

*Wednesday,
3rd July, 1889*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVIII

Jan.-Dec., 1889

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1889

VOLUME XXVIII



Published by Authority of the Governor General.



CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1890.

*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 Vict., Cap. 67.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 3rd July, 1889.

P R E S E N T :

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

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

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

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. J. Crosthwaite.

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend Acts VI and VII of 1884. He said :—

“ Under section 11 of the Indian Steamships Act, the surveyor who makes a survey of a steamship, if satisfied that he can properly do so, gives the owner or master what is called a declaration in a prescribed form, and containing certain particulars. This declaration the owner or master forwards to an officer appointed in that behalf by the Local Government. Upon receipt of the declaration by the officer in question, the Local Government can grant a certificate of survey, and cause it to be delivered to the owner or master.

“ A precisely similar procedure is prescribed under sections 9, 10 and 11 of the Inland Steam-vessels Act in respect of certificates granted in accordance with the provisions of that Act.

“ This procedure has not in every Province been found satisfactory. The necessity of a reference to the Local Government causes delay and inconvenience, which may sometimes amount to a serious evil; the Local Governments do not in all cases possess the experience and knowledge requisite for dealing with declarations, and have to rely on the advice of officials who are experts in such

[*Sir David Barbour; Mr. Crosthwaite.*]

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matters, so that not unfrequently the reference to the Local Government is not really an additional safeguard. For these reasons it has been held to be expedient to authorise a Local Government to delegate to a competent person its power of granting a certificate of survey whether under the Inland Steam-vessels Act or the Indian Steamships Act.

"No Local Government need adopt this course unless it finds it necessary to do so; and it will be provided that the delegation can only be made with the previous sanction of the Government of India, and that the surveyor who gives a declaration shall not be the person authorised to grant the certificate. These limitations appear to be sufficient to prevent any abuse of the power of delegation.

"Advantage has also been taken of the opportunity to amend the Inland Steam-vessels Act in another respect. A certificate of survey granted under section 11 of that Act specifies the number of passengers the vessel is fit to carry, but there is no provision of the law under which the owner or master can be punished for carrying passengers in excess of the number entered in the certificate. This is an omission which requires to be remedied, and it has therefore been provided that the owner and master shall be liable when passengers are carried in excess of the number entered in the certificate to a fine not exceeding Rs. 10 for every passenger so carried in excess."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BAROUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to amend the Central Provinces Tenancy Act, 1883. He said :—

"In the Bill to amend the Central Provinces Land-revenue Act, 1881, which was introduced at the last meeting of the Council, it was proposed to make

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[*Mr. Crosthwaite.*]

some alterations in the definitions of 'sfr-land' and 'tenant' in that Act. As these definitions should be the same in both the Land-revenue and the Tenancy Act, it is necessary to amend the latter Act. This opportunity is also taken to make a few other amendments which appear to be desirable in the Tenancy Act, and to add to it a few provisions which have been shown by experience to be required.

" The Tenancy Act at present does not apply to the scheduled districts. I have already explained in moving for leave to introduce the Bill to amend the Land-revenue Act, 1881, that these scheduled districts consist of certain estates called zamindáris. In those zamindáris which are not scheduled the Central Provinces Tenancy Act of 1883 is in force, while in those which are scheduled Act X of 1859, an Act passed to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal, is the law which regulates the rights of landlord and tenant. The latter Act is less simple and less suited to the condition of the people than the former, and there is no sound reason why the law of landlord and tenant should not be the same in the scheduled zamindáris as in the zamindáris which are not scheduled. The Bill therefore proposes to extend the Central Provinces Tenancy Act, 1883, to the scheduled districts and so to make the law of landlord and tenant uniform throughout the Provinces.

