

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 15

JAN. - DEC.

1876

P. L.

ABSTRACT OF THE PROCEEDINGS

Calcutta, 1/1/77

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

VOL. XV.



Published by the Authority of the Governor General.

Gazettes & Debates Section

Parliament Library Building

Room No. FB-025

Block 'G'

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

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 Tuesday, the 22nd February 1876.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. 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. Arbutnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

His Highness the Mahārājā of Vizianagram, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rājā Nārendra Krishna Bahādur.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to relieve from incumbrances certain estates in Chutia Nágpur be taken into consideration. As the Council were aware, the Bill had been framed very carefully on the model of the Act which had been previously passed for Oudh. There were, perhaps, one or two points of detail to which he should draw the attention of the Council. The first question before the Committee was what kind of property should be liable to the conditions of this Act. After some consideration and discussion, they decided to adopt in the title of the Bill the words "immoveable property," as being the most complete expression which could be adopted to include all the various estates, tenures and sub-proprietary rights which might exist in the Province of Chutia Nágpur. It was thought better to adopt one comprehensive phrase than to resort to various local phrases which might or might not fit into precise legislative drafting. It would be observed that the Committee had provided that

so long as an estate continued to be managed, the landholder and his heir should be incapable of entering into any contract which might involve them or either of them in pecuniary liability. They had also provided in regard to improvident leases, that the manager should have power either to set aside a lease or to cause the lessee to pay a proper consideration therefor. With reference to this provision which had been made by the Committee, he would draw the attention of the Council to section 3 of the Bill, which might be considered, perhaps, as one of its most important sections. It would be observed that the effects of an order bringing an estate under management were to be, *first*, the barring of any suits which might have been brought in reference to the estate, the freedom of the owner from personal arrest, and that his immoveable property should not be liable to attachment for prior debts. There was to be a cessation of all power of arrest, and immoveable property was also to be free from attachment, and the section ended with this important clause, that the holders of the property should be precluded from entering into any contracts involving them in any pecuniary liability. The Committee had carefully considered also whether when an estate, that was to say, immoveable property, was brought under management, at the same time any moveable property which the landholder might possess should also be brought under management. But on consideration they decided not to attempt to make any provision of that sort, but to restrict the main provisions of the Bill to immoveable property, that being the sort of property which carried with it those political consequences with regard to which this Bill was intended to deal. They had also considered, on some representations made to them, whether an appeal should be allowed to the Board of Revenue at Calcutta. But they thought that as two appeals were already provided in the Bill, one to the Deputy Commissioner of the district and the other to the Commissioner of the province, it was not desirable to allow a third appeal. They considered that the Commissioner of the province who was the head of the executive, and the Political Superintendent over all these Native Chiefs, should be the final appellate authority.

HIS HONOUR thought those were the principal points in the Bill to which the attention of the Council should be directed. He might add one other point perhaps. It was this, that the Committee framed the provisions of the Bill so that there should be no encouragement to the local authorities to bring under their management estates which were hopelessly insolvent. Estates in that condition could not possibly be extricated without either injustice to the creditors or expense to the State, and he need hardly add that neither of those conditions would be accepted. The provisions of the Bill had been so framed that the Act would not work satisfactorily unless the obligations of the

estate were such that there was some reasonable hope of discharging them. Those were the estates which we wished to save and bring under management. If there were estates which were hopelessly insolvent, and the creditors of which were willing to submit their claims to the arbitration of the district officers and the Managers under this Bill, to bring them as it were to a sort of Insolvent Court, no doubt they could do so, and for such cases the provisions of the Act would also be very suitable. But except with the consent of the creditors, it was not desirable that hopelessly insolvent estates should be brought under management, and the provisions of the Act had been framed to that effect.

