeguarded by sections 4 and 11 of the Code of Civil Procedure. A recommendation in the nature of an amendment to this section was also made by the Government of Madras. That Government proposed that the words 'immoveable property paying revenue to Government' ought to be defined so as to make it clear that raiyatwari holdings in the Madras Presidency were not intended to be included in the section; but, as the Madras Government themselves point out, the construction which has been invariably put upon the same words in the Code of Civil Procedure excludes raiyatwari holdings from the operation of section 265 of that Code. The Madras Government suggest that we ought, in order to avoid any contention, to say expressly that raiyatwari holdings are not intended to be included. I should, however, think that any attempt on our part to define immoveable property paying revenue to Government would have precisely the consequence which the Madras Government were seeking to avoid.

"Another proposal made by the Madras Government was that, instead of having a separate Act, the provisions of the Bill might be included in the existing Code of Civil Procedure. This proposal was carefully considered by the members of the Select Committee, and an alternative draft was prepared by

1893.] [Dr. Rashbehary Ghose; Sir Philip Hutchins.]

my learned friend Mr. Macpherson, embodying, as far as it could be done, the provisions of this Bill in the existing Code of Civil Procedure. It was ultimately, however, decided by the Select Committee that the provisions of this Bill could not be properly incorporated with the Code of Civil Procedure. The Bill really deals with matters of substance; it affects the ordinary rights of shareholders to a certain extent, and does not therefore fall within the domain of mere procedure. There were other objections too to the proposal of the Government of Madras with which, however, I do not think it is at all necessary to detain Hon'ble Members.

“In conclusion I have only to add that, having regard to the nature of the alterations, which are not of a very material character, the members of the Select Committee do not consider that the Bill requires to be republished, and they accordingly recommend that the Bill should be passed as amended by them.”

#### INLAND EMIGRATION BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Bill to amend the Inland Emigration Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Mackay, the Hon'ble Dr. Rashbehary Ghose, the Hon'ble Palli Chentsal Rao Pantulu, the Hon'ble Mr. Stevens, the Hon'ble Mr. Buckingham and the mover, with instructions to report within five weeks.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 23rd February, 1893.

J. M. MACPHERSON,

CALCUTTA; }  
The 17th February, 1893. }

*Offg. Secy. to the Government of India,  
Legislative Department.*