

*Wednesday,
7th July, 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
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
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1887.

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 Viceregal Lodge, Simla, on Wednesday, the 7th July, 1886.

PRESENT;

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

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

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

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

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

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Colonel O. R. Newmarch.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Colonel W. G. Davies, C.S.I.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. ILBERT, on behalf of the Hon'ble Sir A. Colvin, introduced the Bill to amend the Indian Ports Act, 1875, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Port St. George Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

PUNJAB TENANCY BILL.

The Hon'ble COLONEL DAVIES moved that the Bill to amend the law relating to the Tenancy of Land in the Punjab be referred to a Select Committee consisting

[Colonel Davies,; *The Lieutenant-Governor.*]

[7TH JULY,

of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin and the Mover, with instructions to report within ten weeks.

His Honour THE LIEUTENANT-GOVERNOR said :—

“ My hon'ble colleague, when moving for leave to introduce this Bill, explained the reasons for it and its scope so clearly and exhaustively as to relieve me from the necessity or the temptation to take up the time of the Council with any remarks of my own. I may, however, at the present stage of the case be permitted to repeat that this Bill is of very limited scope. It makes no important departure from the present Tenancy Act. In its two most important features, namely, the adjustment of occupancy-rents by the standard of the Government revenue and the adjustment of those rents by the Settlement-officer at the time of settlement it reverts to the old law and custom of the Punjab. The other changes which it introduces have either been necessitated by practical difficulties experienced in the working of the present law during the eighteen years it has been in operation or embody interpretations of the law and decisions given by the Civil Courts. In short, the Bill raises none of those delicate and difficult economic questions which so often accompany discussions on tenant-right. Indeed, very great changes will have to pass over the social condition of the Punjab before such questions can assume magnitude in this Province. In the Punjab the land is not, as in some parts of India, concentrated in the hands of large proprietors, to whom the mass of the people stand in the relation of tenants. The Punjab is a country of small landowners and of peasant-proprietors who are their own tenants. The mass of the people are themselves the proprietary body, cultivating their own lands. The average area of proprietary estates is something under 25 acres. In an area of 63½ million acres, something less than 9 millions are tenant-holdings. In a cultivated area of 23½ million acres, 62 per cent. is cultivated by the proprietors themselves, 13 per cent. by occupancy-tenants and 25 per cent. by tenants-at-will. In view of these facts I think the Council may commit this Bill to a Select Committee with some confidence that it is not likely to raise disturbing questions. It is in my judgment a Bill eminently calculated to foster and preserve the friendly relations which happily have hitherto existed in this Province between landlords and their tenants, who are often of the same flesh and blood, and oftener still of the same social class, as the landlords themselves.”

The Motion was put and agreed to.

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[Colonel Davies.]

PUNJAB LAND-REVENUE BILL.

The Hon'ble COLONEL DAVIES also moved for leave to introduce a Bill to declare and amend the Land-revenue Law of the Punjab. He said :—

“ The law on this subject is contained in Act XXXIII of 1871. This Act was the first attempt to express within a reasonable compass, and in clear language, the various rules and orders—based ‘ *on the spirit* ’ of the Bengal Regulations—by which the proceedings of Revenue and Settlement officials in the Punjab had up to that time been regulated, and which had acquired the force of law under section 25 of the Indian Councils Act.

“ The Act I am speaking of was framed with great care by a master of his art, Sir James Stephen, in close consultation with the then Financial Commissioner, Mr. (afterwards Sir R.) Egerton, and the Lieutenant-Governor, Sir Henry Davies—both men of large revenue and settlement experience. But it is scarcely, I think, to be wondered at that, notwithstanding all the skill and care expended on it, this first attempt to condense and put into legal form a mass of rules and instructions governing one of the most intricate branches of the administration should, when subjected to the test of practical working, have been found to be incomplete in some respects, and to require amendment in others.

“ What the principal defects in the existing law are I shall have to explain when I introduce the Bill, but I may now mention that some of them have already formed the subject of correspondence with the Government of India, and many others have, as experience brought them to light, been supplied in the enactments on the same subject which have been framed for other parts of India. Moreover, the recent orders of the Government of India, based on recommendations made by the Famine Commissioners, demand that the continuous operations by which village-records are maintained correct to date shall be disconnected from those other occasional operations by which the assessment of the land-revenue is revised ; and, in the endeavour to recast the body of rules which have been issued under the authority of the existing law with a view to the carrying out of those orders, technical difficulties have arisen which render the amendment of the Act a matter of necessity. The simultaneous revision of the Tenancy Act has also suggested certain changes in, and additions to, the Land-revenue Act.

“ These briefly are, my Lord, the grounds on which it is proposed to amend the latter Act, and they will, I trust, be accepted by the Council as sufficient to support the motion I have made with this object.”

The Motion was put and agreed to.

[Mr. Ilbert ; Sir Stewart Bayley.]

[7TH JULY,

INDIAN COMPANIES ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Indian Companies Act, 1882. He said :—

“ The object of this Bill is to give priority, within certain limits, to the payment of salaries and wages in the distribution of the assets of a company which is being wound up under the Indian Companies Act. Provision to this effect was made by a Statute which was passed in 1883 to amend the English Companies Act, and corresponding provisions will be found both in the English Bankruptcy Act and in the Indian Bankruptcy Bill now before the Council. A recent decision of the Bombay High Court has attracted attention to the fact that there is no similar provision in the Indian Companies Act. I propose to insert such a provision, and thus to assimilate the Indian Companies Law to the English Companies Law, and the Law relating to Insolvent companies to the Law relating to Insolvent individuals.”

The Motion was put and agreed to.

