COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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.

1876.

WITH INDEX.

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1877.

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 Thursday, the 7th September 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, K. C. B.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble T. C. Hope.
The Hon'ble F. R. Cockerell.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the further Report of the Select Committee on the Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

Leave was granted.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE moved for leave to introduce a Bill to consolidate and amend the law relating to Railways in India. He said that the necessity for the Bill had arisen out of a failure to protect lines under construction, and it was now intended to extend to lines under construction the same protection as was in force on lines open for traffic. It was also proposed to take this opportunity of consolidating four of the five Acts which contained the law relating to Railways in India. The remaining Act being superseded by a Bill which was already before the Council in reference

to the Presidency Police Magistrates. The proposed measure was not one with regard to which any difficulty or embarrassment was likely to occur; but in order to guard against possible misconstruction, out of doors, he thought it right to say that the Bill was unlike the Bill of 1867, which gave rise to opposition on behalf of certain interests in connection with the Guaranteed Lines. The present Bill in no way interfered with those interests or attempted to define the terms of the contract under which they were created.

The only other new feature in the Bill related to one or two points which had been overlooked in former Acts; and further security was now sought on behalf of the public, indeed also for the Railways. It was also found that doubts existed as to whether those who were employed about Railway stations in the performance of certain duties, connected with the Railway carrying trade employed under contract, could come under the name of servants of the Company or not. It was found, especially at the larger stations, that by their not being included in the provisions of the Act, they could not be punished for extortion, or for refusing to do certain duties as Railway servants; and opportunity would now be taken to remove those doubts.

With His Excellency the President's permission, a very important movement had been initiated in the Conference regarding Railways which was to assemble in Calcutta next cold season; and it was possible that, upon that occasion, some further measures, the results of the rapid growth and development of Railways, might be suggested. He would, therefore, only ask that the Bill should now be introduced to the Council, with a view to its publication, and that no final steps should be taken with reference to it until we had had the opinion of that body on it, who would no doubt also afford much assistance in considering whether there were any other points relating to this subject on which it would be desirable to legislate.

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble Mr. Hope presented the Report of the Select Committee on the Bill to amend the law relating to the transfer of Bombay Municipal Debentures.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. HOPE also presented the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh.

LAND IMPROVEMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the Land Improvement Act, 1871, and moved that it be referred to a Select Committee with instructions to report in six weeks.

This was a Bill which he got leave to introduce a considerable time ago; but its introduction had been delayed from various causes. The object of it was a single one, namely, to make clear what was the nature of the security that the Government took for the advances that it made to landowners. The Council were aware that the whole object of the Land Improvement Act was to enable the Government to make advances for the improvement of land, and to recover those advances, from the borrower, or his security, in the way in which land-revenue was recovered. He was glad to say that no disputes had arisen hitherto between the borrower and the lender, although there had been a considerable amount of advances made under the Act, especially in the provinces of Bengal. But, on coming to apply the terms of the Act to the recovery of advances, it had been found that there was a little difficulty in making them fit the facts, and some high officials—Local Governments, Secretariats, and Government lawyers—had differed as to the exact meaning of the Act. It was, therefore, desirable that we should make that matter quite clear before any disputes arose between ourselves and those persons to whom we had lent money. Fortunately, there could be little or no doubt as to the principles on which the recovery of such advances ought to be based, and on which every body considered that they had in fact been made.

The difficulties of the Land Improvement Act were as follows: By section 14 the Collector who arranged for the advances was to grant a certificate which, amongst other things, was to specify the position, extent and boundaries of the land to be improved, and the nature and amount of the security furnished, if any, other than the land to be improved. Then the next section—section 15—provided that the amount so specified should be recoverable from the borrower, or his security, as if they were arrears of

land-revenue due by the borrower, or his security; and the section proceeded thus:

"If any such sum cannot be so recovered, it shall be recoverable as if it was an arrear of revenue due on *the land specified in the said certificate*:

"Provided that when the person to whom the advance was made is a landlord or a tenant having a right to transfer his interest in the land without the consent of the landlord, the interest of *no person, other than such landlord or tenant, in the said land*, shall be sold under this section."

Now, on those sections arose three or four questions. The first question was, whether the improved land was so subjected to the charge, that the charge should take effect prior to all other interests in the land, in the same way as arrears of land-revenue would take effect? So that, for instance, if there was a prior mortgage, the advance should be recovered in preference to the right of the mortgagee to recover his debt. That was the first, and most important, question, and he thought that it was also, fortunately perhaps, the least doubtful.