He thought he had now mentioned all the important points in the Bill. There were also some verbal amendments or slight alterations with regard to which he need not trouble the Council.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said that this Bill was framed by Government with the best intention of preventing the estates of the landed gentry at Chutia Nágpur from falling into the hands of usurers. It would appear that the landholders of that province did not lead provident lives, or had not the tact of properly managing their affairs. Not possessing a knowledge of the world, which taught men to live within their means or incomes, hence these landholders incurred large debts, and generally mortgaged their estates to such usurers who brought suits against them in the Civil Courts for the recovery of their loans. When these money-lenders obtained decrees they enforced them, and either purchased the estates of their debtors or foreclosed their mortgages, and thus became owners of such lands. In order to prevent such lands coming into the hands of the usurers, the Government would appoint Managers for the management of the proprietors' estates, and when their debts were liquidated, their estates would be restored to them in due time. We could not sufficiently admire the principle upon which this measure was based, and the landed gentry of that part of the country, where the provisions of this Bill would apply, ought to be grateful to the present wise and experienced Lieutenant-Governor of these provinces for introducing this Bill; but RÁJÁ NÁRENDRA KRISHNA would also remark that the money-lenders of that province might apprehend that, under the authority vested in the Managers, they might not care so much to pay off the just debts incurred by the landholders as to see them white-washed completely, whether or not the creditors got the actual sums which they had advanced. He hoped the worthy Lieutenant-Governor would prepare rules for the guidance of these officers which would justify the hopes

of the creditors of receiving back their monies with interest at some reasonable rate. This measure clearly showed how very considerably His Honour wished to deal with respectable people fallen into involved circumstances. In conclusion, he begged to recommend that in special cases the final appeal for the settlement of a debt should rest with the Board of Revenue, when the aggrieved party might adduce reasonable grounds for the interference of the Board.

The Hon'ble Mr. HOPK said the Council were no doubt aware that they had had in force in Bombay for some years two Acts of a similar nature to the one which was now under the consideration of the Council. As he happened to hold the post of Collector of Ahmadábád at the time the first of these, Act VI of 1862, the object of which was to relieve the Ahmadábád Taluqdárs from debt, came into force, and as the Broach Thákurs' Relief Act was passed in consequence of representations which he made when Collector of that district, he thought that he ought not to allow the present opportunity to pass without placing before the Council a few of the results of the working of those two Acts. Act VI of 1862 came into force at the close of that year, and it had taken effect in 469 estates. The amount of claims adjusted by the manager had been 1,634, and the amount claimed by the creditors was 24 lákhs. But as the amount found upon a careful investigation to be justly and reasonably due was only 13½ lákhs, the balance might be taken as a sort of measure of the extortion to which these unfortunate taluqdárs had been subject. Out of this 13½ lákhs about 12 lákhs had been paid off up to the present time, and only 1½ lách still remained unpaid; and although the currency of the Act had been only thirteen and a quarter years, yet no less than 377 out of the 469 estates had already been released from attachment. As regards the Broach Thákurs on the other hand, their number was small; there were only five. The number of claims was 445, the sum claimed was 5½ lákhs, and the amount awarded was Rs. 3,15,000. As the Act had only been four years in operation, none of the estates had yet been released, but the amount paid off out of the Rs. 3,15,000 was Rs. 1,20,000. But we might hope that all these estates would be released in a reasonable time—at any rate in considerably less than twenty years, the period contemplated at the passing of the Act. Now these Taluqdárs and Thákurs were all of them Rájputs of the most ignorant description, and the country in which they lived had passed but recently under British rule. The technicalities of our laws pressed most heavily upon them. Money-lenders were not slow to take advantage of the law and the ignorance of those with whom they dealt, and the result was that when these Acts were brought in the condition of these Taluqdárs and Thákurs was pecuniarily hope-

less, and politically very prejudicial to good order. The Acts had put them upon their legs again, and had indirectly done more than that, because one of the results of the Acts was the appointment of a Manager and the establishment of a taluqdári school where the sons and young relatives of these Thákurs had been gathered together in a sort of college and received a proper education, so that we might hope they would not fall into the mistakes of their fathers. How far the whole measure would prove beneficial to their successors, or how far a lauded aristocracy could be preserved by legislation, were points which time alone could show. But he hoped the Council would agree with him in thinking that the results which had been happily obtained were sufficiently satisfactory to warrant the extension of a like measure to other parts of India, which might be similarly situated.