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

LOWER BURMA GAOLS DELIVERY BILL.

The Hon'ble SIR S. BAYLEY moved for leave to introduce a Bill to make provision for the more speedy trial of certain accused persons in custody in Lower Burma. He said :—

“ The necessity for, and the object of, this temporary measure are best given in the words of the Chief Commissioner, from whose report, with Your Excellency's permission, I will read. A letter dated the 12th June, 1886, from the Secretary to the Chief Commissioner, runs as follows :—

<p>* Shwegyin. Toungoo. Pegu. Hanthawaddy. Bassein. Thongwa.</p>	<p>Henzada. Tharrawaddy. Promo. Thayetmyo. Thaton subdivision, of Amherst.</p>	<p>by large gangs of rebels or dacoits. Villages have been burnt and numerous atrocities committed. The number of persons who have taken part in these disturbances has been very large. Some 1,500 have already been arrested, and numerous arrests continue to be made daily. Order has now to some extent been restored, but there are several gangs still at large, and there is little hope that the province will be restored to its normal condition for some months to come. Every effort has been made to cope with this outbreak of crime in accordance with the ordinary procedure, and two officers in succession</p>
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[*Sir Stuart Bayley.*]

(Mr. Ireland and Mr. Copleston) have been appointed Additional Sessions Judge for the purpose of assisting in the disposal of cases. But it has been found that something more than this is necessary if the large number of prosecutions now pending are to be disposed of with reasonable promptitude. There are at present over 1,000 prisoners in custody who have not yet been brought to trial; some of them have been over five months in jail; and to dispose of all these cases under the ordinary procedure will occupy many months. This is unfair to the prisoners themselves, some of whom may be innocent, and it is inconvenient to the Government, inasmuch as the overcrowded condition of our jails cannot be relieved until the case of these prisoners have been disposed of. Moreover, as explained in Mr. Hodgkinson's note there is reason to fear that, in some cases at least, guilty persons will escape punishment if their cases are not promptly brought to trial.

Accordingly the Bill now submitted has been drafted with a view to introducing in the disturbed tracts, subject to certain safeguards, a more summary procedure than is admissible under the ordinary law. Sir Charles Bernard hopes that it will not be necessary in very many cases to sentence prisoners to long terms of imprisonment, and he believes that it will be possible, when the country has quieted down, to release many of the prisoners before the sentences have expired. In some cases it is probable that a whipping will prove a sufficient punishment for young lads who have joined rebel bands thoughtlessly or under intimidation, and a clause has accordingly been inserted in the Bill authorizing Magistrates to inflict this punishment in certain cases in which a whipping would not be a lawful punishment under the Indian Penal Code. The remaining provisions of the Bill are sufficiently explained in Mr. Hodgkinson's note, in which the Chief Commissioner generally concurs.

In conclusion I am to submit that Sir Charles Bernard regards it as a matter of importance that some such enactment as that now submitted should be passed into law with as little delay as possible.

These are the circumstances under which we have been asked to legislate. The draft Bill which Sir Charles Bernard submitted has been modified in some respects, and the shape which, under the advice of the Legislative Department, it will now take is as follows. It will extend only to those tracts which the Chief Commissioner may notify as disturbed tracts in Lower Burma. In those tracts the Chief Commissioner will have power to appoint District Magistrates and other selected Magistrates of the first class to try cases as Sessions Judges without the necessity of previous commitment.

The procedure which these officers will follow in that class of cases will be the ordinary procedure of warrant-cases under the Criminal Procedure Code. The offences to which this procedure will apply are mainly offences against the public peace of a violent nature, and are entered in the schedule at the end of the Bill. The decisions of these officers will be subject in the ordinary course to both the

revisionary and the appellate jurisdiction of the Judicial Commissioner, who is the local High Court ; but, as it is possible that the Judicial Commissioner will find himself unable to keep pace with those cases, power is given to the Local Government to appoint, with the previous sanction of the Governor General in Council, an Additional Judicial Commissioner, or Additional Judicial Commissioners. The object of this last clause is in case it should ultimately be necessary in some very special circumstances to vest with the powers of the Judicial Commissioner officers such as the Commissioners of Divisions. But at present it is not intended to do that ; it is proposed to leave the revisionary jurisdiction of the High Court in the hands of the Judicial Commissioner, and possibly to appoint an Additional Judicial Commissioner to go about and hold circuit. This Additional Judicial Commissioner will work under the ordinary checks of the Criminal Procedure Code. The only alterations of importance we have made are that in these cases of the disturbed tracts we reduce the period during which an appeal can be presented in cases other than capital cases from 60 to 30 days, and, for the reasons given in Sir Charles Bernard's letter, which I have just read out, we allow whipping in substitution of the severer penalties which the Penal Code generally directs.

"I may mention that the Judicial Commissioner, who, as I said before, is a local High Court, has been consulted, and he quite concurs with the Chief Commissioner as to the necessity for providing an effective procedure for these cases, though the procedure which Sir Charles Bernard and the Judicial Commissioner proposed is somewhat more summary than that which we have seen our way to accept. The Chief Commissioner will have the power to remove from the operation of this Bill any tract as soon as it ceases to be a disturbed tract, and we propose that the special law altogether shall expire at the end of the current financial year. I think that the provisions of the Bill will probably suffice to meet the object which Sir Charles Bernard has in view, and I do not think that anything less than a measure of this kind would have the effect."

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also introduced the Bill.

The Council adjourned to Wednesday, the 14th July, 1886.

S. HARVEY JAMES,

*Offg. Secretary to the Govt. of India,
Legislative Department.*

SIMLA ;
The 9th July, 1886.