Wednesday,
25th August, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXV

Jan.-Dec., 1886

ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1886

VOLUME XXV.

Published by the Authority of the Governor General.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
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 25th August, 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 Sir A. Colvin, K.C.M.G., C.I.E.

The Honb'le Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

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

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

NATIVE PASSENGER SHIPS BILL.

The Hon'ble Sir A. COLVIN moved for leave to introduce a Bill to consolidate and amend the law relating to Native Passenger Ships. He said:—

"Experience has shown that the law of 1876, in respect of Native passenger ships, which was amended by the respective enactments of 1883 and 1884, requires modification in certain points with a view to the greater security and comfort of the passengers, and to the protection of the interests of those concerned in Native passenger traffic. After consulting the different Local Governments, the six amendments which are contained in the Statement of Objects and Reasons have been resolved upon with the view of meeting the above points. It is unnecessary that I should enter into further explanation here in regard to the amendments proposed in the modifications of the present law set forward in the Bill which I ask leave to introduce, as they are stated with sufficient fulness in the Statement of Objects and Reasons.

The motion was put and agreed to.

The Hon'ble SIR A. COLVIN also introduced the Bill.

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble SIR THEODORE HOPE moved that the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the mover, with instructions to report within two months. He said:—

"In support of a motion of this kind it is usual to give a somewhat more detailed sketch of the provisions which a Bill contains than that which is afforded on the motion for leave to introduce it. I do not think, however, that it is necessary for me to trouble the Council with what, as regards the majority of the amendments which this Bill proposes to effect, would be hardly more than a repetition of my remarks on the last occasion. But there is one of those amendments which I then indicated as being of importance, and on which I shall be expected to give a little further explanation; that is, the section relating to conciliation, by which it is proposed to invest the Conciliators with power to require the attendance of either of the parties to the conciliation. At present the Conciliator possesses the power of requiring the attendance of the applicant, but only of inviting that of the defendant.

"In the first place, I may take the opportunity of pointing out the very important position which this system of conciliation has now obtained in the four Dekkhan collectorates to which the Act is applied. It was in force last year in 25 out of 37 talukas in these four collectorates, the remaining talukas being worked under somewhat different arrangements; and in those 25 talukas there were 237 Conciliators. The importance of their work may be judged from the fact that during the past year there were 40,641 applications for conciliation, and that those applications related to an amount of no less than 51½ lakhs of rupees. During the year, again, the number of cases disposed of including those in arrear was 42,880. Of these cases, both the parties appeared in about 12,000, and in about 31,000 one or other of the parties was absent; that is to say, there were

about 28 per cent. of full appearances, and about 72 per cent. of absences of one or other of the parties, of which a small proportion only was due to withdrawals or compromises. Now, it is obvious that, where one or other of the parties does not make his appearance before the Conciliator, the conciliation cannot be said to have failed, but has never had the opportunity of being tried at all, and the object of the provision of the law is defeated, except in so far as the granting of certificates is concerned. Therefore, what we must look to, in examining this conciliation system, is the result in cases in which both parties made their appearance before the Conciliator. Now, we find that during the past year the proportion of cases in which the parties came to terms (which means that they settled their disputes without it being necessary to go to a Civil Court) was no less than 78 per cent.; or, to put it in another form, more than 3 out of 4 of the cases, or nearly 4 out of 5, were settled in this simple and inexpensive way, instead of being subjected to the costly and dilatory machinery of the Civil Courts. This percentage of 78, moreover, is the more satisfactory, for we find that the proportion has been growing every year since the Act was introduced. In the year 1880 the percentage of such cases was 52; in the following year it was 44; in the third year it was 58; in the fourth 64; in the fifth year 73; and now we have it at 78.

"Turning next to the nature of these agreements, which is not an unimportant point—because when the Act was introduced, and its probable effects could only be judged by theory instead of by experience, it was said that the influence of the saukar, and of his social relations, and so on, would be so great that the unfortunate raiyats when brought before the Conciliator would be less able to stand against him than when in a Civil Court,—we find that in the past year 9,361 cases were decided, and that, out of these, 8,990 agreements were filed in the Civil Court, the difference in figures being merely owing to pending cases. Out of these 8,990 agreements, 6,704 related to money-claims. These money-claims were of the value of 7¼ lakhs of rupees, and the result of the conciliation process was that these 7¼ lakhs of rupees were reduced by 33 per cent., or ⅓rd; that is to say, that the matter was settled for about ⅔rds of what the saukar was demanding from the raiyat. The mortgage-agreements, again, numbered 1,790, and were valued at 3½ lakhs of rupees, the amount of interest claimed being Rs. 1,86,581. In these, we find that the results of the conciliation were very nearly in the same proportion as in the money-claims, that is to say, the reduction amounted to 32 per cent. of the claims. Turning now to the third class of agreements, namely, those for the redemption of mortgaged land, the number was 496, and the land was valued