The Hon'ble Mr. HOBHOUSE said the only observation he had to make was in respect to the suggestion that there should be a further appeal than was given by the Bill. He was not surprised that persons who were accustomed to see every thing disposed of according to the ordinary course of law should desire that the best assistance that could be had on such occasions should be called in to decide the rights of these creditors. At the same time this Act was one of a rare class, a very special kind of Insolvency Act, passed to meet a particular state of things, and it was necessary for the proper working of it with due economy and due rapidity that the Manager who took the estate in hand should not be exposed to all the litigation in all the Courts to which the ordinary affairs of solvent people were open. Therefore in the other Acts which had been passed on similar subjects and in this Act, it was proposed to keep the decision in the hands of the district officers. There were no less than two appeals given from the decision of the Manager, and if there were a third it must be, as his friend Sir Richard Temple had intimated to the Board of Revenue, who sat in Calcutta, and who, no doubt, had considerable advantages by sitting in Calcutta, from the circumstance that they could be attended by Counsel. At the same time an appeal from a remote district of the kind to Calcutta was attended with very considerable expense, and the various creditors of the estate would probably find the assets to which they might resort for payment considerably diminished by the increase of litigation. It seemed to him better that the local officers should decide on these points. He did not understand that it was proposed to have an appeal to the District Judge or to the High Court, for if so, it would let in all the ordinary course of law, even involving an appeal to the Privy Council. It was necessary in these cases to have a somewhat summary, somewhat arbitrary, procedure; otherwise we should not see the end of the business. His friend Mr. Hope had just given the Council a most instructive account of

the operations under similar Acts. He did not understand from him that there had been any discontent in the working of the previous Acts; but on the contrary, that persons who had claims against these estates were being paid in a more regular and punctual way than if they had to resort to the ordinary process of law without the intervention of such machinery as this. It seemed to him that such machinery, although it might be different from the ordinary course of the law, would be to the benefit of the persons concerned, and that we better not hamper it by giving a third appeal to a distant place such as Calcutta.

His Excellency THE PRESIDENT observed that in clause 17 it was provided that the manager should act in conformity with rules passed under the proposed Act, and by clause 19 the Commissioner was empowered from time to time to make rules consistent with the Act in all matters connected with its enforcement. He should like to know what was the nature of the rules to be laid down for the purpose of determining debts.

The Hon'ble MR. INGLIS said that the rules to be framed under section 19 would lay down the procedure to be followed by the Managers when investigating and determining the claims brought against the estates taken under charge, the rate of interest to be allowed, and the order in which the admitted claims of the creditors were to be paid off.

His Honour THE LIEUTENANT-GOVERNOR was about to make a remark on the very point which His Excellency had just mentioned. These rules were not intended to provide for any thing inconsistent with the object of the Act. It was laid down in section 8 that the Manager was to determine the amount of the debts and liabilities justly due to the several creditors, and therefore the rules would, he presumed, provide for matters of detail, such as the manner in which notices should be served on the creditors, the form in which the statements of claims should be drawn up, the order of paying debts and liabilities found to be due, the rate of interest to be paid, and the security to be given by the subordinate officers. The rate of interest would be the only really important matter which would come under the operation of these rules. His Honour was anxious to draw the attention of his hon'ble friend Rájá Nárendra Krishna to section 12. The object was not to undertake the management of property which was hopelessly involved, but only property the condition of which admitted of its recovery, and then after it had been set in order to restore it to the owner. He was particularly careful to explain that it was not intended to take those estates under management which were so irretrievably involved that it would be impossible to reclaim them.