" The next important amendment, my Lord, is with regard to the class of thekadárs, gaontias or farmers. It is considered that, where a person has held a tract of land under a farming lease and has broken up waste-land at his own expense and cultivated it for some years, he should have a tenant-right in the land. The amendment which it is proposed to make in the Central Provinces Land-revenue Act will provide for the protection of those thekadárs or gaontias who have held their villages for a long period and whose rights should have been provided for at the last settlement. There is another class of thekadárs or gaontias whose leases are of more recent date, but who have, acting on the belief that their leases would be renewed, expended money and labour in breaking up and reclaiming waste-lands. Mr. Mackenzie is of opinion that this class also requires protection, and section 10 of the Bill accordingly provides that a thekadár or gaontia shall have, when ejected, a right of occupancy in waste-land which he has himself, or by hired labour, broken up and cultivated for a period of twelve years. This provision will compensate him for the improvements which he has effected in the land leased to him, and will, it is believed, be in conformity with the feeling of the people. I may mention that the Tenancy Act regards the reclaiming, enclosing or clearing of lands for agricultural purposes as an improvement for making which a tenant can claim compensation, and the same principle

[*Mr. Crosthwaite.*]

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is recognized in section 69 of the Punjab Tenancy Act, 1887. A thekadár or gaontia is not a tenant within the meaning of the Central Provinces Tenancy Act and is not therefore entitled under the Act to compensation for improvements.

"Section 12 of the Bill inserts in the Act a Chapter dealing with village-service tenants, that is to say, tenants who are recorded in the settlement-papers as holding land rent-free in consideration of their performing some duty or service in the village. The Tenancy Act makes no special provision for this class of tenants, and consequently they have an ordinary tenant-right in the land they hold, and there is no suitable method of compelling them to perform their duties or of depriving them of the village-service holdings if they are incompetent or refuse to perform their duties. The new Chapter contains a few simple provisions declaring that on the death of a village-service tenant the right in his holding shall pass to his successor in office, and that the holding cannot be transferred by the tenant or sold in execution of a decree, and also prescribing the grounds on which he can be ejected from his holding.

"Section 14 of the Bill proposes to add an important provision to section 53 of the Act. It is found that, in order to prevent a cultivator from obtaining a tenant-right, the device has been resorted to by some landlords of entering into a partnership with a raiyat for the cultivation of land. The landlord supplies the land, and sometimes seed-grain or money, and the raiyat cultivates the land as the landlord's partner. The produce is divided in accordance with the agreement between the landlord and the raiyat. In effect the raiyat is paying a rent in kind, but the contract between him and the landlord is so arranged that the raiyat is not a tenant and can be ejected whenever the contract of partnership is determined. The object of the Tenancy Act was to confer tenant-rights on all tenants, and this device is an evasion of the Act. The Bill proposes, therefore, to provide that in all such cases, where a raiyat cultivates under an agreement of partnership with his landlord, the raiyat shall have the right of an ordinary tenant in the land which he cultivates, and that the rent payable by him shall be fixed by a Revenue-officer on application made by the raiyat or the landlord.

"There is, my Lord, one other proposed amendment in the Tenancy Act which requires some explanation. This is section 16, which inserts in the Act a section in order to provide that, when a Settlement-officer for the purposes of his assessment determines the rents of ordinary tenants and bases his assessment on the rents so determined, the landlord is entitled to recover those rents from the tenant. The Tenancy Act provides that the rents of absolute occupancy and occupancy tenants shall be fixed at the settlement; but there is no corresponding provision regarding ordinary tenants. It is doubtful whether section 15

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of the Act will in all cases enable the landlord to enhance the rent of an ordinary tenant when the revenue payable by the landlord on account of the tenant's holding is increased. When the revenue is enhanced on the ground that the rents paid by ordinary tenants are below the rents which a Settlement-officer considers to be fair and reasonable for the purposes of assessment, the landlord should be able to realize enhanced rents from his ordinary tenants without having to go through the process of enhancement provided by the Act.

"The last section of the Bill amends section 41 of the Central Provinces Local Self-government Act, 1883. That section confirmed the rates for the maintenance of roads, schools or the district post, for the payment of which provision was made in the last settlement, and it also provided for the recovery of those rates. In the settlements which are now in progress, or which will shortly be commenced, the payment of these rates will have to be provided for, and it is therefore necessary to amend the section so as to make it apply generally to the rates for the maintenance of roads, schools or the district post for the payment of which provision is made at any settlement.

"The other amendments made by the Bill are of minor importance and are, I think, sufficiently explained in the Statement of Objects and Reasons."

The Motion was put and agreed to.

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

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces 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 10th July, 1889.

SIMLA;
The 4th July, 1889.

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S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.