at Rs. 1,10,000. The value was not open to much dispute,—the difference on settlement being only about Rs. 1,000 or so,—but in 125 cases, where the land was in the possession of the creditor, his term was limited, that is to say, an arrangement was made by which he would have to give up the possession of the land after a definite period; while in the remaining 314 the lands were restored at once to the original mortgagor, subject to an arrangement that he should pay a series of fixed instalments till the debt was liquidated. These are the actual facts of the past year. Now, with regard to the quality of the Conciliators' decisions, which might seem open to question, it is very remarkable that, out of the whole of these 8,990 cases, only 77 were objected to within the period for which the law provides that objections to the arrangement may be filed in the Civil Court by either party. Out of all these 77, the objections were allowed in only 37 instances. Besides this the Court, of its own motion, under the powers which it has under another section of the Act, disallowed 38 of the agreements, as being either contrary to law, or improper for some other obvious reason. So we have the fact that, out of all these 8,990 agreements, only 75 were upset for one reason or another, that is to say, considerably less than one per cent.'

"Passing now from the circumstances in which the conciliation has had a satisfactory effect to the opposite, we find that the cases in which conciliation could not come into play owing to the non-appearance of the parties without apparent cause are on an average about 64 per cent. This percentage has not varied very much since the Act was introduced. I find that in some years the number of applicants who did not attend was larger than in other years, and so also as regards the defendants; but practically about 64 per cent., that is to say, about ⅔rds, of the cases which might have come before the Conciliators, and which presumably, if they had so come, might probably have been settled satisfactorily in the proportion which I have been citing, absolutely lie over, and become the subject at any rate of expensive and tedious litigation. Now, it is in order to remedy this particular difficulty, of the non-appearance of one party or the other, that the clause in our present Bill has been framed.

"As regards the general working of this conciliation system, I may quote a few words from the last year's report by the Hon'ble Mahadeo Govind Ranade, the Special Judge in charge of the four Dekkhan districts.

"He says that the figures shew, '*first*, that although there has been a decrease of nearly 20 per cent. in the total number of applications, these applications were still nearly twice as many as the number of suits instituted in the

subordinate Courts; *second*, that the value of the claims involved in these applications was nearly five times as large as the value of the claims brought in the Civil Courts; *third*, that the number of applications in which agreements were made, or in which the claims were otherwise compromised, did not fall much short of the number of suits which were disposed of really and finally; *fourth*, that the value of the claims so settled exceeded the total value of the claims disposed of by the Civil Courts," and again, "that the percentage of abatements under all heads, namely, (w, y and z), secured by Conciliators was not very much lower than the corresponding results in suits disposed of in Civil Courts." Moreover, I find that, out of the 25 Sub-Judges in the four districts, 22 are entirely in favour of the conciliation system. The 3 others make objections to certain portions of it, which are very ably reviewed and met by Mr. Ranade, but which I need not trouble the Council by recapitulating. Thus, I would submit that the system is a very good one; that it has proved of enormous benefit as far as it has been allowed to act; that it has already, even in this imperfect state, taken the place of very much larger, more expensive and cumbrous machinery; and that it ought to be allowed the fullest scope. In order to secure this attendance of parties, I may state that various expedients have been suggested short of allowing a power of summons and warrant; but, after full deliberation, it has been considered best to adopt the simple means already in vogue in the ordinary Courts of the country, that is to say, that the summons should issue, and that in the case of non-compliance with the summons attendance should be required by warrant. In case there should be any feeling that this requiring of attandance by warrant is a somewhat harsh and drastic method, I would recall to mind that exactly similar objections were made in 1879 in this Council to the clause of the Act which provides against suits being decided *ex parte*, by giving the Courts power to absolutely require the presence of the defendant. At that time very strong objection was offered to this clause, and it was finally discussed and adopted on an amendment in this Council. But now we find that during the last six years not the silghtest evil consequences have arisen from it. I venture to believe now in this case, as I thought then, that, when once it is understood that an order has to be obeyed, nobody thinks of disputing it. I do not recollect that in the whole course of my experienc as a Magistrate I ever had to issue a warrant to obtain the attendance of a witness, and I have very little doubt that this will be the result with regard to the attendance of these parties, and that the mere fact of the law requiring that they shall attend will be quite sufficient to ensure their doing so without trouble.