The second question was, whether land given by way of collateral security stood in the same position as the land to be improved? The Council would see that, in respect to this point, the language used was, "land specified in the said certificate." Both kinds of land were to be specified in the certificate, and therefore, under the strict literal construction of the Act, it would seem that both kinds of land were placed in the same position.

The third question was, whether you could avail yourself of all your remedies against the principal, without using the remedies against the surety? Again, on the strict literal construction of the Act, it would seem that we were forced to sue the surety before all the remedies against the principal were exhausted, which was not at all a just proceeding, and was probably one that nobody would desire.

The fourth question was, what was the meaning of the proviso to the fifteenth section of the Act which he had read at length? The language no doubt was obscure, and he had been told by those who understood this subject that the obscurity lay in the word 'interest,' which, to the mind of a plain unsophisticated lawyer, bore one meaning, and to the mind of those learned in land-revenue tenures, such as the gentlemen in the Department over which his hon'ble friend Sir Alexander Arbuthnot presided, bore another. He however believed

the real meaning was, that if the borrower was a landlord, you should not sell the tenant's interest, and that if the borrower was a tenant, you should not sell the landlord's interest.

Fortunately, as he had said, it was very clear what the principles were which should regulate the recovery of those advances; and, in the first place, he thought there could be no doubt in any body's mind that the improved land ought to be subject to the charge in precisely the same way as it was subject to the imposition of land-revenue. That was the general principle—he believed it, indeed, to be the universal principle—on which advances for improvement were made, whether in England, the United States, or India. The advance was for the improvement of the common possession into however many interests the whole ownership might be divided; and, of course, nobody would make the advance unless he was to have the first fruits of the improvement effected by means of the advance.

It seemed equally clear that land given by way of collateral security ought not to be placed in the same position. The surety who gave the land as security derived no advantage from the advance made by way of improvement. It was not his land that was improved, and all persons—mortgagees or others—who had a subsidiary interest in the land, might be materially injured, if the Government were to come in ahead of them and claim to be repaid out of land upon which they had never spent a farthing. Therefore, it ought to be provided that, with respect to land given by way of collateral security, the Government should come in just in the same way as any other lender of money.

He did not think that there was more doubt on the third question, but that we should be at liberty to treat the surety and the principal according to the ordinary rule. Certainly sureties would be exceedingly astonished if they were told that the land of their principal was available in the ultimate resort for the repayment of the money spent upon its improvement, but that the Act was so framed, that we were absolutely compelled to make the surety repay that money before we could proceed to sell the land.

The proposed Bill accordingly dealt with these points, and section 2 provided that advances should be recoverable in all, or any, of the following ways :—

(*a*) from the borrower as if they were arrears of land-revenue due from him :

(*b*) from the surety (if any) as if they were arrears of land-revenue due from him:

(*c*) out of the land to be improved as if they were arrears of land-revenue due on account of such land:

(*d*) out of the property comprised in the collateral security (if any) according to the terms of such security.

That seemed to him to do justice to all parties, and the remedies which were concurrent would, no doubt, be put in force, according to the justice and expediency of each case.

Then there was added to section 2 a proviso expressing what was intended to be expressed in the Act of 1871; and the opportunity was taken of adding a third clause which expressed a principle certainly of justice, possibly of law, namely, that, if the surety was compelled to repay, he should have the same remedies against his principal as the Government would have when the advance was due. He conceived that to be a just provision, and he thought every body would be satisfied to have it expressed in the Act, because, though there was a general principle of law to the same effect, there might be doubt whether it would apply to the very peculiar position in which the Government stood as owners of land-revenue.

He had only to add that although this was a Bill which affected, and must affect, existing contracts, yet we might feel quite assured that all loans that had been made had been advanced by the Government, and had been received by the borrower, upon the understanding that the remedies were such as were expressed in this Bill, and that, so far as they had been recovered, which has been done to a considerable extent, they had been recovered on those same principles.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the *Gazette of India* in English, and in the Gazettes of the Local Governments by which advances have been made under the Land Improvement Act, in English and in such other languages as the Local Governments direct.

The Motion was put and agreed to.

OUDH LAND-REVENUE BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Sir Alexander Arbuthnot and the Hon'ble the Mahárájá of Balrámpur be added to the Select Committee on the Bill to consolidate and define the law relating to the settlement and collection of Land-revenue in Oudh.

The Motion was put and agreed to.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Hope be added to the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the Land Improvement Act, 1871—The Hon'ble Sir Alexander Arbuthnot, the Hon'ble Messrs. Hope and Cockerell, and the Mover.

The Council adjourned to Thursday the 14th September 1876.

SIMLA;
The 7th September 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—12-9-76.