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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.

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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 on Thursday, the 27th July 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb.
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.

OUDH LAND-REVENUE BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to consolidate and define the law relating to the settlement and collection of land-revenue in Oudh. He said that the Bill was originally introduced in 1872 by Sir John Strachey, in consultation with the Chief Commissioner, Sir George Couper, and the Judicial Commissioner, Mr. Currie, who had been intimately connected with the affairs of the Province from its annexation. The Bill was originally drawn on the lines of the Land-Revenue Act for the Panjáb, but intermediately the Bill for the North-Western Provinces was brought forward and the original Bill was considerably modified in accordance with the provisions approved for the North-Western Provinces Land-Revenue Act. Subsequently, the measure was submitted to all the officers of experience in Oudh, and had been minutely revised, and the recommendations of the local officers had been carefully considered by the Select Committee. He had only now to explain the amendments, or rather the more important amendments, which had been made

in Committee. The Council were aware that the proprietary rights in the soil in Oudh were divided among, first, Taluqdárs and other proprietors, in direct relations with the Government; secondly, village communities holding wholly or partly in common, who were jointly responsible for the rents for which they were liable to their superiors; and thirdly, subordinate holders, who had no common fiscal liabilities, but were in possession of holdings for which they paid rent to their superiors. It was owing to the relations between those several classes that the present Bill differed in some of its provisions from the Bills which were approved and passed for the Panjáb and the North-Western Provinces; and the principal amendments which had been made by the Committee related mostly to the relations between those several classes. He would now go through those amendments.

Section 26, as it was originally drawn, allowed the Chief Commissioner to select with which of the two classes, having property in the same mahál, a settlement should be made. Instead of that, it was now provided that in taluqdárí maháls the settlement must be made with the Taluqdár. That was in conformity with the fact, as the settlement had actually been made in the Province, and it was also in accordance with the status conferred upon the Taluqdárs by the Government under certain political engagements. Further, it was certainly for the advantage of the Government revenue that the settlement should be made with the Taluqdár, who had, generally, the larger interest in the property. By section 32, it had been made necessary that the sanction of the Governor General in Council should be obtained before any Taluqdár should be excluded from the settlement of his entire taluqá. That was also done in consideration of the peculiar status conferred upon the Taluqdárs under the political engagements previously referred to. It had been thought proper that with regard to so severe a measure as the entire exclusion of proprietors of what were frequently very large estates from settlements of this kind that the sanction of supreme authority should be first obtained. In practice it had been found that the Taluqdárs had had considerable difficulty in realizing their dues from village communities. Many of those village communities had been in antagonism with the Taluqdárs in former days, and they had not shown that readiness in paying their dues to the Taluqdár that might have been expected from them. It had, therefore, been thought necessary to make some provisions by which the Taluqdár, who was directly liable to the Government for the payment of the revenue, should have certain facilities for collecting his rents from those village communities.

Section 40, therefore, made the under-proprietors jointly and severally responsible for the payment of the dues determined by the Settlement Officer. That, it was believed, would not only be for the benefit of the Taluqdárs, but also for the benefit of all superior proprietors in direct relations with the Government. Section 159 enabled proprietors to apply to the Deputy Commissioner to realize arrears of rent due under a sub-settlement or lease as arrears of revenue. That amendment rested very much on the same reasons as those which he had given with regard to section 40. It had not been thought proper to give the Taluqdár himself the power of realizing his rent as arrears of revenue from the under-proprietors; but it had been considered necessary, when he was in extreme difficulties, owing to the recusancy of those under-proprietors, that he should be enabled to go to the Deputy Commissioner, who would assist him to realize his dues in the way described, thereby saving him great expense and much litigation. On the other hand, some of the amendments were in favour of the inferior classes having interest in the land. Section 135 empowered the Deputy Commissioner to make sales subject to incumbrances. In the present day, sales for arrears of revenue were not common, but, of course, that was the ultimate safeguard of a land-revenue, and it was necessary to contemplate such a possibility. But this amendment mitigated the severity of the original law and protected the subordinate holders whom he had already referred to as having an interest in the land, and, under certain circumstances, it maintained their right intact when the whole mahál was sold for arrears of revenue. Again section 158, which declared when a proprietor was to be deemed a tenant with a right of occupancy, differed from the Panjáb Law. That amendment was also in favour of the old village proprietors, and he considered it a great improvement on the Panjáb Act.

Those, he thought, were all the principal amendments touching on the relations of the several classes having various rights in the soil; but an important innovation had been made in chapter V. According to the proviso which would be found in section 95, the imperfect partition of a joint estate could, under this law, be made with the consent of recorded co-sharers holding in the aggregate more than a moiety of the property. There had been some discussion as to the propriety of that proviso; but it was strongly supported, on practical grounds, by the whole of the Revenue Officers in Oudh, as well as by the Chief Commissioner and the Judicial Commissioner, and His Honour himself entirely approved of it. The theoretical objection to it was, that you ought not to maintain the joint fiscal liability of the co-sharers of a man who wished to get the sole management of his share; but, in practice, it had always

been found that the people themselves were perfectly content with what was called 'imperfect partition'—that was to say, leaving the common fiscal liability of the co-sharers in the mahál untouched, and granting the individual holder the sole management of his land.