His Excellency THE PRESIDENT said:—"After the remarks made by my Hon'ble friend Mr. Hobhouse, I think that it would be desirable, in view of the further consideration of the question of appeal, to postpone the motion that the Bill be passed. At the same time it will be well to consider the scope of the rules by which the procedure of the Manager will be guided in determining the debts of creditors. It must be remembered that, while for political reasons, the Government of India in this case, and in former cases in other parts of India, have passed laws with the object of clearing certain encumbered estates from their debts, it is far from the intention of Government to interfere in any way with the proper and legitimate rights of those persons who have lent money on security to the owners of the estates; and, in all these measures, every care must be taken that justice is done to the fair rights of those persons. That is the intention of the Legislative Council in this Bill; and it of course must be provided that—as the Lieutenant-Governor has pointed out—the rules which are to be enacted under the Bill shall be such as that only forms of procedure, coupled, perhaps, with some regulation of the rate of interest to be allowed, shall be comprised in the rules, so that they shall not interfere with the duty of the Manager in determining the amount 'justly due' to creditors. He must act, as the Hon'ble Mr. Hobhouse has pointed out, something like a Commissioner of Bankruptcy going into the merits of each case, without any bias, and come to a conclusion as to what the liabilities really are. I have no doubt that the rules were only intended to have this effect, and probably it may be found that the introduction of a few words into clause 8 will make this clear."

The further consideration of the report was postponed.

CRIMINAL TRIBES ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR also introduced the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, and moved that it be referred to a Select Committee with instructions to report in one week. He said that it would be in the recollection of the Council that at the last meeting he described the tribes of a nomad and criminal character to which it was intended to apply this Act. So he had nothing to add on this occasion, save just briefly to state that this Bill was simply an extending Bill, and that the object was effected by inserting in the first section the word "Bengal;" so as to make the Act apply not only to the territories under the Lieutenant-Governor of the North-Western Provinces, but also to those under the Lieutenant-Governor of Bengal.

The Hon'ble MR. BAYLEY wished to say one word in explanation as regards the necessity of this Bill. He believed objection had been taken to the original action of this Council and of the Government of India in framing the previous Bill so as to exclude the Lieutenant-Governorship of Bengal. He could only say that this subject was fully and deliberately submitted to the then Lieutenant-Governor of Bengal, who at the time—MR. BAYLEY confessed he even then thought that this was a mistake—signified his desire expressly that the Bill should not be extended to the Lower Provinces. Experience had shown that the Lieutenant-Governor was wrong; but the error was not committed either by the Government of India or by this Council.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR then moved that the Bill be published in English in the *Gazette of India* and in the *Calcutta Gazette* in such languages as the Lieutenant-Governor of Bengal shall direct.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT presented the Report of the Select Committee on the Bill to provide Reformatory and Industrial Schools. He should postpone any detailed remarks on the Bill as amended by the Select Committee until the next meeting of the Council, when he proposed to move that the Bill in its amended form be taken into consideration. But perhaps he might on this occasion allude very briefly to one important and material alteration recommended by the Select Committee, which limited the scope of the Bill, which, in fact, limited its operation to one of the two classes of juvenile offenders to whom it was intended to apply. Under section 8 of the Bill as originally framed, it was made applicable to unconvicted offenders who were found to be frequenting the company of criminals or who wore without any ostensible means of livelihood. This was a point on which there had been a good deal of difference of opinion. Strong objections had been taken to the section in question by some members of the Native community, especially by the representatives of the British Indian Association. It was also objected to by the Government of Bombay; and on full consideration it appeared to the Select Committee that the measure, which was a somewhat novel measure in Indian legislation, should be carried out in a tentative form, and that, on the whole, it would be best to confine legislation to the case of convicted offenders and defer legislation regarding the classes referred to in the original Bill until

we had seen how the Bill as now amended should work by the test of experience.

The following Select Committee was named :—

On the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal—The Hon'ble Messrs. Hobhouse and Bayley and the Mover.

The Council then adjourned to Tuesday, the 29th February 1876.

CALCUTTA,
The 22nd February 1876. }

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