"With these remarks I commend my motion to the Council."

The Hon'ble MR. ILBERT said :—" The Act now under amendment was the subject of a controversy which raged very fiercely a short time before my arrival in this country, and of which the embers were still smouldering when the second amending Act was passed four years ago. The judgment of most impartial critics at the present time will probably be that the Act embodies sound principles and contains some useful provisions combined with others which were not well adapted to their purpose and have remained inoperative. I think that the Local Government is quite justifiedby its experience of the working of the Act in asking for powers to extend to other districts those provisions which have satisfactorily stood the ordeal of the last six years. With reference to the particular provision which was rejected by a narrow majority in 1882,—the provision which gives Conciliators power to require the attendance of the parties,—I thought then that neither the evidence nor the arguments brought forward in support of the proposal to give this power were convincing, and accordingly I gave my vote on the side of caution. As, however, it appears that the local authorities, in the light of the full discussion which took place in this Council four years ago, and of the subsequent experience gained during the last four years, are of opinion that the conferment of such a power is necessary for the satisfactory working of the Act, I am quite content to defer to their judgement on that point "

The motion was put and agreed to.

JHANSI AND MORAR BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to annex the Town and Fort of Jhansi and certain adjacent territory to the Jhansi District, and for certain other purposes. He said :—

" This Bill is drawn in three Parts. The object of Part I is to incorporate in the Jhansi District the town and fort of Jhansi, which were lately ceded by the Maharaja Scindia to the British Government in exchange for the cantonment of Morar. The town and fort have already been declared by proclamation under the Statute 28 & 29 Vic., c. 17, section 4, to be subject to the Lieutenant-Governship of the North-Western Provinces, but legislation is required for the annexation of the town and fort to the Jhansi District, and for the assimilation of the law in force therein to that in force in the district. The provisions necessary to effect these objects are contained in sections 2 and 3 of the Bill ; while section 4 makes it clear that the ceded territory will be part of the scheduled

district known as the Jhansi Division ; and section 5, which is taken from the corresponding provision in the Upper Burma Laws Bill now before the Legislative Council, validates all acts done since the date of the cession and before the commencement of the Act. As negotiations are at present pending for the exchange of certain lands in the neighbourhood of Jhansi, the provisions of sections 2, 3 and 4 of the Bill are made prospective, so as to cover the lands which may be ceded.

"The object of Part II is to give effect to certain decrees and orders of the Gwalior Courts which, by reason of cession of territory, have ceased to be enforceable in those Courts.

"The object of Part III is to afford relief to certain traders and others formerly carrying on business within the cantonment of Morar who had money-claims enforceable in the local Courts at the time of the cession of the cantonment to the Maharaja. As the British Courts in the cantonment have necessarily been abolished, these persons have now no means of recovering the amounts due to them at Morar, whilst to follow their debtors to the various places to which they have migrated, and proceed against them in the Civil Courts there, would, in many cases, put the creditors to greater expense than the amount of the debts due to them. It is proposed, therefore, by section 7 of the Bill that persons who may have been entitled to file suits of certain classes, or applications for the execution of decrees in suits of those classes, in a Morar Civil Court at the date of the cession of the cantonment, may file the suits and applications in the Civil Courts at Jhansi or Agra, or at any other place appointed by the Governor General in Council in this behalf, and that the Court having jurisdiction at those places shall dispose of the suits and applications. In order to save debts which might otherwise have become time-barred, the same section declares that in computing the period of limitation for the suits and applications, the time which has elapsed between the date of the cession of the cantonment and the commencement of the Act shall be excluded.

The motion was put and agreed to.

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

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in

the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The motion was put and agreed to

The Council adjourned to Wednesday, the 1st September, 1886.

S. HARVEY JAMES,

SIMLA; *The 2nd September, 1886.*

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

S. G. P. L., Delhi.—No. 375 L. D.—R. G. G.