By section 174, persons whose property was under the superintendence of the Court of Wards were declared incompetent, without the sanction of the Court, to create charges upon such property. Such a restriction had been proved by experience to be absolutely necessary to the restoration of encumbered estates to a state of solvency.

There was, also, in section 14, an administrative change which was, he thought, an improvement on the original Panjáb Act. It left the specification of documents which were to compose the settlement record to the determination of the Chief Commissioner. He thought that this matter might well be left to the Chief Commissioner's discretion from time to time, and that its exclusion from the body of the Act was an improvement.

Under section 208, the Chief Commissioner was empowered to make rules for the appointment of patwáris; but he would explain that although this provision was put into the Bill, and it would certainly be much the best administrative measure, still there were some objections of the Taluqdárs which remained to be considered, and which his hon'ble friend Mr. Inglis who had most carefully watched over the Bill during its progress would now consult them about.

The Committee had ordered the republication of the Bill, and he believed it would be brought up again after two months time; but it had been so thoroughly considered by every body who was entitled to have a voice in the matter, including the Taluqdárs, that he hoped that the Bill, which had now been so long before the Council, would be passed at Simla during the present year.

His Honour had only to add that he had gladly availed himself of His Excellency the President's permission to take part in maturing the Bill, having been so long associated with all the classes concerned in Oudh, and retaining a lively interest in the prosperity of the Province.

His Excellency THE PRESIDENT remarked that the Government was very much obliged to His Honour for his assistance in placing the Bill in the shape in which it was now before the Council.

OUDH LAWS BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to declare what laws are in force in Oudh.

He said that there was no motion before the Council, and he might present the Report without saying a word. But as three years had elapsed since the Bill was introduced, and no report had been made in the meantime, it would facilitate the final consideration of the Report, which he hoped would take place before they left Simla, if he stated now the principal operations that had been performed, and the existing frame of the Bill.

The reason why this matter had been so long delayed, was that it was closely connected with the Oudh Land-Revenue Bill now in the hands of his friend Sir Henry Davies, and it had been thought desirable to pass the two at the same time. And though no great amount of discussion had arisen on the Laws Bill, a great deal had arisen on the Land-Revenue Bill. That discussion had been carried on principally between the Local Government, its officers, and the Associations or leading individuals who represented the landed interest in Oudh. It was that circumstance which had prevented the Committee from reporting to the Council. Last year there were many meetings of the Committee, and much work was done upon both Bills; but it was found more convenient to send the results to the Local Government for local discussion than to bring them before the Council, and publish them in the usual way. They had now passed the Bills through Committee again, and had reached the stage in which republication was desirable; and he hoped it would prove to be the penultimate stage of this long business.

When he introduced the Laws Bill, he explained to the Council at considerable length what was the condition of the law which made such a Bill as this desirable. Considering the lapse of time and the great changes which had taken place in the composition of the Council, it might be necessary for him, when they came to consider the Report, to recapitulate the heads of that explanation. But it was not necessary for the present purpose. He would now only remind the Council that the principal sources of law in Oudh were three:—

First, there were the enactments which, in their inception or by subsequent extension, were expressly applied to Oudh, either alone or as part of British India.

Secondly, there was the spirit of the Panjáb Civil Code corrected by Oudh customs; and the Panjáb Civil Code was itself the spirit of the Bengal Regulations corrected by Panjáb customs.

Thirdly, there was a quantity of executive orders, unknown and unascertainable except by judicial decision, which were supposed to have acquired the force of law by virtue of the Indian Councils Act of 1861.

The Bill was framed for the purpose of getting rid of the extreme uncertainty and obscurity which hung over the two latter sources of law, and of laying a solid foundation for Oudh law similar to that which was laid for Panjáb law by the Panjáb Laws Act.

The principles of the Bill were as follows: It took hold of the Bengal Regulations which were wanted in Oudh, and expressly extended them to Oudh with the modifications which experience had shown to be proper. All other Bengal Regulations it repealed. It embodied those executive orders which were meant to have the force of law; and all other orders which might be held to have acquired a legislative character under the Councils Act it repealed. Those repeals got rid of the shifting and uncertain elements which at any moment might be unexpectedly erected into law, or unexpectedly denied to be law. It set up personal laws and customs in such matters as marriage, inheritance and other domestic questions of families and communities. It also set up local customs and mercantile usages in all questions. And the most bulky, though not the most important, part of the Bill contained certain special provisions, of which some had grown up as law in Oudh by virtue of judicial decisions, some were taken from the Panjáb Civil Code, and a small portion were innovations supposed to be desirable to introduce.

Such was still the form of the Bill, but the part which contained the special laws had been considerably abbreviated, as might be seen by comparing the two drafts. And he had now to state what alterations the Committee had made and why.

In the Bill as introduced the special laws occupied the third part, and the first chapter of that part related to the subject of Minority. That was now omitted for the following reasons: So far as regarded European British subjects, the Legislature had provided for their case by the Act of 1874 passed since the introduction of this Bill. As regarded Natives, several questions were raised by them, which led the Committee to reconsider the expediency of making any express enactment on this subject. And they thought that the wants of the community would be fully provided for by Act XL of 1858, which related to non-Europeans, and by the family or local customs prevalent in Oudh. That course had been adopted in the Panjáb, and they had the authority of Sir H.

Davies for saying that it was perfectly satisfactory. They had therefore given that turn to the Bill.

The next chapter related to the Court of Wards, and it had been found more convenient to transfer it to the Land-Revenue Bill, because the Revenue procedure was properly applicable to that Court. It had accordingly disappeared from the Laws Bill.

The next chapter related to betrothals of Hindús and Muhammadans, and he might apply to it very nearly the same observations which he had made on the Minority chapter, except that there was no enactment relating to the subject, and that the law would rest entirely on custom.

In that which was originally the fifth chapter and was now the second, the chapter which related to pre-emption, the principal alteration was that the Committee had applied the right of pre-emption to foreclosures of mortgages as well as sales. Here again they had followed the Panjáb precedent. The Council must not disguise from themselves that this was a considerable extension of the custom of pre-emption; a custom to which many experienced officers objected, as one peculiar to the Muhammadans, and not known to the Hindús till introduced to them by our Government, and as interfering with the lawful transactions of mankind. On the other hand, it was said, that however introduced, the privilege was much valued, and that it beneficially retarded the disintegration of the village communities. That those communities had been held together by external pressure, and that they must dissolve under the influences of prolonged peace, equal laws, fixed revenue assessments, and increasing value of land, seemed certain. But when any social change, however inevitable, took place with great rapidity, it was both a painful thing and a dangerous one; and the practice of pre-emption appeared to supply a welcome and a healthy check to the too rapid progress of disintegration. The Hindú societies appeared to feel the relief afforded by it, and the Taluqdárs' Association told them that the privilege was beneficial to the Hindús. The Oudh authorities concurred with those of the Panjáb in recommending an extension of the principle, and the Committee had followed that advice.

Another portion of the original Bill which had disappeared was a part of the fifth chapter relating to the subject of partition of estates. But it had only been transferred to the Land-Revenue Bill for the same reasons which applied to the Court of Wards.

A portion of chapter VI of the original Bill consisted of provisions for insolvency. The principal reason why they were inserted was that the Panjáb Laws Act contained such provisions. But they appeared to be little used in the Panjáb, and, when used, to be little esteemed. Nor was it easy to see why there should be a special law on this subject for such a province as Oudh. The subject was one which was being dealt with in the new edition of the Civil Procedure Code, which was now before the Council, and on which the Committee hoped to present a Report before they left Simla. It would be better to include Oudh in the general law, and therefore this subject was struck out of the category of special laws for that province.

Another portion of Part III of the original Bill related to cases where a person died intestate leaving moveable property which was unclaimed. The Committee found that those cases were sufficiently provided for by a section of the Police Act of 1861, which extended to Oudh, and they therefore struck out the provision from this Bill.

Another portion of the same Part related to juries in civil cases in Lucknow. That practice rested on the authority of a letter from the Foreign Department, written prior to the Councils Act of 1861, and it was quite peculiar to the city of Lucknow. Fault was found with it by the Jalsa-i-Tahzíb, one of the Native Associations. The Chief Commissioner had stated that it was very rarely put in force, and that there was no reason why Lucknow should differ in this respect from all the rest of India. The Committee had therefore omitted it from the special laws of Oudh.

Chapter VIII of the Bill as introduced related to hidden treasure. That, however, was a subject on which it was intended to pass a general measure. Indeed, a notice to that effect was in the list of business, a little while ago, in the name of his friend Mr. Bayley, but dropped out again. At present the measure remained a hidden treasure in the breast of his hon'ble friend. But it would soon come to light, and it would be better to pass no special or local law in the meanwhile.

Chapter IX of the Bill as introduced related to military cantonments and bázárs. It was a reproduction of the Bengal Regulation; one of those Regulations of which the spirit passed to the Panjáb and from the Panjáb to Oudh. He mentioned at the time that lawyers were very shy of dealing with these military affairs, and it turned out that it would have been

better to let them alone. When the Regulation, which was more than sixty years old, came to be expressed in modern legal language, differences of opinion arose as to the propriety of re-enacting the whole of it, and as to the modifications it might be expedient to effect. And then the Commander-in-Chief very reasonably objected to have a local law, differing in some, though it might be in slight, particulars from the general law, for a subject of such general concern as that of cantonments. So the Committee had left the law where it stood, on the footing of Regulation XX of 1810, only taking care to provide for the express application of that Regulation to Oudh.

The principal additions the Committee had made to the Bill would be found in the fifth chapter. They related to Village and Road Police, and had been drawn from the Police Act passed for the North-Western Provinces in the year 1873.

There were of course a number of smaller alterations which were mentioned in the Report he was now presenting. He had stated to the Council the nature of the larger alterations which accounted for the different appearance which the Bill had now assumed.

The Council adjourned to Thursday, the 17th August 1876.

SIMLA;
The 27th July 1876.

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

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